

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings
Proceedings Clerk
10:14 am, Jan 03, 2013

In the Matter of:)
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Mizuho Securities USA Inc.)
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Respondent.)
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CFTC Docket No. 13-11

ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED,
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from October 7, 2011 through October 11, 2011 (the “Relevant Period”) Mizuho Securities USA Inc. (“Mizuho” or “Respondent”) violated Commission Regulations (“Regulations”) 1.12(h) and 166.3, 17 C.F.R. §§ 1.12(h) and 166.3 (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

Mizuho is registered with the Commission as a futures commission merchant (“FCM”). Pursuant to Regulation 30.7(a), 17 C.F.R. § 30.7(a) (2012), an FCM must account for and maintain money, securities and property (collectively “funds”) in an amount at least sufficient to cover or satisfy all of its current obligations to foreign futures and options customers in a separate “secured account.” Pursuant to Section 4d(a)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6d(a)(2), FCMs must also separately account for and maintain funds received from customers trading on U.S. exchanges in a “segregated account.”

Mizuho had a deficiency of secured funds on Friday, October 7, 2011 and Monday, October 10, 2011. Mizuho did not notify the Commission of those deficiencies until Wednesday, October 12, 2011.

B. RESPONDENT

Mizuho Securities USA Inc. is an FCM with its principal office located in New York, NY. Mizuho has been registered with the Commission as an FCM since 1989.

C. FACTS

On Friday, October 7, 2011, Mizuho accepted approximately 1.2 million futures and options contracts from the books of another FCM for a single customer. In anticipation of that transfer, Mizuho transferred approximately \$40 million in excess firm funds into its customer segregated accounts, but did not make any anticipatory transfers to its secured accounts.

Due to the Columbus Day bank holiday, the two members of Mizuho’s accounting department responsible for preparing the company’s 30.7 (Foreign Secured) Calculation Report (the “30.7 Report”) and statement of segregated funds (the “Daily Segregation Statement”) were both out of the office on Monday, October 10. As shown on Mizuho’s 30.7 Report, as of the close of business on October 7, 2011, Mizuho was required to hold \$536,875,879 in secured funds, but held only \$524,471,120 in its secured accounts, resulting in a deficiency of \$12,404,759. Mizuho’s Daily Segregation Statement indicates that Mizuho met its segregated funds requirements and had excess segregated funds of \$122,564,573 as of that date. As of Monday, October 10, 2011, Mizuho was required to hold \$564,203,212 in secured funds, but held only \$523,184,067 in its secured accounts, resulting in a deficiency of \$41,019,145. Mizuho’s Daily Segregation Statement indicates that Mizuho met its segregated funds requirements and had excess segregated funds of \$95,458,784 as of that date. However, funds required to be held in secured accounts are distinct from funds required to be held in segregated accounts. *See* Regulation 30.7(d) (“In no event may money, securities or property representing the foreign futures or foreign options secured amount be held or commingled and deposited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and the regulations thereunder.”).

Mizuho was not aware of the aforementioned deficiencies in the amount of secured funds on deposit until Tuesday, October 11. On October 11, Mizuho notified its designated self-regulatory organization (“DSRO”), but not the Commission, of a secured deficiency “due to the inability to move funds through the Fed to cover the debit any sooner than Tuesday morning, the next business day following the transfer.” Mizuho transferred \$59 million from its house account to a 30.7 secured account and its customer transferred almost \$79 million, curing the deficiency. The following day, October 12, Mizuho provided the Commission with telephonic and written notice of the secured funds deficiency.

During the relevant time, Mizuho routinely deposited all customer funds into its segregated accounts, and then transferred funds to its secured accounts as needed. Mizuho did not have proper policies and procedures in place to ensure that secured funds were transferred to secured – as opposed to segregated – accounts. Mizuho also failed to provide its employees with training regarding their obligation to immediately notify the Commission of any secured fund deficiency.

IV.

LEGAL DISCUSSION

A. Mizuho Did Not Provide Timely Notice to the Commission of Secured Fund Deficiencies in Violation of Regulation 1.12

Regulation 1.12(h), 17 C.F.R. § 1.12(h) (2012), provides in part that whenever an FCM “knows or should know that the total amount of its funds on deposit in segregated accounts on behalf of customers, or that the total amount set aside on behalf of customers trading on non-United States markets, is less than the total amount of such funds required by the Act and the Commission’s rules to be on deposit in segregated or secured amount accounts on behalf of such customers,” it must “report such deficiency immediately by telephone notice, confirmed immediately in writing by facsimile notice” to the Commission and DSRO. *See also In re Szach*, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,451 at 51,462) (CFTC Jan. 8, 2001) (“[P]ursuant to Commission Regulation 1.12(h), whenever an FCM is or should be aware of any instance of under-segregation, it is required to immediately report that deficiency to the Commission.”).

Mizuho knew that the amount of secured funds on deposit on October 7 and 10 was less than the amount required on October 11. However, Mizuho did not provide notice to the Commission of those deficiencies until October 12. Accordingly, Mizuho violated Regulation 1.12(h).

B. Mizuho Failed to Diligently Supervise Its Employees Responsible for Notifying the Commission of Any Secured Fund Deficiency

Regulation 166.3, 17 C.F.R. § 166.3 (2012), requires that every Commission registrant (except associated persons who have no supervisory duties) diligently supervise the handling by its partners, employees and agents of all its commodity interest accounts and activities relating to its business as a registrant. Regulation 166.3 imposes on registrants an affirmative duty to supervise their employees and agents diligently by establishing, implementing, and executing an adequate supervisory structure and compliance programs.

In order to prove a violation of Regulation 166.3, it must be demonstrated that either: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995). Evidence of underlying violations of the Act or Regulations "is probative of a firm's failure to supervise, if the violations which occurred are of a type which should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly." *In re Paragon Futures Assoc.* [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,266 at 38,850 (CFTC Apr. 1, 1992).

Mizuho violated Regulation 166.3 by failing to provide adequate training to its employees regarding their obligation to comply with Regulation 1.12(h). Mizuho also failed to diligently supervise because it did not have policies or procedures in place mandating immediate notification to both the CFTC and its DSRO of any segregated or secured fund deficiency.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Mizuho violated Regulations 1.12(h) and 166.3, 17 C.F.R. §§ 1.12(h) and 166.3 (2012).

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. the filing and service of a complaint and notice of hearing;

2. a hearing;
 3. all post-hearing procedures;
 4. judicial review by any court;
 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2012), relating to, or arising from, this proceeding;
 7. any and all claims that it 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 proceeding; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondent violated Regulations 1.12(h) and 166.3, 17 C.F.R. §§ 1.12(h) and 166.3 (2012);
 2. orders Respondent to cease and desist from violating Regulations 1.12(h) and 166.3, 17 C.F.R. §§ 1.12(h) and 166.3 (2012);
 3. orders Respondent to pay a civil monetary penalty in the amount of one hundred seventy five thousand dollars (\$175,000), plus post-judgment interest;
 4. orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Regulations 1.12(h) and 166.3, 17 C.F.R. §§ 1.12(h) and 166.3 (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred seventy five thousand dollars (\$175,000) (the "CMP Obligation"). Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2006). Respondent shall pay the 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 --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent 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. 2058120581 and to the Regional Director, Chicago Office, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, IL 60661.

- C. Respondent and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 - 1. Detailed Compliance Review: After notifying the Commission of the secured fund deficiencies, Mizuho implemented strengthened processes, procedures and controls around margining, cash transfer and segregation of customer funds. The internal audit department of Mizuho will undertake to perform, within 60 days of the date hereof, a detailed review of the margining, segregation and cash transfer

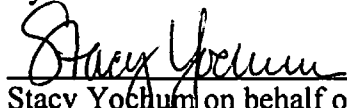
areas of the FCM, with an accompanying report. Mizuho will ensure that any and all recommendations from the internal audit group be implemented within 90 days of the completion of such report. If implementation cannot be accomplished within 90 days, a specific timetable and plan must be presented. A copy of the report shall be provided to the Commission. Mizuho will undertake to review its compliance procedures regarding the handling of segregated and secured funds on at least an annual basis, and will implement strengthen compliance procedures whenever necessary to comply with the Act and Commission Regulations.

2. **Public Statements:** Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent('s/s'): (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

3. **Partial Satisfaction:** Respondents understands and agrees that any acceptance by the Commission of partial payment of Respondent's Restitution Obligation, Disgorgement Obligation, or CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

The provisions of this Order shall be effective as of this date.

By the Commission.



Stacy Yochum on behalf of Sauntia S. Warfield,
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: January 3, 2013