

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9341 / July 18, 2012

SECURITIES EXCHANGE ACT OF 1934
Release No. 67456 / July 18, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30141 / July 18, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14954

In the Matter of

XAVIER CAPDEPON and
GWEN SNORTELAND,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 15(b)
OF THE SECURITIES EXCHANGE ACT OF
1934 AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Xavier Capdepon (“Capdepon”) and Gwen Snorteland (“Snorteland”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Capdepon has submitted an Offer of Settlement (“Capdepon Offer”), and Snorteland has submitted an Offer of Settlement (“Snorteland Offer”), both of which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-

Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) of the Securities Exchange Act of 1934, and Sections 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

Summary

1. These proceedings arise out of 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, including Capdepon and Snorteland, provided S&P inaccurate and misleading information. Capdepon was the lead modeler, and Snorteland was the transaction manager, for Delphinus. Investors were misled because notes were issued with ratings obtained and maintained by their conduct.

3. Delphinus resulted in approximately \$10 million in structuring and marketing fees for Mizuho. 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.

Respondents

4. **Xavier Capdepon** was an employee of Mizuho Securities USA Inc. during the relevant period. Capdepon, age 34, is a resident of New York, New York.

5. **Gwen Snorteland** was an employee of Mizuho Securities USA Inc. during the relevant period. Snorteland, age 37, is a resident of the Bronx, New York.

¹ The findings herein are made pursuant to Respondents’ Offers are not binding on any other person or entity in this or any other proceeding.

Other Relevant Entities

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

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-IB – “AAA”
- Class A-IC – “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 was also 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 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 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 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.

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. Capdepon and Snorteland 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. Capdepon and Snorteland, among others, were 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. Capdepon and Snorteland were aware of S&P’s change in methodology.

18. 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.

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

20. On July 18, 2007, after S&P published its announcement, Capdepon emailed multiple alternative portfolios to S&P throughout the evening with the knowledge and awareness of the other Mizuho employees responsible for the transaction. The alternative portfolios included so-called “dummy” assets, an industry 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 in escrow.

21. 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 making them more desirable 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 the collateral manager would be asked to purchase assets to increase the Delphinus portfolio’s diversification.

22. At no point prior to closing did Capdepon or Snorteland, or any of the other Mizuho employees responsible for the transaction, send S&P the fully-ramped portfolio or provide S&P with notice that the portfolio was already fully ramped. Nor did Capdepon or Snorteland or other 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, there was no effort to 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.

23. Capdepon and Snorteland knew or should have known that, if they had supplied S&P with the actual portfolio on July 18, 2007, Delphinus would not have received the necessary ratings and thus could not have closed as planned.

24. 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).

25. 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. Shortly after the closing on July 19, 2007, Snorteland was asked by Moody’s how ramped up Delphinus was at closing. Although she knew Delphinus was 100% ramped at closing, Snorteland responded that Delphinus was only 98.47% ramped, including commitments to purchase.

Effective Date Misconduct

26. Because Mizuho 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.

27. Obtaining Effective Date RAC for Delphinus was of crucial importance. First, if not obtained, and 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.

28. On July 31, 2007, the Delphinus Trustee sent to S&P, and others, a request for Effective Date RAC for Delphinus. That request for Effective Date RAC included a copy of a letter from an accounting firm which, among other things, stated that Delphinus was effective at close and attached a copy of the asset portfolio that was actually transferred to Delphinus at close.

29. 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 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.

30. On August 23, 2007, S&P asked Mizuho – specifically, Snorteland – about whether there was an error in the accountant’s letter. Before responding to S&P’s inquiry, Snorteland instructed a Mizuho employee to obtain a second effective date letter from the accountants, this time with a different effective date. That Mizuho employee forwarded Snorteland’s instruction to Capdepon, who wrote her an email explaining that her request posed certain problems. Among other things, Capdepon wrote that S&P had rated a portfolio that included dummy assets and that Delphinus was effective at close. Despite Capdepon’s email, Snorteland continued to insist that a different effective date letter be obtained. Capdepon responded, “Ok.”

31. The following morning, August 24, 2007, Snorteland told S&P that Delphinus was effective in August. Snorteland testified that she did not tell S&P that the accountant’s letter was correct, and that S&P had rated the wrong portfolio because she did not “want to re-open the issue.”

32. Snorteland 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. Snorteland directed a Mizuho employee to deliver 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.

33. 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.

34. On September 6, 2007, just one day after having had the trustee and the accountants represent to S&P that Delphinus's effective date was July 19, 2007, Snorteland was asked by a Mizuho employee whether to send the new letter or the old letter to Fitch in connection with obtaining Effective Date RAC from Fitch, and she instructed that employee to send the letter representing that Delphinus's effective date was July 19, 2007. One day later, on September 7, 2007, in attempting to obtain RAC from Moody's, Snorteland directed a Mizuho employee to provide Moody's with the letter representing August 6, 2007 as the effective date. As described above, that representation was inaccurate.

Violations

35. Section 17(a)(1) of the Securities Act prohibits any person from "employ[ing] any device, scheme, or artifice to defraud." Section 17(a)(2) prohibits any person from "obtain[ing] money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." Section 17(a)(3) prohibits any person from "engag[ing] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser."

36. As a result of the conduct described above, Capdepon and Snorteland willfully violated Section 17(a) of the Securities Act.

IV.

Snorteland's Offer does not include an agreement to pay a penalty. As part of her Offer, Snorteland agrees that, if she fails to submit acceptable proof of her financial condition, then the Commission may reopen this proceeding against her for the purpose of resolving the penalty issue.

If the Commission reopens this proceeding, Snorteland agrees that she will not contest the findings of fact or law in this Order as a basis for any Commission determination to order a penalty that may be appropriate and in the public interest.

V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Capdepon and Snorteland cease and desist from committing or causing any violations and any future violations of Sections 17(a) of the Securities Act.

B. Capdepon and Snorteland be, and hereby are:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

suspended from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

with the right to reapply for reentry after one year to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondents will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Capdepon shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$125,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check, bank money order, or by credit or debit card via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to Enterprise Services Center, Accounts Receivable Branch, 6500 South MacArthur Boulevard, Oklahoma City, Oklahoma 73169; and (D) submitted under cover letter that identifies Capdepon as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Kenneth R. Lench, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Mail Stop-6013 SP1, Washington, DC 20549.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraph D above. The foregoing payments may be combined in a single Fair Fund for distribution to injured investors. Additional monies paid by any defendant or respondent in a related proceeding arising from the underlying conduct also may be added to this Fair Fund for distribution. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Capdepon agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Capdepon's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Capdepon agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Capdepon by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary