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

**SECURITIES ACT OF 1933**
**Release No. 9340 / July 18, 2012**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 67455 / July 18, 2012**

**INVESTMENT COMPANY ACT OF 1940**
**Release No. 30140 / July 18, 2012**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-14953**

**In the Matter of**

**ALEXANDER V. REKEDA**

**Respondent.**

**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 Alexander V. Rekeda ("Rekeda").

## II.

In anticipation of the institution of these proceedings, Rekeda 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 him and the subject matter of these proceedings, which are admitted, Rekeda consents 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 Rekeda's Offer, the Commission finds[1] 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 provided S&P inaccurate and misleading information. Investors were misled because notes were issued with ratings obtained by the deceptive conduct of Mizuho's employees. Rekeda was the head of the team at Mizuho responsible for the Delphinus CDO.

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

## Respondent

4. **Alexander V. Rekeda** was a registered representative and Head of Structured Credit, Americas, of Mizuho Securities USA Inc. during the relevant period. Rekeda, age 38, is a resident of Hoboken, New Jersey.

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[1] The findings herein are made pursuant to Rekeda's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Other Relevant Entities

5. **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

6. 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**.**

7. 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.

8. 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.

9. The Offering Memorandum and Indenture also expressly informed investors that, as of the closing date, each note would start to accrue interest at a specified rate ranging from LIBOR plus 0.60% (for Class A-1A Notes) to LIBOR plus 9.00% (for Class E Notes). Interest and principal were payable monthly on the Class A, S, B, C and D-1 Notes commencing October 11, 2007 and quarterly on the Class D-2, D-3 and E Notes commencing in October 2007. Certain administrative expenses received a payment priority over all note classes; in turn, the right of each note class to receive accrued interest and principal payments was senior to all lower note classes; and, preference shareholders, who were lowest on the priority scale, were entitled to payments only to the extent that all accrued and unpaid amounts on senior interests had been paid in full. Moreover, counterparties to CDSs and hedges were effectively senior in payment to all note classes by virtue of the fact that they had an earlier payment date. All payments, including payments of administrative fees, were to be made solely from the proceeds of the Delphinus CDO’s collateral pool.

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

11. 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.

12. 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.

13. 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

14. Delphinus was scheduled to close on July 19, 2007. The ramping of the Delphinus CDO portfolio was completed on July 17, 2007. Rekeda knew that Delphinus was fully ramped on July 17, 2007.

15. 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. Rekeda's team at Mizuho was responsible for obtaining those ratings.

16. 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. Rekeda was aware of S&P's change in methodology.

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

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

19. On July 18, 2007, after S&P published its announcement, Mizuho employees, acting with Rekeda's knowledge and awareness, emailed multiple alternative portfolios to S&P throughout the evening of July 18. 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.

20. The alternative portfolios sent to S&P on July 18 had certain factors in common, including, among other things, that: (a) they failed to disclose to S&P certain assets that had already been purchased for the fully-ramped portfolio; (b) they included dummy assets, thereby suggesting that the portfolio was not fully ramped and that Mizuho would purchase assets that matched the quality and characteristics of the dummy assets; (c) the dummy assets were coded as "prime" assets thereby 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 collateral manager would be asked to purchase assets to increase the Delphinus portfolio's diversification.

21. At no point prior to closing did any Mizuho employee send S&P the fully-ramped portfolio or provide S&P with notice that the portfolio was already fully ramped. Nor did any Mizuho employee 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.

22. 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).

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

## **Violations**

24. Section 17(a)(2) of the Securities Act 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."

25. Scienter is not required under Sections 17(a)(2) and (3) where proof of negligence is sufficient. *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980); *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1466-67 (2d Cir. 1996); *SEC v. Merchant Capital, LLC*, 483 F.3d 747, 766 (11th Cir. 2007); *Weiss v. SEC*, 468 F.3d 849, 855 (D.C. Cir. 2006); *SEC v. Espuelus*, 579 F. Supp. 2d 461, 472 (S.D.N.Y. 2008). The relevant standard of care under the negligence-based provisions of Section 17(a) is "reasonable prudence" for which industry standards are a relevant but non-determinative factor. *See, e.g., SEC v. GLT Dain Rauscher, Inc.*, 254 F.3d 852, 853 (9th Cir. 2001) ("We hold that the standard of care for an underwriter of municipal offerings is one of reasonable prudence, for which the industry standard is one factor to be considered, but it is not the determinative factor").

26. As a result of the negligent conduct described above, Rekeda willfully[2] violated Sections 17(a)(2) and (3) of the Securities Act.

**Undertakings**

Rekeda has undertaken to provide to the Commission, within thirty (30) days after the end of the twelve (12) month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

**IV.**

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

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. Rekeda cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act.

B. Rekeda be, and hereby is:

[2] 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)).

suspended 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.

for a period of twelve (12) months, effective on the second Monday following the entry of this Order.

C. Rekeda, 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 Rekeda 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.

D. 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 C 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, Rekeda 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 Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Rekeda 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 Respondent 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.

E. Rekeda shall comply with the undertaking enumerated above.

By the Commission.

Elizabeth M. Murphy
Secretary