

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

**MIZUHO CAPITAL MARKETS
LLC**

Respondent.

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) **CFTC Docket No. 21-17**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about 2013 to at least April 2021 (“Relevant Period”), Mizuho Capital Markets LLC (“Mizuho Capital” or “Respondent”) violated Sections 2(a)(13)(F) and (G), 4r(a)(3), 4s(h)(1), and 4(s)(i)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 2(a)(13)(F), (G), 6r(a)(3), 6s(h)(1), 6s(i)(1) (2018), and Regulations 23.431(d)(2) and (3), 23.502(b), 23.602(a), 43.3(a), 43.4(a), 45.3, 45.4, and 45.14(a) of the Commission Regulations (“Regulations”), 17 C.F.R. §§ 23.431(d)(2), (3), 23.502(b), 23.602(a), 43.3(a), 43.4(a), 45.3, 45.4, 45.14(a) (2020) promulgated thereunder. 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.

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 Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledge service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Mizuho Capital, a provisionally registered swap dealer, failed to comply with certain requirements concerning reconciling swap portfolios with its counterparties, providing disclosures to counterparties concerning the daily mid-market mark of swaps, and reporting swap transactions to a swap data repository (“SDR”). Mizuho Capital also failed to supervise these areas of its swap dealer activities diligently, resulting in numerous violations of the Act and Regulations.

Specifically, Mizuho Capital failed to establish, maintain, and follow, procedures that were reasonably designed to ensure that it engaged in portfolio reconciliation with its non-swap dealer counterparties, as required under the Act and Regulations. As a result, Mizuho Capital failed to engage in portfolio reconciliation with, or to provide all required portfolio reconciliation information to, its non-SD swap counterparties over the course of over six years. Mizuho Capital also repeatedly failed to disclose daily marks, as well as the methodology and assumptions used to prepare daily marks, to a substantial portion of the counterparties for which Mizuho Capital was subject to daily mark disclosure requirements. Mizuho Capital also made various errors and omissions in its swap data reported to an SDR pursuant to Part 43 and Part 45 of the Regulations.

Mizuho Capital’s failure to supervise its swap dealer activities diligently also included failing to devote adequate attention and resources to swap dealer compliance for an extended period of time and failing to implement a compliance testing program adequate to identify repeated compliance failures that were occurring in multiple different areas of its business.

In accepting Respondent’s Offer, the Commission recognizes the self-reporting and substantial cooperation of Mizuho Capital in connection with the Division of Enforcement’s (“Division”) investigation of this matter. The Commission also acknowledges Respondent’s representations concerning its remediation in connection with this matter. The Commission’s recognition of Respondent’s self-reporting, substantial cooperation, and appropriate remediation is further reflected in the form of a substantially reduced penalty.

B. RESPONDENT

Mizuho Capital Markets LLC’s principal place of business is in New York City, and has been provisionally registered as a swap dealer with the Commission since December 31, 2012.

consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

C. FACTS

1. Portfolio Reconciliation

a. Swap Dealer Documentation Requirements

Section 4s(i)(1) of the Act, 7 U.S.C. § 6s(h)(i) (2018), requires swap dealers to conform with the Commission’s standards concerning timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps, which are set forth in Subpart I of Part 23 of the Regulations, 17 C.F.R. pt. 23, Subpart I (2020).² Among other things, these standards obligate a swap dealer to engage in portfolio reconciliation with its counterparties. *See* Regulation 23.502, 17 C.F.R. § 23.502 (2020). Portfolio reconciliation is “any process by which the two parties to one or more swaps: (1) Exchange the material terms of all swaps in the swap portfolio between the counterparties; (2) Exchange each counterparty’s valuation of each swap in the swap portfolio between the counterparties as of the close of business on the immediately preceding day; and (3) Resolve any discrepancy in material terms and valuations.”³ Regulation 23.500(i), 17 C.F.R. § 23.500(i) (2020).

With respect to any swaps in which a swap dealer’s counterparty is not a swap dealer or major swap participant (“non-SD counterparties”), swap dealers are required by Regulation 23.502(b) to establish, maintain, and follow written policies and procedures reasonably designed to ensure that the swap dealer engages in portfolio reconciliation in accordance with certain requirements set forth in Regulation 23.502(b). Those requirements include, among other things, that each swap dealer agree in writing with each of its counterparties on the terms of the portfolio reconciliation and that the swap dealer perform portfolio reconciliation at a prescribed frequency, depending upon the size of the particular portfolio. *See* Regulations 23.502(b)(1) and (3).

b. Mizuho Capital’s Portfolio Reconciliation Failures

From approximately August 23, 2013⁴ until approximately April 2020, Mizuho Capital’s written procedures concerning portfolio reconciliation were insufficient, leading Mizuho Capital to fail to engage in portfolio reconciliation with, or to provide all required portfolio reconciliation information to, its non-SD swap counterparties from August 23, 2013 until around

² Section 4s(i) of Act and Subpart I of Part 23 of the Regulations also set forth swap documentation standards for major swap participants. Because Mizuho Capital is a swap dealer, the remainder of this Order will discuss the Act and Regulations only as they relate to swap dealers.

³ At the time of the conduct at issue, the “material terms” of a swap were defined as the minimum primary economic terms (as defined in Appendix 1 of Part 45 of the Regulations, 17 C.F.R. pt. 45, app.1 (2020)) of a swap other than certain enumerated terms. *See* Regulation 23.500(g), 17 C.F.R. § 23.500(g) (2020). “Valuation” is defined as the current market value or net present value of a swap. Regulation 23.500(m), 17 C.F.R. § 23.500(m) (2020).

⁴ On January 2, 2013, the Commission deferred the compliance date for Regulation 23.502 for all types of counterparties until July 1, 2013. *See Business Conduct and Documentation Requirements for Swap Dealers and Major Swap Participants: Extension of Compliance Date*, 78 Fed. Reg. 17, 20 (Jan. 2, 2013). In CFTC Letter No. 13-40, the Division of Swap Dealer and Intermediary Oversight stated that it will not recommend that the Commission take an enforcement action against an SD or MSP for failure to comply, prior to August 23, 2013, with Regulation 23.502. CFTC Letter No. 13-40, 2013 WL 3355713, at *2 (June 27, 2013).

December 2019.

Prior to December 2019, for certain of its non-SD counterparties, Mizuho Capital failed to conduct portfolio reconciliation entirely. For example, in the year 2018, Mizuho Capital failed to engage in portfolio reconciliation with 87% of its non-SD counterparties for which Mizuho Capital was subject to portfolio reconciliation requirements. For certain other non-SD counterparties, Mizuho Capital engaged in some form of reconciliation, but Mizuho Capital failed to provide its counterparties all of the information required for portfolio reconciliation. Specifically, Mizuho Capital failed to provide all of the material terms of swaps. For example, in the year 2018, Mizuho Capital provided valuation information, but failed to provide the material terms of swaps, to approximately 13% of its non-SD counterparties for which it was required to engage in portfolio reconciliation.

Although Mizuho Capital had some written policies and procedures addressing portfolio reconciliation prior to April 2020, its written procedures were deficient. In general, Mizuho Capital's portfolio reconciliation procedures lacked specificity and did not make clear that portfolio reconciliation was required. With respect to obtaining the requisite written agreement on portfolio reconciliation from its counterparties, as of around August 2013, Mizuho Capital's procedure required its staff to send a standard written notice to counterparties in which Mizuho Capital sought confirmation and agreement on the terms of portfolio reconciliation. Mizuho Capital's notice, however, had language suggesting that a counterparty may choose not to engage in portfolio reconciliation, and in practice, many counterparties did not respond to Mizuho Capital's notice or otherwise provide a written agreement on the terms of portfolio reconciliation. Mizuho Capital's procedures did not address what its staff should do in such instances. As a result, in many instances, nothing more was done by Mizuho Capital to engage in portfolio reconciliation with those counterparties.

Mizuho Capital's procedures also failed to describe adequately the steps needed to be taken to perform certain methods of portfolio reconciliation. In particular, Mizuho Capital's procedures provided for one method of portfolio reconciliation that involved a one-way delivery of portfolio reconciliation data by Mizuho Capital. Mizuho Capital's procedures did not, however, provide a process for its staff to identify accurately those counterparties that required a one-way delivery of portfolio reconciliation data. Further, this method required Mizuho Capital to engage in a manual process to gather and deliver portfolio reconciliation data, but its procedures did not describe the steps needed to be taken to perform the manual process. Mizuho Capital's procedures also generally did not provide for any quality control or testing to confirm that its procedures were being followed, that it was engaging in portfolio reconciliation with all its counterparties, or that it was providing its counterparties all required information.

Mizuho Capital's supervision with respect to portfolio reconciliation was also insufficient. Mizuho Capital failed to provide its staff sufficient training on the requirements for portfolio reconciliation, and Mizuho Capital did not assign supervisors any specific responsibilities addressing portfolio reconciliation. Further, prior to 2019, although Mizuho Capital's internal audit group conducted some sporadic testing of its portfolio reconciliation function, Mizuho Capital's controls were inadequate to identify that it was regularly failing to engage in portfolio reconciliation with, or to provide all required portfolio reconciliation information to, the vast majority of its non-SD counterparties. Mizuho Capital's lack of an

effective supervisory system is also evidenced by the widespread nature of its portfolio reconciliation failures and the fact that these failures went undetected and uncorrected for an extended period of time. It was not until March 2019 that Mizuho Capital's compliance testing team first discovered certain portfolio reconciliation failures, leading Mizuho Capital to review its portfolio reconciliation function further and discover more widespread failures in September and early December 2019.

2. Daily Marks

a. Swap Dealer Business Conduct Requirements

Section 4s(h) of the Act, 7 U.S.C. § 6s(h) (2018), sets forth certain business conduct standards for swap dealers. These include requirements that swap dealers disclose to counterparties the daily mark of each uncleared swap transaction. Regulation 23.431, 17 C.F.R. § 23.431 (2020), implements, among other provisions, the disclosure requirements of Section 4s(h). Pursuant to Regulation 23.431(d), swap dealers must disclose to counterparties the mid-market mark of uncleared swaps daily during the term of the swap, as well as the methodology and assumptions used to prepare the daily mark, among other things.

b. Mizuho Capital's Daily Mark Disclosure Failures

From approximately 2013 through around October 2019, Mizuho Capital had numerous failures to disclose daily marks, as well as the methodology and assumptions used to prepare daily marks, to counterparties for which Mizuho Capital was subject to daily mark disclosure requirements. Mizuho Capital had a number of errors with its daily mark disclosure processes.

First, throughout this period, Mizuho Capital failed to enter certain counterparties into its daily marks reporting systems such that Mizuho Capital would send daily mark disclosure reports to those counterparties. In some instances, this resulted in Mizuho Capital failing to provide its counterparty daily mark reports entirely, while in other instances, Mizuho Capital began providing its counterparty with daily mark reports at some point during the lifetime of a swap, but did not provide them initially. Overall, due to this failure, Mizuho Capital failed to disclose daily marks to around 48% of the counterparties to which Mizuho Capital was required to provide daily marks.

Second, between April 2018 and July 2019, Mizuho Capital failed to deliver certain daily mark reports due to a technological error. Around April 2018, Mizuho Capital began using an automated tool to deliver daily mark reports to counterparties. The automated tool, however, had a technological flaw that resulted in the tool sporadically failing to deliver daily mark reports for up to one hundred random counterparties each day. Although Mizuho Capital staff would generally re-run the automated tool to reduce the number of delivery failures to less than ten per day, system limitations prevented the tool from delivering daily mark reports to all counterparties.

Third, between May and October 2019, Mizuho Capital failed to provide over 2,000 daily mark reports after Mizuho Capital transitioned to a new trade reporting system, but failed to migrate counterparty address information for daily mark reporting purposes. This issue affected forty counterparties.

Finally, Mizuho Capital also failed to disclose to its counterparties the methodology and assumptions it used to prepare daily marks. Mizuho Capital was unable to demonstrate to Division staff that it made daily mark methodology and assumption disclosures historically, and this issue affected all counterparties for which Mizuho Capital was subject to daily mark disclosure requirements as of October 2019.

Mizuho Capital's supervision of its daily mark disclosure processes was inadequate. During the Relevant Period, although Mizuho Capital had some policies and procedures relating to daily mark disclosure obligations, prior to April 2019, Mizuho Capital did not have an effective written procedure describing the process for providing daily marks to counterparties or any controls to ensure that daily mark reporting occurred. Nor did Mizuho Capital have any written supervisory procedures relating to daily marks. Mizuho Capital also could not demonstrate to Division staff how Mizuho Capital tested or confirmed that it was providing daily marks and daily mark disclosures to all required counterparties. Mizuho Capital also failed to provide its staff sufficient training on daily mark disclosure requirements. Further, although Mizuho Capital's internal audit group conducted a limited review relating to daily marks in 2014, Mizuho Capital did not review or conduct any testing of its daily mark processes again until late 2018. In late 2018 and early 2019, as a result of testing done by Mizuho Capital's internal audit group and an outside consultant, Mizuho Capital began to identify certain deficiencies with its daily marks processes, although its controls were still inadequate to detect widespread daily mark disclosure failures that were still occurring. In September 2019, after receiving an inquiry from a counterparty concerning daily marks, Mizuho Capital began reviewing its daily mark processes comprehensively and discovered the further violations described above.

3. Mizuho Capital's Misreporting and Failure to Report and Timely Correct Swap Data to an SDR

As a provisionally registered swap dealer, Mizuho Capital is a reporting counterparty and thus is required to report certain data about swap transactions to an SDR. Since becoming a provisionally registered swap dealer, until around April 2021, Mizuho Capital made various errors and omissions in its swap data reported pursuant to Part 43 and Part 45 of the Regulations. Mizuho Capital's swap data reporting errors impacted at least one hundred thousand swap transactions across its product portfolio. For example:

- Mizuho Capital failed to report confirmation messages for over 6,500 FX and IRS swaps.
- Mizuho Capital failed to report values for the US person, financial entity, and clearing indicator fields, impacting up to 84% of its IRS and FX transactions as of October 2019.
- Mizuho Capital misreported the settlement date for approximately 11,000 FX swaps between November and June 2020.
- Mizuho Capital misreported price data for thousands of FX and IRS swaps.

- Mizuho Capital failed to report 2,500 swap positions which were erroneously removed from SDR reporting in connection with a migration to a new reporting system.
- Prior to March 2019, Mizuho Capital overreported thousands of FX swap transactions where Mizuho Capital was not the reporting counterparty due to a failure to properly design its trade reporting system's reporting party logic.

Mizuho Capital also misreported execution timestamps. For over 2,400 swaps Mizuho Capital omitted or reported inaccurate timestamps in connection with a migration to a new reporting system. For over 5,000 swaps, Mizuho Capital's systems inaccurately reported execution timestamps as the time when the trades were rebooked or amended. Further, prior to August 2020, Mizuho Capital also inaccurately recorded execution timestamps for swaps transactions executed over the telephone or by chat, resulting in untimely and inaccurate real-time and creation data reporting. This occurred because Mizuho Capital's systems did not permit a manual entry for execution time and instead automatically populated the execution time as the time when the trade was booked into Mizuho Capital's system. For certain transactions, the execution times Mizuho Capital reported were 20 to 108 minutes after the actual trade execution.

Once learning of its data reporting errors, Mizuho Capital also failed to submit corrected data as soon as technologically practicable after discovery. For example, with respect to reporting FX swap transactions where Mizuho Capital was not the reporting counterparty, Mizuho Capital knew as of this issue as of July 2017, but failed to correct it until March 2019. Similarly, for thousands of other errors and omissions described above, Mizuho Capital failed to promptly correct the errors and omissions upon discovery.

During the Relevant Period, Mizuho Capital did not implement sufficient processes and controls to ensure that its SDR reporting was accurate and complete and to correct errors as soon as technologically practicable after discovery. Many of Mizuho Capital's errors occurred as a result of Mizuho Capital updating its trade reporting systems, but failing to perform adequate testing to ensure Mizuho Capital would report accurately going forward. Mizuho Capital also did not have adequate controls to detect repeated errors and omissions in its swap data reporting. For example, in November 2019, after an update to its trade reporting system, Mizuho Capital began misreporting the settlement date of certain FX swaps, but Mizuho Capital did not discover this error until the end of June 2020.

4. Mizuho Capital's Inadequate Supervision of its Swap Dealer

During the Relevant Period, Mizuho Capital failed to supervise its swap dealer activities diligently with respect to portfolio reconciliation, daily mark disclosures, and swaps data reporting. Since the swap dealer's inception, and for an extended period of time after, Mizuho Capital failed to devote adequate attention and resources to swap dealer compliance. This included Mizuho Capital failing to implement a compliance testing program adequate to identify repeated compliance failures that were occurring in multiple different areas of its swap dealer activities, as described above. Mizuho Capital's supervision failures, including failing to prevent

and detect repeated compliance failures, resulted in numerous violations of the Act and Regulations.

5. Mizuho Capital's Self-Reporting, Cooperation, and Remediation

In October 2019, Mizuho Capital self-reported certain daily mark and portfolio reconciliation errors to Division staff, leading to the Division to open its investigation. Following its initial self-report, Mizuho Capital continued to investigate and identified additional deficiencies, which it disclosed to Division staff. After an examination by the National Futures Association alerted Mizuho Capital to numerous other deficiencies including swap data reporting errors, Mizuho Capital began a top-to-bottom review of its swap data reporting processes. At an early stage, Mizuho also retained an outside consultant to review and test its swap dealer processes more broadly. Throughout the Division's investigation, Mizuho Capital continued to disclose additional relevant facts to Division staff and provided substantial cooperation. Among other things, Mizuho Capital provided specific information to the Division regarding the deficiencies it had identified, updated Division staff regularly on its findings, and categorized and detailed errors in its reporting.

Mizuho Capital also represented to the Commission that it has engaged in substantial remediation efforts. As to portfolio reconciliation, this includes taking interim steps in December 2019 to provide complete portfolio reconciliation to all of its non-SD counterparties while longer-term automated solutions were being developed. By June 2020, Mizuho Capital implemented an automated control to confirm the population of counterparties with whom it must perform portfolio reconciliation and issued a revised procedure for portfolio reconciliation. As to daily mark disclosures, by November 2019, Mizuho Capital reviewed and corrected address information for daily mark reports for all of its counterparties and issued daily mark methodology disclosures to all counterparties. In March 2020, Mizuho Capital updated its daily mark delivery tool to alert staff to delivery errors, and in April 2020, Mizuho Capital issued revised procedures for daily mark disclosures. As to swap data reporting, Mizuho Capital remapped its entire swap data reporting system by the end of May 2021, and Mizuho Capital has represented that it will complete reporting corrected swap data to its SDR for all transactions and issue revised swap data reporting policies and procedures by the end of October 2021. As to supervision, Mizuho Capital took additional remediation measures, including making substantial investments in its swap dealer compliance program; replacing key personnel; enhancing its annual compliance testing; and implementing recurring annual training on portfolio reconciliation, daily mark disclosures, swap data reporting, and diligent supervision, among other topics.

III. LEGAL DISCUSSION

A. Portfolio Reconciliation

Section 4s(i)(1) of the Act, 7 U.S.C. § 6s(h)(i) (2018), requires swap dealers to conform with the Commission's standards concerning the timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps. These standards include requirements for swap dealers concerning portfolio reconciliation. *See* Regulation 23.502, 17 C.F.R. § 23.502 (2020).

Portfolio reconciliation is “any process by which the two parties to one or more swaps: (1) Exchange the material terms of all swaps in the swap portfolio between the counterparties; (2) Exchange each counterparty’s valuation of each swap in the swap portfolio between the counterparties as of the close of business on the immediately preceding business day; and (3) Resolve any discrepancy in material terms and valuations.” Regulation 23.500(i), 17 C.F.R. § 23.500(i) (2020). The “material terms” of a swap include the minimum primary economic terms (as defined in Appendix 1 of Part 45, 17 C.F.R. pt. 45, app.1 (2020)) of a swap, with certain exceptions. *See* Regulation 23.500(g), 17 C.F.R. § 23.500(g) (2020). “Valuation” is the current market value or net present value of a swap. Regulation 23.500(m), 17 C.F.R. § 23.500(m) (2020).

Regulation 23.502(b), 17 C.F.R. § 23.502(b) (2020), requires each swap dealer to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation as set forth in Regulation 23.502(b) for all swaps in which its counterparty is neither a swap dealer nor a major swap participant.

From approximately August 23, 2013 to around December 2019, Mizuho Capital failed to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation. As discussed above, Mizuho Capital’s procedure lacked specificity and failed to describe adequately the steps needed to be taken to perform portfolio reconciliation. Mizuho Capital also failed to conduct adequate testing to ensure its policies and procedures were being followed and provide its staff sufficient training on portfolio reconciliation requirements. As a result, Mizuho Capital in fact failed to engage in portfolio reconciliation with, or to provide all required portfolio reconciliation information to, the vast majority of its non-SD counterparties for several years. Thus, Mizuho Capital violated Section 4s(i)(1) of the Act and Regulation 23.502(b).

B. Daily Marks

Section 4s(h)(1) of the Act, 7 U.S.C. § 6s(h)(1) (2018), and Regulation 23.431(d), 17 C.F.R. § 23.431(d) (2020), require swap dealers to disclose to counterparties the daily mark of each uncleared swap transaction. The Regulations require that the daily mark “shall be the mid-market mark of the swap” and “shall not include amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments.” Regulation 23.431(d)(2), 17 C.F.R. § 23.431(d)(2) (2020). The Regulations also require each swap dealer to disclose the “methodology and assumptions used to prepare the daily mark” and “any additional information concerning the daily mark to ensure a fair and balanced communication.” Regulation 23.431(d)(3), 17 C.F.R. § 23.431(d)(3) (2020). In adopting Regulation 23.431, the Commission stated that it would “consider good faith compliance with policies and procedures reasonably designed to comply with the business conduct standards rules as a mitigating factor when exercising its prosecutorial discretion for violation of the rules.” *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9,734, 9,744 (Feb. 17, 2012).

From approximately 2013 through around October 2019, Mizuho Capital, a swap dealer, had numerous failures to disclose daily marks, and the methodology and assumptions used to prepare daily marks, to counterparties for which Mizuho Capital was subject to daily mark

disclosure requirements. Mizuho Capital therefore violated Section 4s(h)(1) and Regulation 23.431(d)(2) and (3). Moreover, Mizuho Capital did not act in good faith compliance with policies and procedures reasonably designed to comply with the business conduct standards rules. Prior to April 2019, Mizuho Capital did not have an effective written procedure describing its process and controls concerning daily marks, and Mizuho Capital was unable to demonstrate how it tested or confirmed that it was providing daily marks and daily mark disclosures to all required counterparties. In light of these facts, Mizuho Capital does not meet the requirements of the Commission’s policy statement regarding mitigation.

C. Swap Data Reporting

The Act requires all swaps, both cleared and uncleared, to be reported to a registered SDR and establishes requirements for real-time reporting and public availability of swap transaction data. *See* Section 2(a)(13)(F), (G), and 4r(a)(3) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6r(a)(3) (2018). These sections of the Act and the Commission’s implementing regulations in Parts 43 and 45 of the Regulations, 17 C.F.R. pts. 43, 45 (2020), were designed to enhance transparency, promote, standardization, and reduce systemic risk. “The accuracy and completeness of swap reporting are critical to the Commission’s mission to protect market participants and to ensure market integrity.” *CFTC v. Deutsche Bank AG*, No. 1:16-cv-6544 (WHP), 2020 WL 4611985, at *8 (S.D.N.Y. June 17, 2020) (citing *In re Société Générale Int’l Ltd.*, CFTC No. 19-38, 2019 WL 4915485, at *6 (Sept. 30, 2019) (consent order) (collecting cases). Market participants rely upon the public availability of swap data for price discovery purposes. *Id.* The Commission, in turn, requires complete and accurate reporting data to engage in meaningful oversight of the swaps market. *Id.*

Part 43 of the Regulations, 17 C.F.R. pt. 43 (2020), establishes requirements for the real-time public reporting and public availability of swap transaction and pricing data. Under Regulation 43.4(a), swap transaction and pricing information must be reported to a registered SDR so that the SDR can publicly disseminate swap transaction and pricing data in real-time in the form and manner set forth in appendix A to Part 43, 17 C.F.R. pt. 43, app. A (2020). 17 C.F.R. § 43.4(a) (2020). Under Regulation 43.3(a)(1), a reporting party must report any publicly reportable swap transaction to a registered SDR as soon as technologically practicable⁵ after execution. 17 C.F.R. § 43.3(a)(1) (2020).

Regulation 45.3 requires the reporting of required swap creation data, which includes the primary economic terms data and all confirmation data for the swap. *See* 17 C.F.R. §§ 45.1, 45.3 (2020). Regulation 45.4 requires the reporting of required swap continuation data, which includes all changes to the primary economic terms of a swap as defined in Regulation 45.1 occurring during the existence of the swap. *See* 17 C.F.R. §§ 45.1, 45.4 (2020). In addition, under Regulation 45.14(a), the reporting counterparty must report a correction of errors or omissions as soon as technologically practicable after discovery of the error. 17 C.F.R. § 45.14(a) (2020).

⁵ The phrase “as soon as technologically practicable” means “as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.” Regulation 43.2, 17 C.F.R. § 43.2 (2020).

As set forth above, Mizuho Capital failed to accurately report certain swap data and failed to correct errors and omissions in swap data it previously reported in a timely manner. As a result, Respondent violated Sections 2(a)(13)(F), (G), and 4r(a)(3) of the Act, and Regulations 43.3(a), 43.4(a), 45.3, 45.4, and 45.14(a).

D. Supervision

Section 4s(h)(1)(B) of the Act requires “diligent supervision of the business of the registered swap dealer.” 7 U.S.C. § 6s(h)(1)(B) (2020). Regulation 23.602 requires each swap dealer to establish and maintain a system to supervise, and to diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar function). 17 C.F.R. § 23.602(a) (2020).

Under Regulation 23.602, a violation is demonstrated by showing either that: (1) the registrant’s supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *See In re Bank of Nova Scotia*, CFTC No. 20-26, 2020 WL 4926053, at *10 (Aug. 19, 2020) (consent order) (citing *In re Commerzbank AG*, CFTC No. 19-03, 2018 WL 5921385, at *10-11 (Nov. 8, 2018) (consent order); *In re INTL FCStone Mkts., LLC*, CFTC No. 15-27, 2015 WL 4980321, at *3 (Aug. 19, 2015) (consent order) (interpreting Regulation 23.602 and noting its similarity to Regulation 166.3, 17 C.F.R. § 166.3, making case law concerning Regulation 166.3 instructive); *cf. In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995) (consent order) (interpreting Regulation 166.3)). Evidence of violations that “‘should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly’ is probative of a failure to supervise.” *CFTC v. Deutsche Bank AG*, No. 16-cv-6544 (WHP), 2020 WL 4611985, at *9 (June 17, 2020) (consent order) (citing *INTL FCStone Mkts.*, 2015 WL 4980321, at *3 (quoting *In re Paragon Futures Ass’n*, CFTC No. 88-18, 1992 WL 74261, at *14 (Apr. 1, 1992))).

As described above, during the Relevant Period, Mizuho Capital failed to maintain an adequate supervisory system and failed to perform its supervisory obligations diligently with respect to portfolio reconciliation, daily mark disclosures, and swap data reporting. Mizuho Capital also failed to devote adequate attention and resources to swap dealer compliance, including failing to implement an adequate compliance testing program. Mizuho Capital’s failure to supervise is demonstrated by its failure to detect, prevent, and remediate repeated compliance failures over an extended period of time. Accordingly, Mizuho Capital violated Section 4s(h)(1)(B) of the Act and Regulation 23.602(a).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Mizuho Capital Markets LLC violated Sections 2(a)(13)(F) and (G), 4r(a)(3), 4s(h)(1), and 4(s)(i)(1) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6r(a)(3), 6s(h)(1), 6s(i)(1) (2018), and Regulations

23.431(d)(2) and (3), 23.502(b), 23.602(a), 43.3(a), 43.4(a), 45.3, 45.4, and 45.14(a), 17 C.F.R. §§ 23.431(d)(2), (3), 23.502(b), 23.602(a), 43.3(a), 43.4(a), 45.3, 45.4, 45.14(a) (2020).

V. OFFER OF SETTLEMENT

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

- A. Acknowledges 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 (2018), and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), 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, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), 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, including this Order;
- 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 Sections 2(a)(13)(F) and (G), 4r(a)(3), 4s(h)(1), and 4(s)(i)(1) of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G),

6r(a)(3), 6s(h)(1), 6s(i)(1) (2018), and Regulations 23.431(d)(2) and (3), 23.502(b), 23.602(a), 43.3(a), 43.4(a), 45.3, 45.4, and 45.14(a), 17 C.F.R. §§ 23.431(d)(2), (3), 23.502(b), 23.602(a), 43.3(a), 43.4(a), 45.3, 45.4, 45.14(a) (2020);

2. Orders Respondent to cease and desist from violating Sections 2(a)(13)(F) and (G), 4r(a)(3), 4s(h)(1), and 4(s)(i)(1) of the Act and Regulations 23.431(d)(2) and (3), 23.502(b), 23.602(a), 43.3(a), 43.4(a), 45.3, 45.4, and 45.14(a);
 3. Orders Respondent to pay a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000), 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 VI of this Order.
- F. Represents that it has already undertaken significant remediation efforts, including, but not limited to, the following:
1. Implementing new and enhancing existing policies and procedures concerning portfolio reconciliation, daily marks, and supervision such that they are designed to meet Mizuho Capital's obligations under the Act and Regulations;
 2. Implementing a new swap dealer training program for Mizuho Capital staff addressing portfolio reconciliation, daily mark, swap data reporting, and supervision requirements, among other topics, which will recur annually;
 3. Establishing new processes and controls designed to detect, track, and correct portfolio reconciliation, daily mark disclosure, and swap data reporting failures;
 4. Comprehensively reviewing and remapping its swap data reporting systems to provide for compliant data reporting; and
 5. Reporting corrected data to an SDR for all of the data reporting errors disclosed to Division staff as of the date of the filing of this Order, apart from certain expired or terminated trades for which it will complete reporting corrected data within 60 days of the date of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 2(a)(13)(F) and (G), 4r(a)(3), 4s(h)(1), and 4(s)(i)(1), of the Act, 7 U.S.C. §§ 2(a)(13)(F), (G), 6r(a)(3), 6s(h)(1), 6s(i)(1) (2018), and Regulations 23.431(d)(2) and (3), 23.502(b), 23.602(a), 43.3(a), 43.4(a), 45.3, 45.4, and 45.14(a), 17 C.F.R. §§ 23.431(d)(2), (3), 23.502(b), 23.602(a), 43.3(a), 43.4(a), 45.3, 45.4, 45.14(a) (2020).

- B. Respondent shall pay a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000) (“CMP Obligation”), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then 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 (2018).

Respondent shall pay the CMP Obligation and any post-judgment interest 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:

CFTC
C/O ESC/AMK-326; HQ RM 265
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne 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. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **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: (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 comply with this agreement, and 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.

2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.
3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's 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.
4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.
5. Remediation:
 - a. Within 60 days of the entry of this Order, Respondent shall issue updated and enhanced policies and procedures for swap data reporting.
 - b. Within 60 days of the entry of this Order, Respondent shall complete reporting corrected swap data to an SDR with respect to the swap data reporting errors brought to the attention of Division Staff as of the date of the filing of this Order.
 - c. Within 120 days of the entry of this Order, Respondent shall make a report to the Commission, through the Division, concerning its remediation efforts before and since the entry of this Order. Within 365 days of the entry of this Order, Respondent shall submit a written report to the Commission, through the Division. The written report shall explain how Respondent has complied with the terms of this Order and provide an update on the status of Respondent's remedial efforts, including but not limited to discussion of: the policies, procedures and controls governing Respondent's portfolio reconciliation, daily mark, and swap data reporting obligations; periodic testing of compliance with Respondent's portfolio reconciliation, daily mark, and swap data reporting obligations; the qualifications and training of staff responsible for compliance with Respondent's portfolio reconciliation, daily mark, and swap data reporting obligations; and the status of any portfolio reconciliation, daily mark, or swap data reporting issues escalated to senior management. The written report shall contain a certification from Respondent's chief compliance officer(s) regarding whether Respondent has established policies, procedures, and controls to satisfy the terms in this Order.

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

By the Commission.



Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 27, 2021