

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 83685 / July 23, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18609**

**In the Matter of**

**MIZUHO SECURITIES  
USA LLC**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b) AND 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934, MAKING FINDINGS, AND IMPOSING  
A CEASE-AND-DESIST ORDER AND  
SANCTIONS**

**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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Mizuho Securities USA LLC (“Respondent” or “Mizuho”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Sanctions (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds that:

## **SUMMARY**

1. This matter concerns Mizuho's failure to maintain and enforce policies and procedures reasonably designed to prevent the misuse of material nonpublic customer order information concerning the repurchase of shares by issuers ("customer buyback order information"), in violation of Section 15(g) of the Exchange Act. In particular, although Mizuho had established certain policies and procedures to prevent the misuse of material nonpublic information, from approximately December 2012 through December 2014 (the "Relevant Period"), Mizuho failed to maintain and enforce its policies and procedures aimed at preventing Mizuho execution and sales traders from disclosing material nonpublic customer buyback order information internally to other Mizuho traders and externally to customers. These policies and procedures required, among other things, effective information barriers between Mizuho equity trading desks and measures to protect confidential Mizuho customer order information, including the identities of buyback customers that had placed trade orders with Mizuho. Mizuho's failures created a risk that Mizuho execution and sales traders could misuse material nonpublic customer buyback order information, including by disclosing the order information to Mizuho customers.

2. As a result of these failures, during the Relevant Period, Mizuho's execution and sales traders received confidential issuer buyback trade information on nearly every day that Mizuho executed buyback trades. Moreover, the head execution trader on Mizuho's U.S. Equity Trading Desk was given direct access to Mizuho's International Trading Desk's order management system, which included buyback purchase trade orders, and he also routinely disseminated such information to traders on his desk.

3. In addition, on several occasions, Mizuho execution and sales traders disclosed to certain firm customers nonpublic customer buyback order information. The information often included the order size, the limit price, and key terms that indicated to the recipients that the orders were issuer buyback orders. This trade information was valuable to other market participants, particularly given that the party placing the trade was the issuer. Moreover, many of the issuer buyback orders that Mizuho handled during the Relevant Period comprised a significant portion of the daily trading volume in the stocks being bought back, which increased the potential impact of the buyback orders on the prices of those stocks.

## **RESPONDENT**

4. Mizuho Securities USA LLC (f/k/a Mizuho Securities USA Inc.), a Delaware limited liability company with its principal executive offices in New York, New York, is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act. Mizuho is an indirect majority-owned subsidiary of Mizuho Financial Group, Inc., a foreign private issuer whose stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

## FACTS

### **A. Mizuho's Equity Division**

5. During the Relevant Period, Mizuho had five different trading desks within its Equity Division, including a U.S. Equity Trading Desk (the "U.S. Desk") and an International Sales Trading Desk (the "International Desk"). Mizuho's U.S. Desk was responsible for facilitating U.S. equity trades for Mizuho's predominately institutional customers. Mizuho encouraged its U.S. Desk personnel, including execution and sales traders, to maintain contact with Mizuho institutional customers. Mizuho's International Desk accepted Mizuho customer orders in securities that traded on markets in Asia and routed those orders to Mizuho's foreign affiliates for execution. During the Relevant Period, the International Desk also was responsible for handling issuer buyback programs for Mizuho corporate customers. Both the U.S. Desk and the International Desk were located on the eleventh floor of Mizuho's New York City office.<sup>1</sup>

6. Mizuho's policies and procedures designated each of its business units as either "private-side" or "public-side." Mizuho's policies and procedures defined a "private-side" business unit as one that "has been designated by management and Compliance as such due to their access to material nonpublic information" and a "public-side" business unit as one that "has not been designated by management and Compliance as private side or otherwise has not been given access by management and Compliance to material nonpublic information." During the Relevant Period, Mizuho had physical and other barriers in place between its "private-side" and "public-side" business units and imposed additional policies and procedures for the handling of material nonpublic information on its "private-side" business units. Both the U.S. Desk and the International Desk were designated as "public-side" business units.

### **B. Corporate Stock Buybacks**

7. An issuer buyback occurs when a publicly traded company buys its shares back from its shareholders. Issuer buybacks typically reduce the number of outstanding shares, which, in turn, increases the ownership stake of each remaining shareholder. Issuers may buy back their shares through, among other means, open market purchases, tender offers, private negotiated transactions, and accelerated share repurchases. Most issuer buybacks are executed over time through open market purchases, which are commonly referred to as share repurchase or buyback programs. There are various reasons why an issuer might decide to buy back shares, including, among others: (1) signaling to the market that its stock is undervalued and is a good investment; (2) reducing the number of outstanding shares, thereby increasing earnings per share; (3) returning capital to shareholders in a more tax efficient manner than declaring dividends; (4) offsetting the dilutive impact of employee stock options; and (5) obtaining shares to distribute to employees in connection with employee compensation plans.

8. Publicly traded companies typically disclose buyback programs at the time that the buybacks are authorized. This disclosure commonly is made by issuing a press release, which also may be filed with the Commission on Form 8-K. The disclosure typically includes: (1) the

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<sup>1</sup> Mizuho also had U.S. Desk personnel located in Boston, Chicago, and San Francisco.

maximum number of shares or maximum dollar amount of shares to be bought back; (2) the buyback methods that may be used (*e.g.*, open market purchases, privately negotiated transactions, etc.); (3) the estimated duration of the buyback program; and (4) the objective of the buyback program. Publicly traded companies also have periodic disclosure obligations with regard to their buyback programs. Item 703 of Regulation S-K requires retroactive quarterly disclosure of specific buyback trading information in annual reports on Form 10-K and quarterly reports on Form 10-Q that are filed with the Commission. Among other items, the company must disclose in each of these periodic reports the total number of shares bought back during the prior quarter, the average price paid per share, and the maximum number or approximate dollar value of shares that may still be purchased pursuant to the publicly announced buyback program.

9. Issuers are not required to, and typically do not, disclose the specific dates on which they will execute trades pursuant to an announced buyback program. Market participants normally do not become aware of an issuer's actual buyback-related trading activity until after the trades have been executed, and then, only on a quarterly basis. Moreover, not every company that announces a buyback program ultimately executes the program. Indeed, an issuer may decide to cancel a buyback program entirely before executing any trades. In addition, the actual number of shares bought back can be far fewer than publicly announced, thus converting a larger buyback into a smaller one.<sup>2</sup>

### C. Mizuho's Execution of Issuer Buyback Orders

10. During the Relevant Period, Mizuho's International Desk executed buyback trades under as many as fifteen issuer buyback programs per day. Mizuho and its issuer customers entered into written stock repurchase agreements, which specified the general conditions under which the buyback orders would be executed. A primary focus of such agreements was to ensure that Mizuho complied with the safe harbor conditions of Rule 10b-18 under the Exchange Act when it effected buyback trades on behalf of an issuer.<sup>3</sup>

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<sup>2</sup> Item 703 was intended to inform investors whether, and to what extent, registrants *follow through* on their original repurchase plans and to provide investors with information that could affect a registrant's stock price. Business and Financial Disclosure Required by Regulation S-K, Release No. 33-10064 (April 13, 2016) (citing Release No. 3308335), at 191. A recent academic study published in *The Review of Financial Studies* reported that the average completion rates for issuer buyback programs, based on a sample review of publicly available issuer buyback data, were 45.53 percent, 53.17 percent, and 59.31 percent for one, two, and three years after an issuer buyback program was publicly announced. Busch and Obernberger, "Actual Share Repurchases, Price Efficiency, and the Information Content of Stock Prices," *The Review of Financial Studies* (2016). This study is consistent with previous academic studies which reported similar results. *See, e.g.*, Stephens and Weisbach, "Actual Share Reactions in Open-Market Repurchase Programs," *The Journal of Finance* 53 (February 1998) (reporting average completion rates of 54.10 percent, 68.70 percent, and 73.80 percent for one, two, and three years after an issuer buyback program was publicly announced.)

<sup>3</sup> Exchange Act Rule 10b-18 provides publicly traded companies that buy back their shares in the open market with a non-exclusive voluntary safe harbor from manipulation liability under Sections 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5 thereunder solely by reason of the manner, timing, price, and volume of their common stock repurchases. If an issuer fails to meet any of these four conditions on a particular trading day, all of the shares bought back that day are disqualified from the safe harbor. Rule 10b-18 does not, however, afford a safe harbor from other types of violations of the Exchange Act, including insider trading. The safe harbor is also not available for repurchases that, although made in technical compliance with Rule 10b-18's conditions, are nevertheless part of a plan or scheme to evade the federal securities laws. Rule 10b-18 does not mandate the terms under which an issuer may

11. On days when Mizuho was executing buybacks, typically before the market opened, Mizuho issuer buyback customers sent specific trade orders under their buyback programs directly to Mizuho's International Desk to execute. The buyback orders specified the number of shares to be bought at certain price limits and, in some instances, exceeded ten percent of a stock's daily trading volume on a particular day.

12. After Mizuho received a buyback order, a trader on the International Desk entered the order information into an order management system that was linked to trading algorithms at two contracted third party broker-dealers ("Third Party Broker-Dealer A" and "Third Party Broker-Dealer B").<sup>4</sup> Mizuho's agreements with these two third-party broker-dealers included confidentiality clauses stating that all order information would be kept confidential. Mizuho's policies and procedures stated that traders on the International Desk "will route" buyback orders to a "contracted broker (algorithm) on behalf of the issuer." According to Mizuho, these trading algorithms were designed to execute buyback trade orders in accordance with the requirements of Rule 10b-18 of the Exchange Act. The trader selected the algorithm that would be used to execute buyback orders on a particular day. Throughout the trading day, the trader on the International Desk monitored the buyback order executions and could adjust the speed at which the purchases were being executed, in order to either accelerate or slow down the rate at which stock was being bought, based on market conditions. At the end of each trading day, the trader on the International Desk emailed a trade confirmation to each issuer buyback customer, which included the number of shares bought for the issuer customer that day, the average price paid per share, and, at times, the relationship of the average price paid per share to the volume-weighted-average-price ("VWAP") of the stock for that day.<sup>5</sup>

13. During the Relevant Period, the International Desk executed 99.82 percent or more of issuer buyback transactions using the third party trading algorithms rather than directly with Mizuho customers through trades negotiated by Mizuho's execution and sales traders.<sup>6</sup> Nevertheless, the International Desk routinely shared buyback order information with the U.S. Desk. On mornings before the market opened, traders on the International Desk, including the International Desk supervisor, routinely provided the head execution trader on the U.S. Desk with

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repurchase its shares without engaging in manipulation. Rather, Rule 10b-18 sets forth conditions with which issuers must comply in order to obtain a safe harbor from liability for manipulation. Paragraph (d) of Rule 10b-18 expressly provides that there is no presumption of manipulation simply because the issuer's purchases do not satisfy the Rule's conditions.

<sup>4</sup> The manner condition of Rule 10b-18 requires an issuer seeking to avail itself of the safe harbor to purchase all shares through only one broker-dealer on a given day. However, under Rule 10b-18(b)(1)(iii) "[w]here Rule 10b-18 purchases are effected on behalf of the issuer by a broker-dealer that is not an electronic communication network (ECN) or other alternative trading systems (ATS), that broker-dealer can access ECN or other ATS liquidity in order to execute repurchases on behalf of the issuer on that day."

<sup>5</sup> VWAP is calculated by dividing the total value of shares traded (price multiplied by number of shares) during a specified period, commonly one trading day, by the total number of shares traded during the same period.

<sup>6</sup> Less than one-half of one percent of the International Desk's issuer buyback trades were executed through trades with other Mizuho customers. Using Mizuho's trading data, this percentage can be calculated in two ways: (1) as a percentage of the number of individual buyback transactions executed, which yielded 99.93 percent; and (2) as a percentage of the number of shares purchased in buyback transactions, which yielded 99.82 percent.

buyback trade order information. That information typically included the ticker symbol, the order size, and the limit price.

14. Moreover, the head execution trader on the U.S. Desk had access to the International Desk's order management system, which listed every active buyback order being handled by the International Desk, directly from his Mizuho workstation.

15. The head execution trader on the U.S. Desk frequently conveyed to the sales traders on the U.S. Desk the buyback order information that he had been given by traders on the International Desk or that he had accessed through the International Desk's order management system and confirmed with traders on the International Desk.<sup>7</sup> He also identified these orders to his traders as buyback orders. In turn, on several occasions, sales traders on the U.S. Desk shared the buyback order information with Mizuho customers, in communications that included terms such as "zero plus" or "tick sensitive," which are understood in the industry, including by the Mizuho customers that were given the information, as indicating that an order is a buyback order.<sup>8</sup>

16. Because the terms included in the order are understood in the industry as indicating that an order is a buyback order, the buyback order information that was conveyed to Mizuho customers by Mizuho execution and sales traders effectively communicated: (1) the identity of the party placing the order; (2) that the corporate issuer placing the order was, in fact, executing trades pursuant to a previously announced buyback program; (3) the timing of the corporate issuer's execution of actual trades pursuant to a previously announced buyback program; (4) the size and limit price of the buyback orders placed on a particular day; and (5) that Mizuho was the broker-dealer effecting all of the issuer's buyback orders on that day. Certain Mizuho customers, particularly sophisticated hedge funds, also actively sought this buyback order information from Mizuho execution and sales traders. As Mizuho stated in a November 26, 2014 internal PowerPoint presentation on issuer buyback programs, "[i]nvestors view an ability to *execute* share buybacks as a sign of capital stability and a degree of comfort in the fundamental performance of the company." (Emphasis added.)

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<sup>7</sup> Occasionally, the head execution trader also shared information regarding unexecuted buyback orders directly with Mizuho customers.

<sup>8</sup> The term "zero plus" originates from former Exchange Act Rule 10a-1, which was repealed in 2007. Specifically, a prior version of Rule 10a-1(a)(1) provided that, "subject to certain exceptions, a listed security may be sold short (A) at a price above the price at which the immediately preceding sale was effected (plus tick), or (B) at the last sale price if it is higher than the last different price (zero-plus tick)." *See* Exchange Act Rel. No. 55970 (June 28, 2007) 72 FR 36348 (July 3, 2007). "Short sales are not permitted on minus ticks or zero-minus ticks, subject to narrow exceptions." *Id.* In February 2010, the Commission adopted a new circuit breaker rule for short sales, Rule 201, which, if triggered, requires trading centers to prevent the execution or display of short sales orders in covered securities at a price that is less than or equal to the current national best bid. *See* Exchange Act Rel. No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010). Thus, the term "zero plus tick" is no longer relevant for short sale purposes. Under the price condition of Rule 10b-18 of the Exchange Act, which, as described above, requires corporations relying on that safe harbor to purchase shares only at prices not exceeding the highest independent bid or last independent transaction price, whichever is higher. Thus, buyback orders under Rule 10b-18 of the Exchange Act are often referred to as "zero plus" or "tick sensitive." As the price condition is the opposite of the repealed short sale price test, the term "zero plus tick" is not relevant for Rule 10b-18 purposes. Moreover, Mizuho counterparties testified that "zero plus" and "tick sensitive" buy orders were synonymous with an issuer buyback and that they had not seen these terms used to describe other types of orders.

**D. Mizuho Failed to Maintain and Enforce Policies and Procedures Reasonably Designed to Prevent the Misuse of Material Nonpublic Issuer Buyback Order Information**

17. During the Relevant Period, Mizuho had policies and procedures in place governing the conduct of its execution and sales traders, including specific policies and procedures concerning the handling of buyback orders for corporate issuers.<sup>9</sup> These policies and procedures were designed, in part, to prevent the misuse of material nonpublic information.

18. The actual execution of a buyback program in the open market can be material to investors, particularly when it comprises a significant portion of the daily trading volume in the stock being bought back. Nonetheless, throughout the Relevant Period, Mizuho failed to maintain and enforce policies and procedures aimed at preventing Mizuho execution and sales traders from misusing material nonpublic customer buyback order information.

**i. Lack of Effective Information Barriers**

19. Mizuho's policies and procedures required each of the five Mizuho equity trading desks, including the International Desk and the U.S. Desk, to have effective information barriers between them. Mizuho specifically prohibited execution and sales traders of one equity trading desk from viewing the order flow of any other equity trading desk, including by accessing another trading desk's order management system. Despite this clearly-stated policy, Mizuho failed to maintain and enforce effective information barriers between the International Desk and the U.S. Desk to prevent the sharing of issuer buyback order information. Most notably, the head execution trader on the U.S. Desk was given direct access to the International Desk's order management system from his own workstation. Moreover, almost every morning before the market opened, traders on the International Desk, including the International Desk supervisor, provided the head execution trader on the U.S. Desk with unexecuted buyback order information. The International Desk and the U.S. Desk also had personnel, including execution and sales traders, located on the same floor in Mizuho's New York City office. As a result, U.S. Desk personnel were able to overhear International Desk personnel discussing buyback order information.

20. Mizuho's decision to place the handling of issuer buybacks within the International Desk, which it had designated as a "public-side" business unit, heightened the risk that material nonpublic issuer buyback order information could be misused. As noted above, Mizuho's policies and procedures defined a "public-side" business unit as one that "has not been designated by management and Compliance as private side or otherwise has not been given access by management and Compliance to material nonpublic information."

21. As a result of these failures, on several occasions, execution and sales traders on the U.S. Desk disclosed to certain Mizuho customers nonpublic buyback order information which they had obtained from the International Desk.

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<sup>9</sup> Mizuho's policies and procedures governing the conduct of its execution and sales traders were set forth primarily in three documents: (1) the "Equity Division Trading and Sales Written Supervisory Procedures," (2) the "Policy on Insider Trading," and (3) the "Code of Conduct."

22. In January 2014, Mizuho executed trades pursuant to a buyback program for one of its issuer buyback customers (“Company A”). Each day from January 7, 2014 through January 10, 2014, Company A placed an order with Mizuho’s International Desk to buyback one million shares of its stock pursuant to its publicly announced buyback program. A trader on the International Desk routed each order to the trading algorithm at Third Party Broker-Dealer A. The amount of shares to be bought back represented between 7.6 percent and 9.9 percent of the daily trading volume in Company A common stock each day. The International Desk bought back all four million of these shares using the trading algorithm at Third Party Broker-Dealer A. None of the trades were executed by a trader on the open market. Despite this, each day, the International Desk relayed Company A’s buyback order information to the head execution trader on the U.S. Desk. In turn, the head execution trader on the U.S. Desk relayed the same information to sales traders on the U.S. Desk, typically through an instant message that identified the order as a buyback by using the initials “BB.” On January 7, 2014, the head execution trader on the U.S. Desk also passed this order information directly to at least one Mizuho hedge fund customer (“Customer A”), writing “[Company A’s ticker symbol] have 1 mm to buy tick sensitive buyer.” At the time, the information was not public.

23. For each of the four days after receiving Company A’s buyback order information from the head execution trader on the U.S. Desk, at least one sales trader on the U.S. Desk passed the information to Mizuho customers, including another Mizuho hedge fund customer (“Customer B”). The sales trader passed along Company A’s ticker symbol and the order size and limit price of its buyback order. The sales trader also identified the orders to traders at Customer B as “zero plus” orders.

24. Throughout the week, traders and portfolio managers at Customer B discussed Company A’s buyback order information internally. On January 9, 2014, at 7:47 a.m., a trader at Customer B who had received the buyback order information from the Mizuho sales trader, sent an email to other traders at Customer B with the subject, “Things to Note Today,” stating that “[Company A’s ticker symbol]-zero plus buyer has bot 2m over the past 2 days.” On January 13, 2014, at 3:34 p.m., a portfolio manager at Customer B sent an instant message to a trader at Customer B who had been given the buyback order information by the Mizuho sales trader during the previous week, asking whether Company A was buying back shares again through Mizuho. The trader replied: “No, did not see him back today. Biggest [Company A’s ticker symbol] down day since 12/4.”

## **ii. Failure to Protect Confidential Customer Order Information**

25. Mizuho’s policies and procedures required its execution and sales traders to protect confidential customer order information, including, most significantly, the identity of a customer placing an order. Mizuho’s policies and procedures defined “confidential information” as “any nonpublic information”, including information concerning securities holdings and order and transaction details that had not been made public, “given to an employee by the Firm or a customer, prospective customer or other customer representatives, with the understanding either in writing or otherwise that the employee will take reasonable steps to keep such information confidential and will only communicate such information to other employees or representatives of the Firm on a

need to know basis.”<sup>10</sup> Mizuho execution and sales traders consistently acknowledged that protecting the identity of a customer behind an order is a critical and core obligation of a brokerage firm and that there is no exception with regard to buyback orders.

26. Mizuho’s Code of Conduct required all Mizuho employees to “respect the confidential business affairs of Mizuho and its clients” and to keep information about Mizuho and its clients confidential unless such information was publicly available, disclosure was required by law, or disclosure was permitted or authorized by the client. Mizuho’s Equity Division Trading and Sales Written Supervisory Procedures stated that Mizuho sales and trading personnel were obligated to “maintain confidentiality when handling VWAP orders,” a type of order that included issuer buyback orders.<sup>11</sup> During the Relevant Period, the vast majority of issuer buyback orders executed by Mizuho were also VWAP orders. Similarly, Mizuho’s policy on insider trading stated that “employees are expected to take great care to make sure that confidential information obtained from or about one customer of MSUSA is not directly or indirectly disclosed to another customer, or to anyone advising the other customer, unless such disclosure is authorized.” Mizuho’s policy on insider trading also prohibited any Mizuho employee who received “information that he / she knows is, or thinks might possibly be, both ‘material’ and ‘nonpublic’” from divulging that information to “anyone else whether inside or outside MSUSA unless that person is clearly involved on the project and has a need to know in order to carry out his or her responsibilities.” Mizuho’s policy on insider trading specifically included “buyback programs” on its list of items that “should” be considered material.<sup>12</sup> Accordingly, Mizuho sales and trading personnel should have protected buyback order information and the customer’s identity.

27. During the Relevant Period, Mizuho consistently failed to maintain and enforce these policies and procedures. As described above, customer buyback order information routinely was provided by the International Desk to the U.S. Desk. In turn, on several occasions, execution and sales traders on the U.S. Desk disclosed this information to certain Mizuho customers, using terms, such as “zero plus” and “tick sensitive,” which indicated that the orders were issuer buyback orders, and when coupled with the issuer’s name or ticker symbol, effectively communicated the identity of the Mizuho customer placing the order.

28. At the time of these disclosures, Mizuho’s policies and procedures provided no exception that would have permitted Mizuho execution and sales traders to share such information with other Mizuho customers. The buyback order information that was shared between the International Desk and the U.S. Desk and, at times, provided to certain Mizuho customers, was not publicly available nor was its disclosure required by law. Although publicly traded corporations, including issuer buyback customers of Mizuho, are required to disclose summary buyback activity

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<sup>10</sup> According to Mizuho’s policies and procedures, all material nonpublic information is also considered confidential information.

<sup>11</sup> VWAP orders are intended to ensure that orders are executed in line with the average trading price during a defined time period and, typically, are executed by using an algorithm.

<sup>12</sup> Mizuho’s Equity Division Trading and Sales Written Supervisory Procedures also stated that VWAP transactions “typically are large transactions that may impact the market price of the stock.”

retroactively in their periodic filings with the Commission, they are not required to, and do not, publicly disclose specific day-to-day buyback activity.

29. Mizuho execution and sales traders also did not have permission from their issuer buyback customers to disclose their unexecuted buyback order information to other Mizuho customers. Mizuho's issuer buyback customers expected that Mizuho would keep this information confidential, particularly their identity as the party placing the order. Mizuho's own training materials during the Relevant Period reiterated this expectation of confidentiality. For example, slides used during annual compliance training for Mizuho sales and trading personnel conducted in December 2012 and December 2013 included the following guidance: "It is firm policy that nonpublic information concerning the Bank and its customers, including trading positions and strategies, or any other information provided by a client is confidential. *Moreover, clients have an expectation of confidentiality.*" (Emphasis added.)

30. The purpose of providing customer order information to other customers is to facilitate the execution of an order by finding a party willing to execute the other side of the order. However, the overwhelming majority of issuer buyback orders at Mizuho were executed using the third party algorithms. In practice, the International Desk executed 99.82 percent or more of the buyback transactions during the Relevant Period using third party algorithms.

31. As a result of these failures, a risk was created that Mizuho customer buyback order information could be misused by other Mizuho customers. Indeed, these Mizuho customers could have taken advantage of the buyback order information in several ways, including by: (1) trading the stock knowing that they could potentially sell the stock back to the issuer at a slightly lower price, thereby limiting their downside risk; (2) trading the stock based on an understanding of the manner in which the stock is likely react to the buyback trading, given the size of the buyback activity or the fact that there is buyback activity supporting the stock price; (3) refining their earnings estimate models for the corporation that was buying back its stock to more accurately predict the corporation's earnings; and (4) gaining insight into intraday price and volume movements in the stock being bought back.

## **LEGAL ANALYSIS**

32. Section 15(g) of the Exchange Act requires registered broker-dealers to establish, maintain and enforce written policies and procedures, reasonably designed, taking into consideration the nature of the broker-dealer's business, to prevent the misuse, in violation of the Exchange Act or the rules and regulations thereunder, of material nonpublic information by such broker or dealer or any person associated with such broker or dealer.<sup>13</sup> The internal controls requirements imposed by Section 15(g) are essential to protect against the risk of misuse of material nonpublic information, which can undermine investor confidence in the integrity of the markets. Section 15(g) is intended to guard against a broad range of potential market violations, including insider trading and front running. *See* 143 Cong. Rec. E3078-04, 1988 WL 180248

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<sup>13</sup> Section 15(g) of the Exchange Act was formerly Section 15(f) of the Exchange Act. The provision was renumbered in 2010 by the Dodd-Frank Wall Street Reform and Consumer Protection Act, but did not change in any other way.

(Sept. 13, 1988) (stating that “misuse of material nonpublic information” as used within what is now Section 15(g) of the Exchange Act was intended to include a broad range of market abuses, such as insider trading, scalping, and front running).

33. Broker-dealers must be cognizant of their duties under Section 15(g) and the need to tailor their policies and procedures to the specific activities of the individual firm, particularly as their businesses evolve. The Commission has long held that the requirement that broker-dealers implement and maintain policies and procedures consistent with the nature of its business “is critical to effectively preventing the misuse of material nonpublic information.” *In re Gabelli & Co., Inc.*, Exchange Act Rel. No. 35057 (Dec. 8, 1994). The Commission also has consistently made clear that broker-dealers must take seriously their responsibilities to design and enforce sufficiently robust policies and procedures to prevent the misuse of material nonpublic information. *See, e.g., In re Deutsche Bank Securities Inc.*, Exchange Act Rel. No. 79083 (October 12, 2016) (settled order finding that Deutsche Bank failed to establish, maintain, and enforce adequate policies and procedures to prevent the misuse of material nonpublic information generated by its research department); *In re Goldman, Sachs & Co.*, Exchange Act Rel. No. 66791 (April 12, 2012) (settled order finding Section 15(g) violation where Goldman Sachs had not established, maintained, and enforced adequate policies and procedures concerning its trading “huddle” program); *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Exchange Act Rel. No. 59555 (March 11, 2009) (settled order finding Section 15(f) violation where Merrill Lynch failed to limit or monitor traders’ access to the equity squawk box which broadcast material nonpublic information). Establishing policies and procedures, however, is not in itself sufficient to comply with Section 15(g). A broker-dealer also must maintain and enforce such policies and procedures by implementing measures to promote compliance with, and enforcement of, those policies and procedures. *See, e.g., In re Monness, Crespi, Hardt & Co., Inc.*, Exchange Act Rel. No. 72886 (Aug. 20, 2014) (settled order finding Section 15(g) violation where Monness failed to adequately enforce existing policies and procedures designed to protect against the misuse of material nonpublic information); *In re Morgan Stanley & Co. Inc., et al.*, Exchange Act Rel. No. 54047 (June 27, 2006) (settled order finding Section 15(f) violation where Morgan Stanley failed to enforce existing policies and procedures concerning surveillance over a four-year period). The failure to establish, maintain, or enforce the requisite policies and procedures violates Section 15(g) even if, as in this case, no unlawful trading is alleged to have occurred.<sup>14</sup>

34. Mizuho failed to maintain and enforce policies and procedures reasonably designed to prevent the misuse of material nonpublic customer buyback order information. Although Mizuho had established certain policies and procedures to prevent the misuse of material nonpublic information, during the Relevant Period Mizuho failed to maintain and enforce its policies and procedures aimed at preventing Mizuho execution and sales traders from misusing material nonpublic customer buyback order information by, among other things, providing it across Mizuho trading desks and to other Mizuho customers. In particular, Mizuho failed to maintain and enforce

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<sup>14</sup> Section 15(g) of the Exchange Act does not require proof that an underlying insider trading violation or any other violation of the Exchange Act or the rules thereunder had occurred as a result of the failure to establish, maintain, and enforce the requisite policies and procedures. *See In the Matter of New York Stock Exchange LLC, et al.*, Exchange Act Rel. No. 72065, 2014 WL 1712113, at \*5 fn. 13 (May 1, 2014); *In the Matter of Certain Market Making Activities on NASDAQ*, Exchange Act Rel. No. 40910, 1999 WL 6716, at \*6 fn. 3 (Jan. 11, 1999).

effective information barriers between Mizuho equity trading desks and to protect confidential Mizuho customer information, including information that indicated the identity of a buyback customer placing an order. Mizuho execution and sales traders had no reason to effectively communicate to Mizuho customers that the orders were buyback orders, given that almost all Mizuho buyback trades during the Relevant Period were executed by algorithms. As a result of these failures, nonpublic price sensitive customer buyback order information routinely was provided by the International Desk to the U.S. Desk. In turn, on several occasions, execution and sales traders on the U.S. Desk communicated such information to certain Mizuho customers.

35. As a result of the conduct described above, Mizuho willfully<sup>15</sup> violated Section 15(g) of the Exchange Act.

### **REMEDIAL EFFORTS**

36. In determining to accept the Offer, the Commission considered the following remedial acts undertaken by Mizuho during the investigation.

37. In early 2015, shortly after Mizuho became aware of the Commission's investigation, the U.S. Desk head execution trader's access to the International Desk's order management system was terminated.

38. Also in 2015, the responsibility for handling issuer buyback orders at Mizuho was transferred from the International Desk to a different desk, the Equity Capital Market Desk ("ECM"). The ECM Desk is located on a different floor of Mizuho's New York office from Mizuho's U.S. Desk and, unlike the International Desk and the U.S. Desk, is designated by Mizuho as a "private-side" business unit.

39. In August 2015, Mizuho adopted additional policies and procedures concerning the handling of issuer buyback orders. Under the updated policies and procedures, ECM employees received specific training not to divulge any buyback order information to Mizuho traders and third parties until such information was either in the public domain or unless specific "wall crossing" procedures had been followed. Also pursuant to the new policies and procedures, ECM employees may only share buyback order trade information with the specific Mizuho trader chosen to work a particular trade, and are prohibited from disseminating the information generally to all Mizuho traders.

## **IV.**

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

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<sup>15</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violation and any future violation of Section 15(g) of the Exchange Act.

B. Respondent is censured.

C. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$1,250,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Mizuho as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Yuri B. Zelinsky, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549-5041.

By the Commission.

Brent J. Fields  
Secretary