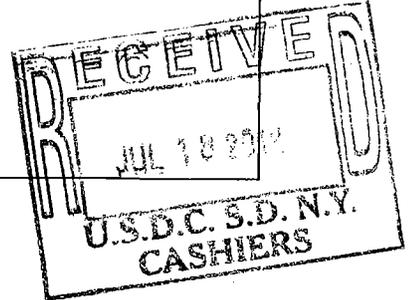


JUDGE ABRAMS

12 CV 5550

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

<b>U.S. SECURITIES AND EXCHANGE COMMISSION,</b>	<b>COMPLAINT</b>
	<b>[Securities Fraud]</b>
<b>Plaintiff,</b>	12-CV-_____ ( )
<b>v.</b>	<b>ECF CASE</b>
<b>MIZUHO SECURITIES USA INC.</b>	
<b>Defendant.</b>	



COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges as follows against the defendant Mizuho Securities USA Inc. (“Mizuho”):

SUMMARY

1. This action arises from the structuring, marketing and rating of a hybrid collateralized debt obligation (“CDO”) called Delphinus CDO 2007-1 (“Delphinus”). Delphinus was a mezzanine CDO backed by subprime bonds, which means that the collateral held by Delphinus was largely composed of subprime Residential Mortgage Backed Securities (“RMBS”) that were rated slightly higher than junk bonds, and credit default swaps referencing subprime RMBS. Mizuho Securities USA, Inc. (“Mizuho”) structured, marketed and obtained ratings for this \$1.6 billion CDO in mid-2007, when the housing market and the securities referencing it were showing signs of severe distress.

2. The marketing materials for Delphinus – including the Offering Memorandum – represented that the notes issued by the CDO would obtain certain specific ratings from three credit rating agencies, including Standard & Poor’s (“S&P”). Receipt of those ratings was a condition precedent to Delphinus’s closing and the sale of the CDO notes. Undisclosed to

purchasers of Delphinus notes, however, certain of Mizuho's employees provided S&P inaccurate and misleading information. Investors were misled because notes were issued with ratings obtained by the conduct of Mizuho employees.

3. Delphinus resulted in approximately \$10 million in structuring and marketing fees. Delphinus closed on July 19, 2007; on September 27, 2007, Fitch placed five classes of Delphinus on Rating Watch Negative. On January 2, 2008, Delphinus suffered an event of default.

4. Through the conduct of certain employees described herein, Mizuho violated Sections 17(a)(2) and (3) of the Securities Act of 1933 [15 U.S.C. § 77q(a)(2) and (3)] ("the Securities Act"). The Commission seeks injunctive relief, disgorgement of profits, prejudgment interest, civil penalties and other appropriate and necessary equitable relief.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action and venue is proper pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), 77v(a)]. Mizuho transacts business in this judicial district and certain of the acts, practices, transactions and courses of business constituting the violations alleged herein occurred within this judicial district. In connection with certain acts, transactions and courses of business described in the complaint, Mizuho, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange.

#### **DEFENDANT**

6. Mizuho is a Delaware Corporation and an indirect, majority-owned subsidiary of Mizuho Financial Group, Inc., a holding company headquartered in Tokyo, Japan. Mizuho is registered with the Commission as a broker-dealer.

## FACTS

### Background

7. The Delphinus CDO consisted of the following twelve classes of securities (collectively, “Tranches”) that were purchased by a Mizuho affiliate from the Co-Issuers at closing and were subsequently marketed and sold by Mizuho within the United States and a Mizuho affiliate abroad:

- \$ 73,500,000 Class A-1A Sr. Floating Rate Notes due October 2047;
- \$ 86,500,000 Class A-IB Sr. Floating Rate Notes due October 2047;
- \$ 160,000,000 Class A-IC Sr. Floating Rate Notes due October 2047;
- \$ 27,000,000 Class S Sr. Floating Rate Notes due October 2047;
- \$ 144,500,000 Class A-2 Sr. Floating Rate Notes due October 2047;
- \$ 138,500,000 Class A-3 Sr. Floating Rate Notes due October 2047;
- \$ 131,000,000 Class B. Sr. Floating Rate Notes due October 2047;
- \$ 77,500,000 Class C Mezz. Floating Rate Deferrable Notes due October 2047;
- \$ 48,000,000 Class D-1 Mezz. Floating Rate Deferrable Notes due October 2047;
- \$ 30,500,000 Class D-2 Mezz. Floating Rate Deferrable Notes due October 2047;
- \$ 15,000,000 Class D-3 Mezz. Floating Rate Deferrable Notes due October 2047;
- \$ 15,000,000 Class E Mezz. Floating Rate Deferrable Notes due October 2047.

The notes were secured by an underlying portfolio of cash and synthetic RMBS, commercial mortgage backed securities (“CMBS”) and other asset backed securities (“ABS”) including other CDOs. The CDO also issued 40,000 preference shares, par value \$0.01 per share, which were purchased by an equity holder.

8. As stated in the Delphinus CDO Offering Memorandum and the Indenture, each class of notes was required to be rated at closing by S&P, Fitch and Moody’s (collectively, the “Rating Agencies”). It was a condition to the issuance of such notes that each class of securities

obtain a specific rating from each rating agency. For example, the following ratings were required from S&P as a condition of closing:

- Class A-1A – “AAA”
- Class A-1B – “AAA”
- Class A-1C – “AAA”
- Class S – “AAA”
- Class A-2 – “AAA”
- Class A-3 – “AAA”
- Class B – “AA”
- Class C – “A”
- Class D-1 – “BBB+”
- Class D-2 – “BBB-”
- Class D-3 – “BBB-”
- Class E – “BB”

It was also a requirement that the notes be issued concurrently, meaning, if one class of notes failed to obtain the initial required agency rating, no class of notes could be issued. Preference shares were not rated.

9. Closing also was conditioned on, among other things, the Trustee’s receipt of a certificate from the deal accountant (“Accountant”) verifying that the collateral within the portfolio met certain requirements and limitations specified in the Indenture. Accountants performing such procedures routinely attach to the certificate a spreadsheet identifying the collateral assets comprising the portfolio at closing.

10. The Offering Memorandum and Indenture also expressly informed investors that, as of the closing date, each note would start to accrue interest at a specified rate ranging from LIBOR plus 0.60% (for Class A-1A Notes) to LIBOR plus 9.00% (for Class E Notes). Interest and principal were payable monthly on the Class A, S, B, C and D-1 Notes commencing October

11, 2007 and quarterly on the Class D-2, D-3 and E Notes commencing in October 2007. Certain administrative expenses received a payment priority over all note classes; in turn, the right of each note class to receive accrued interest and principal payments was senior to all lower note classes; and, preference shareholders, who were lowest on the priority scale, were entitled to payments only to the extent that all accrued and unpaid amounts on senior interests had been paid in full. Moreover, counterparties to CDSs and hedges were effectively senior in payment to all note classes by virtue of the fact that they had an earlier payment date. All payments, including payments of administrative fees, were to be made solely from the proceeds of the Delphinus CDO's collateral pool.

11. The Offering Memorandum and Indenture also expressly informed investors that the transaction was expected to close on July 19, 2007, and that the Delphinus CDO was expected to be fully-ramped or effective as of the closing date. According to the terms of the Offering Memorandum and Indenture, the CDO was considered to be fully-ramped and effective upon reaching, or entering into commitments to acquire, \$1,600,113,711.44 par amount or notional amount of collateral assets. It was also a condition of closing that the Delphinus CDO have acquired or entered into commitments to acquire collateral assets with an aggregate notional value of \$1,600,113,711.44.

12. The Indenture further provided that the Trustee was required to issue a certificate to the Rating Agencies when the portfolio became fully-ramped and effective. The certificate was required to confirm the assets within the portfolio on the effective date and to verify that the collateral pool met certain limitations and requirements contained in the Indenture. The Trustee was also required to obtain an accountant's certificate attesting to the requirements of the Indenture and to present it to the Rating Agencies.

13. Before proceeding to the initial payment date, the Delphinus CDO was required by the Indenture to request effective date Rating Agency confirmation (“Effective Date RAC”) letters from S&P and Fitch. An Effective Date RAC, as defined in the Indenture, is a confirmation that, as of the effective date, the rating agency has not reduced or withdrawn the closing date rating assigned to each Class of Notes.

14. Investors were told that, in the event of a failure to obtain the required RAC letters within 30 days after the Effective Date (“Effective Date RAC Failure”), available funds (including amounts that would otherwise be used to pay interest to more junior classes of securities) would be applied instead to pay principal sequentially to each Class of Notes in the order of priority, until each class was paid in full, and until each rating agency was able to provide an Effective Date RAC. Absent an Effective Date RAC Failure, note holders would be paid on a pro rata basis. Investors were expressly told that the occurrence of an Effective Date RAC Failure might result in an early repayment of the Offered Securities and that there could be no assurance that the portfolio would ever generate sufficient funds to enable the rating agencies to issue an Effective Date RAC.

### **Misconduct with Respect to Delphinus**

#### **Closing Date Misconduct**

15. Delphinus was scheduled to close on July 19, 2007. The ramping of the Delphinus CDO portfolio was completed on July 17, 2007. Mizuho’s employees responsible for the transaction knew that Delphinus was fully ramped on July 17, 2007.

16. Obtaining ratings from Rating Agencies – S&P, Fitch, and Moody’s – was a condition precedent to Delphinus’s closing, issuance of securities, and receipt of money from investors. Mizuho was responsible for obtaining those ratings.

17. At approximately noon on July 18, 2007, the day before Delphinus was scheduled to close, S&P announced changes to its CDO rating methodology in a press release. Under S&P's July 18 changed criteria, certain categories of RMBS which were commonly used in CDO collateral pools were required to be adjusted downward by as many as 2 notches for purposes of calculating their default probability in S&P's CDO Evaluator. Delphinus's fully ramped portfolio contained a substantial amount of the collateral that was subject to the downward ratings adjustment described in S&P's July 18 press release.

18. Prior to the publication of S&P's July 18 announcement, Mizuho had not notified S&P that the Delphinus portfolio was fully ramped.

19. On July 18, 2007, after S&P published its announcement, Mizuho employees responsible for the Delphinus transaction emailed multiple alternative portfolios to S&P throughout the evening of July 18. The alternative portfolios included so-called "dummy" assets, an industry standard term meaning hypothetical assets that will later be replaced by actual assets; however, in this case, the "dummy" assets were different from, and of a superior credit quality to, assets that had been actually acquired for the CDO. Mizuho employees did not provide S&P with the collateral pool that was then in existence and had already been transferred to the Trustee.

20. The alternative portfolios sent to S&P on July 18 had certain factors in common, including, among other things, that: (a) they failed to disclose to S&P certain assets that had already been purchased for the fully-ramped portfolio; (b) they included dummy assets, thereby suggesting that the portfolio was not fully ramped and that Mizuho would purchase assets that matched the quality and characteristics of the dummy assets; (c) the dummy assets were coded as "prime" assets thereby avoiding the downward notching schedule under the changed S&P rating methodology, whereas the assets they substituted for were mostly coded as "subprime"; and

(d) the dummy assets were, as a general matter, of a higher credit quality than the assets that had already been purchased for Delphinus. In an email that accompanied the final portfolio sent to S&P on the evening of July 18, one of Mizuho's employees responsible for the transaction stated that collateral manager would be asked to purchase assets to increase the Delphinus portfolio's diversification.

21. At no point prior to closing did Mizuho employees send S&P the fully-ramped portfolio or provide S&P with notice that the portfolio was already fully ramped. Nor did Mizuho employees make any effort to change the portfolio to conform the collateral to the portfolio that S&P actually rated on the evening of July 18. Specifically, Mizuho employees did not provide the collateral manager with the portfolio that S&P actually rated, which included twenty six dummy assets, or otherwise inform the collateral manager that it needed to trade securities in order to conform the portfolio to the alternative portfolio that S&P had rated. Instead, a Mizuho employee told the collateral manager that S&P was prepared to issue the required ratings and that the transaction could proceed to closing.

22. The Mizuho employees responsible for the transaction knew or should have known that, if they had supplied S&P with the true asset portfolio on July 18, 2007, Delphinus would not have received the necessary ratings and thus could not have closed as planned.

23. The Delphinus transaction closed by mid-afternoon on July 19, 2007, with the S&P ratings that were obtained by the use of dummy assets, rather than the actual closing date portfolio. At closing, Mizuho sold securities based upon those ratings, which in turn misled investors to believe that the Delphinus notes were of higher credit quality. Investors were not aware that the actual portfolio at closing would have failed certain of S&P's quantitative tests. Additionally, between July 19, 2007 and November 9, 2007, there were numerous transactions in Delphinus

notes in either the secondary market (for cash bonds) or the credit default swap market (credit default swaps written on Delphinus notes).

24. Mizuho did not provide Fitch or Moody's with a fully ramped portfolio prior to closing or otherwise provide notice that the portfolio had been fully-ramped as of closing. Hours after the closing on July 19, 2007, a Mizuho employee responded to a question from Moody's about the status of the portfolio and expressly misrepresented to Moody's that Delphinus was not fully ramped at closing.

#### **Effective Date Misconduct**

25. Because Mizuho's employees supplied S&P with a portfolio that failed to disclose that Delphinus was fully ramped, and S&P based its closing date ratings of Delphinus upon that portfolio, Mizuho was required to seek Effective Date RAC from S&P, meaning S&P was required to analyze the fully ramped portfolio and confirm that S&P had not reduced or withdrawn the rating it had assigned to each class of notes on the closing date.

26. Obtaining Effective Date RAC for Delphinus was of crucial importance. First, if not obtained, and an Effective Date RAC Failure occurs, the manner in which Delphinus paid holders of its securities (and its service providers) would change. Instead of paying each tranche according to the anticipated "pro rata" method, in the event of Effective Date RAC Failure, Delphinus would shut off cash flow to all securities and pay down the senior-most securities according to the so-called "sequential payment" method until Effective Date RAC could be obtained. The cutting off of payments to Delphinus securities, in turn, would affect the market value of those securities.

27. On July 31, 2007, the Delphinus Trustee sent to S&P, and others, a request for Effective Date RAC for Delphinus. In the course of performing analytical work to determine

whether RAC would be provided for Delphinus, S&P determined that on July 18, Mizuho employees had supplied, and S&P had rated, a portfolio that failed to accurately to reflect the assets that had already been purchased for Delphinus. S&P also determined that, had Mizuho's employees instead supplied S&P with the actual closing date portfolio, Delphinus would not have obtained the necessary ratings from S&P and Delphinus would have been unable to close.

28. On August 24, 2007, Mizuho's employees told S&P that Delphinus was not effective at closing. Mizuho's employees then arranged to have prepared and delivered to S&P: (a) a second effective date letter from the Accountant, and (b) a second effective date portfolio from the Trustee. Both the second effective date letter and the second effective date portfolio misrepresented that Delphinus's effective date was August 6, 2007, rather than July 19, 2007. Mizuho's employees delivered the Accountant's second effective date letter to S&P on September 5, 2007, and arranged to have the Trustee deliver the second effective date portfolio to S&P on September 5, 2007. These actions facilitated S&P's issuance of Effective Date RAC for Delphinus.

29. Ultimately, by letter dated September 12, 2007, S&P provided Effective Date RAC for Delphinus. Delphinus thus maintained its closing date ratings, and Delphinus paid noteholders pro rata, rather than switching to sequential payment. The closing date ratings continued to be relied upon by purchasers of Delphinus bonds, as well as parties entering into credit default swaps referencing Delphinus bonds. Between July 19 and November 9, 2007, there were numerous transactions in Delphinus notes in either the secondary market (for cash bonds) or the credit default swap market (credit default swaps written on Delphinus notes). Further, Mizuho continued to offer Delphinus notes for sale to investors in September and October 2007.

30. On September 6, 2007, in attempting to obtain RAC from Fitch, Mizuho's employees represented that Delphinus's effective date was July 19, 2007, despite having just the previous day inaccurately represented to S&P that Delphinus's effective date was August 6, 2007. On September 7, 2007, in attempting to obtain RAC from Moody's, Mizuho's employees again inaccurately represented to Moody's that Delphinus's effective date was August 6, 2007.

### **CLAIM FOR RELIEF**

#### **Violations of Sections 17(a)(2) and (3) of the Securities Act**

31. Paragraphs 1 through 30, above, are realleged and incorporated by reference as if set forth fully herein.

32. Defendant Mizuho, directly or indirectly, in the offer or sale of Delphinus securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) obtained money or property by means of an untrue statement or statements of material fact or an omission or omissions to state a material fact necessary in order to make the statements made, not misleading; and (b) engaged in transactions, practices and a course of business which would have operated as a fraud or deceit upon the purchasers of such securities.

33. By reason of the foregoing, Defendant Mizuho violated, and unless restrained and enjoined by this Court will again violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2), 77q(a)(3)].

### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

A. Permanently restraining and enjoining Mizuho from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2), 77q(a)(3)];

B. Ordering Mizuho to disgorge all profits obtained as a result of its conduct, acts or courses of conduct described in this Complaint, and to pay prejudgment interest thereon;

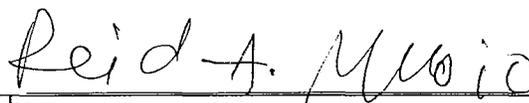
C. Ordering Mizuho to pay civil monetary penalties pursuant to Section 20(d)(2) of the Securities Act [15 U.S.C. § 77t (d)(2)]; and

D. Granting such other and further relief as the Court shall deem just and proper.

Dated: Washington, D.C.

July 18, 2012

Respectfully submitted,



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