

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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7:47 am, Sep 21, 2018

In the Matter of:

MIZUHO BANK, LTD.,

Respondent.

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) **CFTC Docket No. 18-38**
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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” or “CFTC”) has reason to believe that Mizuho Bank, Ltd. (“Mizuho” or “Respondent”) has violated Section 4c(a)(5)(C) of the Commodity Exchange Act (the “Act” or the “CEA”), 7 U.S.C. § 6c(a)(5)(C) (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.

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 acknowledges 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 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.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

From at least May 2016 through May 2017 (the “Relevant Period”), Mizuho – by and through one of its traders (“Trader A”) – engaged in the disruptive trading practice of “spoofing” in the two, five and ten year Treasury and Eurodollar futures contracts (“interest rate futures”). At the time Trader A placed certain orders, Trader A intended to cancel them before execution; Trader A placed his spoof orders in order to test market reaction to his trading. Trader A placed his spoof orders on the Chicago Board of Trade (“CBOT”) and the Chicago Mercantile Exchange (“CME”), designated contract markets in the United States. Mizuho’s disruptive trading violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C)(2012).

In accepting Respondent’s Offer, the Commission recognizes Respondent’s cooperation with the Division of Enforcement’s (“Division”) investigation of this matter and Respondent’s remediation efforts. The cooperation and remediation resulted in a significantly reduced civil monetary penalty.

B. RESPONDENT

Mizuho Bank, Ltd. (“Mizuho”) is a Japanese corporation headquartered in Tokyo, Japan. As part of its business activities, Mizuho engages in proprietary trading of futures in the United States. Mizuho also employed Trader A, discussed below, in its Singapore office. Mizuho has never been registered in any capacity with the Commission.

C. FACTS

1. Mizuho’s Disruptive Trading

During the Relevant Period, Mizuho, by and through the acts of Trader A, placed multiple orders for futures contracts with the intent to cancel the orders before their execution (i.e. spoofing). Trader A spoofed the interest rate futures contracts traded on the CBOT and the CME.

As part of Trader A’s responsibilities, Trader A hedged Mizuho’s swaps positions in the CBOT’s and CME’s interest rate futures contracts. In expectation of executing his responsibilities within the trading unit, Trader A placed orders in CBOT and CME interest rate futures contracts that, at the time of placement, Trader A intended to cancel. Trader A placed these spoof orders to test market reaction to Trader A’s trading in anticipation of having to hedge Mizuho swaps positions with futures at a later date.

Trader A’s spoofing generally involved flashing large orders in the market—i.e., placing large orders with the intent to cancel them before execution, and then quickly doing so. For example, on March 28, 2017, Trader A canceled two sell orders, each for 500 lots, within seconds of placing them. And on May 5, 2017, Trader A canceled two sell orders, each for 300

lots, within seconds of placing them. Trader A would monitor the market's reaction to his spoof orders.

2. Mizuho's Cooperation and Remediation

Upon being made aware of Trader A's misconduct, by its Futures Commission Merchant, Mizuho promptly suspended Trader A's trading privileges and Mizuho commenced an internal review. When the Division notified Mizuho that it was investigating the trading, Mizuho cooperated and provided substantial assistance to the Division's investigation. Among other things, Mizuho provided the Division timely updates on its internal investigation on a rolling basis; expeditiously responded to Division requests for information; disclosed information to the Division and attributed the facts to specific sources for Division; and assisted the Division in analyzing trading data.

At the same time, Mizuho represented that it launched an overhaul of its systems and controls, and implemented a variety of enhancements to detect and prevent similar misconduct across its operations. As part of this process, Mizuho represented that it revised its policies, updated its training, and implemented electronic systems to identify spoofing. Finally, Mizuho has committed to install automated anti-spoofing measures that review both data and communications.

Due to Mizuho's cooperation and representations of significant remediation, the civil monetary penalty imposed by the Commission has been substantially reduced from the otherwise applicable penalty.

III. LEGAL DISCUSSION

A. Section 4c(a)(5)(C) of the Act – Spoofing Violations

Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), makes it unlawful for “[a]ny person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).” As described above, Trader A entered into multiple bids or offers on a registered entity with the intent to cancel the bids or offers before execution in violation of Section 4c(a)(5)(C) of the Act. *See, e.g., United States v. Coscia* 866 F.3d 782, 791 (7th Cir. 2017), *cert. denied*, 138 S.Ct 1989 (2018) (“Congress provided the necessary definition and, in doing so, put the trading community on notice.”); *see also CFTC v. Oystacher*, No. 15-CV-09196, 2016 WL 8256391, at *6 (N.D. Ill. Dec. 20, 2016) (consent order)(finding that entry of bids or offers with the intent to cancel violates Section 4c(a)(5)(C)); *CFTC v. Sarao*, No. 15-CV-3398, 2016 WL 8257513, at *10 (N.D. Ill. Nov. 14, 2016)(consent order)(same); *CFTC v. Khara*, No. 15-CV-03497 (S.D.N.Y. Mar 31, 2016), ECF No. 35 (consent order)(same).

B. Mizuho Is Liable for the Acts of Its Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation (“Regulation”) 1.2, 17 C.F.R. § 1.2 (2018), provide that the act, omission or failure of any

official, agent or other person acting for any individual, association, partnership, corporation or trust within the scope of his employment or office shall be deemed the act, omission or failure of such individual, association, partnership, corporation or trust. Under Section 2(a)(1)(B) and Regulation 1.2, principals are strictly liable for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988).

Trader A engaged in the conduct described herein within the course and scope of his employment at Mizuho. Therefore, Mizuho is liable for the acts, omissions and failures of Trader A, as described above, that constituted violations of Section 4c(a)(5)(C) of the Act.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, the Respondent violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

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 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), 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, §§ 201-53, 110

Stat. 847, 857-74 (codified as amended in 28 U.S.C. § 2412 and in scattered sections of 5 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 Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012);
 2. Orders Respondent to cease and desist from violating Section 4c(a)(5)(C) of the Act;
 3. Orders Respondent to pay a civil monetary penalty in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000), plus post-judgment interest;
- F. 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.C. of this Order

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent and its successors and assigns shall cease and desist from violating Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) ("CMP Obligation"), within ten (10) 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 (2012).

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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
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, DC 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
- a. 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.
 - b. Cooperation with the Commission:

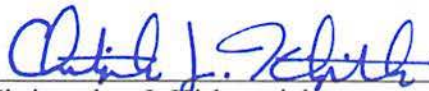
Respondent shall cooperate fully and expeditiously with the Commission, including the Division, and any other governmental agency in this action, and in any investigation, civil litigation or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto. As part of such cooperation, Respondent agrees to the following for a period of five (5) years from the date of the entry of this Order, or until all related investigations and litigation are concluded, including through the appellate review process, whichever period is longer:

 - i. Preserve all records relating to the subject matter of this proceeding, including, but not limited to, audio files, electronic mail, other documented communications, and trading records;

- ii. Subject to applicable laws and regulations, comply fully, promptly, completely, and truthfully with all inquiries and requests for information or documents;
 - iii. Provide authentication of documents and other evidentiary material;
 - iv. Subject to applicable laws and regulations, provide copies of documents within Respondent's possession, custody, or control;
 - v. Subject to applicable laws and regulations, Respondent will make its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location, and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and
 - vi. Subject to applicable laws and regulations, Respondent will make its best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of Respondent.
- c. 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.
- d. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Consent 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.

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

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 21, 2018