

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 75445 / July 14, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16686**

**In the Matter of**

**OZ Management, LP**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST  
PROCEEDINGS PURSUANT TO SECTION  
21C OF THE SECURITIES EXCHANGE ACT  
OF 1934, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against OZ Management, LP (“OZ Management” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Paragraphs 5 through 26 below, acknowledges that its conduct violated and caused violations of the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **INTRODUCTION**

1. These proceedings arise from OZ Management, a registered investment adviser, providing inaccurate trade data to four of its prime brokers. The inaccurate data became part of the brokers' required books and records and blue sheet submissions<sup>2</sup> and concerned thousands of sales and millions of shares. These records and data submissions from broker-dealers are a core component of investigations by the Commission and self-regulatory organizations regarding securities trading. Trading records that are infected with inaccurate data pose substantial risks to the integrity of the investigative process. The problem with OZ Management's inaccurate trade data continued undetected for nearly six years until discovered by Commission staff during an investigation.

2. Between January 2008 and December 2013, OZ Management sometimes provided inaccurate daily trade files to four prime brokers, causing those brokers to record inaccurate data concerning whether an OZ Management sale of shares was a long sale or a short sale. The agreements between the prime brokers and OZ Management, and the prime brokers' technical specifications for the trade files, required that OZ Management provide data indicating whether sales transactions were long or short. However, OZ Management did not inform the brokers that it characterized sales not on a net basis, but rather based on whether it was long or short with respect to securities held in accounts with those prime brokers. OZ Management did this in an effort to avoid operational inefficiencies, but did not consider the possible effects of its characterizations on the prime brokers' books and records, including blue sheets. The four prime brokers accepted these trade files as correct representations of the sales OZ Management had executed in the market and used OZ Management's trade files to create required records and generate blue sheets for requests made by the Commission and the Financial Industry Regulatory Authority ("FINRA"). As a result, during the nearly six-year time period, a total of approximately 552 million shares were listed inaccurately in prime brokers' books and records, and sales totaling approximately 14.4 million shares were reported inaccurately in response to Commission blue sheet requests. Also as a result, FINRA made several referrals to the

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> As described below, blue sheets are electronic forms generated by market makers, brokers, and clearing firms in response to requests by the Commission and securities industry self-regulatory organizations. They contain detailed information relating to trading activity including, among other things, whether the transactions in question were purchases, long sales, or short sales.

Commission concerning possible violations of Rule 105 of Regulation M based on the incorrect data that designated certain long sales as short sales.

3. The records required by the Commission's rules pursuant to Section 17(a) of the Exchange Act are core transaction records of brokers and dealers and "a keystone of the surveillance of brokers and dealers by the Commission's staff and by the securities industry's self-regulatory bodies."<sup>3</sup> The failure of brokers and dealers to make and keep accurate records and provide true copies in response to Commission requests can compromise investigations and examinations and undermine the Commission's mission to protect investors. OZ Management caused the prime brokers to make and keep inaccurate ledgers, and to furnish faulty blue sheets to the Commission, thereby causing the prime brokers to violate Section 17(a) of the Exchange Act and Rules 17a-3(a)(3) and 17a-25 thereunder.

4. Separately, in one instance, OZ Management engaged in short sales during the restricted period prior to the pricing of a secondary offering, and then purchased shares in that offering, thereby violating Rule 105 of Regulation M of the Exchange Act.

## **FACTS**

### **A. Respondent**

5. **OZ Management LP** ("**OZ Management**"), is an investment adviser headquartered in New York, New York. OZ Management is indirectly owned by Och-Ziff Capital Management Group LLC ("**Och-Ziff**"), a Delaware limited liability company whose common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange. Och-Ziff is one of the largest alternative asset managers in the world, with approximately \$47.3 billion in assets under management as of April 1, 2015. OZ Management, a Delaware limited partnership, has been registered with the Commission as an investment adviser since 1999 and serves as the manager for numerous Och-Ziff funds.

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<sup>3</sup> In the Matter of Edward J. Mawod & Co., Exchange Act Rel. No. 13512, 1977 SEC LEXIS 1811, at \*16 (May 6, 1977), aff'd, 591 F.2d 588 (10th Cir. 1979); see also, In the Matter of the Application of Ko Secs., Inc., et al., Exchange Act Rel. No. 48550, 2003 SEC LEXIS 3174 (Sept. 26, 2003).

**B. OZ Management Caused Four Brokers to Maintain and Provide to Commission Staff Inaccurate Records**

**OZ Management's Creation of Daily Trade Files**

6. OZ Management traders placed orders for the funds that it advised through hundreds of executing brokers. Orders were captured in OZ Management's order management system, EZE Castle ("EZE"). OZ Management's traders marked sell orders as "long" or "short" based on the relevant fund's global net position in the security. The executing brokers placed the orders in the market based on OZ Management's order instructions, which contained accurate trade type designations.

7. OZ Management exported the trading data in EZE on a daily basis to the firm's in-house accounting software platform, the Financial Controls and Information System, ("FCIS"), a custom-built system. After the close of trading each day, FCIS generated an electronic trade file report ("trade file"), and transmitted it to the prime brokers where the funds maintained accounts and where the trades would settle ("fund prime brokers" or "the prime brokers").

8. The trade file was designed to facilitate settlement by providing the prime brokers with specific information about the trades OZ Management had placed through its numerous executing brokers. Among other information, pursuant to technical specifications provided to OZ Management by the prime brokers, OZ Management's trade files identified the security, executing broker, trade date, settlement date, price, quantity, and the trade type, *i.e.*, whether the trade was a long sale, a short sale or a purchase.

**OZ Management Introduced the Possibility of Misidentifying Trade Types in the Trade Files**

9. When OZ Management launched FCIS on January 1, 2008, it implemented a functionality that enabled FCIS to produce the trade files to prime brokers in two different versions, or "views." FCIS also utilized a "strategy filter," which further impacted certain trade files. As a result of these configurations, in a number of circumstances, OZ Management provided fund prime brokers with trade files that inaccurately listed the trade type (long or short) of sales.

**The "Fund View"**

10. OZ Management sent to some of its prime brokers a version of the trade file that displayed sales as long or short based on the relevant fund's position in the security firm-wide (the "fund view"). The trade file in the "fund view" correctly reflected how OZ Management had marked the sale (long or short) when it sent the sale to the market through its executing brokers.

### The “Prime Broker View”

11. OZ Management sent a different version of the trade file to the four prime brokers. Unlike the “fund view,” the version sent to these prime brokers identified a sale as long or short based on the relevant fund’s position in the stock *at the prime broker where the trade was sent for settlement* and not based on whether the sale in question had actually been marked long or short when OZ Management sent the sale to the market through its executing brokers (the “prime broker view”). Because this logic was focused on listing the trade in the trade file in a manner consistent with the fund’s position in the security *at the prime broker*, it sometimes switched the identification of the trade type from the way it was identified when OZ Management sent the sale to the market through its executing brokers.

12. In particular, when the relevant fund had a long position in a security firm-wide and had marked the sale long when it sent the sale to the market through its executing brokers, but the fund’s account at the particular prime broker in question did not hold sufficient shares to settle the trade, OZ Management’s “prime broker view” trade file identified the long sale as a short sale.

13. OZ Management developed the “prime broker view” to avoid the need for OZ Management and its prime brokers to manually reconcile on a trade-by-trade basis sales that were executed as long based on the fund’s global net position, but where the fund did not hold sufficient shares to settle that trade at the prime broker where settlement took place. OZ Management did not consider the possible effects of the “prime broker view” on the accuracy of the prime brokers’ required books and records, or inform the prime brokers that the trade files they received from OZ Management did not represent how OZ Management marked sales when OZ Management sent the trades to the market.

### The “Strategy Filter”

14. OZ Management assigns strategy codes to trades for internal purposes to track the performance of its trading strategies.<sup>4</sup> The use of the strategy codes as one of the data filters (the “strategy filter”), when generating the “prime broker view,” also altered the way the trade type was identified in the trade files in certain instances.

15. For example, when the relevant fund had a long position in a security firm-wide and also at the prime broker, and engaged in a long sale, but the particular *strategy* in that fund at the prime broker had no position in the security, OZ Management’s “strategy filter” switched the long sale to a short sale in the trade file. The “strategy filter” operated in this fashion even

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<sup>4</sup> OZ Management utilizes multiple trading strategies, and a strategy may be used by more than one fund.

though the fund that traded held sufficient shares to settle the trade at that prime broker (and firm-wide).

16. OZ Management did not anticipate that the “strategy filter” would have this consequence, and was not aware that the “strategy filter” was changing the identification of some long sales to short sales (and vice-versa) until October 2013 when Commission staff identified discrepancies in identification of sales as long or short during the course of the Commission’s investigation.

17. The use of the “prime broker view” and the “strategy filter” affected the four prime brokers’ books and records and blue sheet submissions, but did not affect the settlement of OZ Management’s trades.

### **The Impact of OZ Management’s Inaccurate Trade Files Was Significant**

18. When the trade type information in the trade files was wrong, the errors were introduced into the brokers’ books and records, and also remained latent in their data systems, infecting the brokers’ blue sheets produced to the Commission and FINRA. The inaccurate information in the trade files generated in the “prime broker view” did not impair the settlement process because OZ Management arranged for shares to be delivered to prime brokers before settlement when its funds did not hold sufficient shares at those prime brokers to settle trades.

#### **Impact on the Prime Brokers’ Ledgers**

19. Between January 2008, and December 2013, “prime broker view” trade files that OZ Management sent to the four prime brokers misidentified thousands of sales, totaling approximately 552 million shares, and these inaccuracies were included in the prime brokers’ books and records.

#### **Impact on Blue Sheets Submitted by the Prime Brokers**

20. Blue sheets, so named because of the traditional blue paper on which they were once printed, play a critical role in the Commission’s Enforcement program. Brokers, clearing firms, and market makers now provide electronic, standardized responses to blue sheet requests from the Commission and self-regulatory organizations. The information in blue sheets includes, among other things, account holders’ names and addresses, trade dates, settlement dates, the stock symbol, number of shares, purchase or sale price, and whether the transaction was a buy or sell, and whether it was marked long or short. The Commission staff uses and has used blue sheets: (1) to assist in the examination for and investigation of possible securities law violations, principally involving insider trading or market manipulation; and (2) to conduct market

reconstructions, primarily following significant market volatility.<sup>5</sup> Securities industry self-regulatory organizations, including FINRA, also use blue sheets to conduct surveillance for insider trading and other securities law violations, including possible violations of Rule 105 of Regulation M.

21. Between July 2009, and October 2013, the prime brokers who received “prime broker view” trade files from OZ Management generated blue sheet responses for Commission requests that reported an inaccurate trade type for thousands of sales.

### **Discovery of the Violations**

22. In 2013, as part of a Commission investigation, SEC staff discovered that OZ Management’s internal trade blotters identified certain trades differently than what had been reported in blue sheets. Commission staff further identified that the trade type for OZ Management trades had been inaccurately recorded in ledgers maintained by a prime broker for OZ Management funds. Ultimately, SEC staff determined that a total of four prime brokers had inaccurate books and records and made inaccurate blue sheet submissions as a result of the trade files OZ Management provided to the prime brokers.

23. After the discovery, in late 2013, OZ Management stopped providing trade files with the “prime broker view.”

24. OZ Management also has provided corrected *historical* information to the affected prime brokers. The prime brokers also are working with the Commission to resubmit corrected blue sheets to the Commission and address the inaccurate information in the systems they use to maintain records required by the Commission’s rules.

### **C. OZ Management Engaged in Prohibited Transactions in Connection with a Secondary Offering**

25. On March 1, 2011, after the market close, EOG Resources, Inc. (“EOG”) announced the pricing of a public secondary offering of 13,570,000 shares of common stock (“the EOG offering”), which priced at \$105.50 per share. On March 2, 2011, OZ Management purchased 150,000 shares of EOG common stock in the EOG offering at \$105.50 per share. Prior to the pricing of the EOG offering, however, OZ Management had engaged in short sales of 5,618 shares of EOG at prices ranging from \$111.50 to \$114.08 per share. These short sales occurred during the restricted period under Rule 105.<sup>6</sup> Under Rule 105, because OZ

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<sup>5</sup> See Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers, 66 Fed. Reg. 35836, 35386 (July 9, 2001) (final rule release).

<sup>6</sup> Rule 105 defines the restricted period as the shorter of the period (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial

Management had executed short sales during the restricted period, OZ Management was prohibited from purchasing securities in the secondary offering. OZ Management did not recognize that its purchases were prohibited because a compliance associate miscalculated the restricted period under Rule 105.

26. The difference between OZ Management's proceeds received from its restricted period short sales of 5,618 shares of EOG and the price it paid for shares received in the offering was \$38,752. OZ Management also improperly obtained a benefit of \$175,628 by purchasing the remaining 144,382 shares at a discount from EOG's market price even though it was prohibited from participating in the offering. Thus, OZ Management's participation in the EOG offering resulted in wrongful gains of \$214,380.

### **VIOLATIONS**

#### **A. Books and Records: Section 17(a) of the Exchange Act and Rules 17a-3(a)(3) and 17a-25**

27. Under Section 21C of the Exchange Act, a person is a "cause" of another's primary violation if the person knew or should have known that his act or omission would contribute to the primary violation. Negligence is sufficient to establish causing liability under Section 21C when a person is alleged to have caused a primary violation that does not require scienter. See In re KPMG Peat Marwick LLP, Exchange Act Rel. No. 43862, 2001 WL 47245, at \*19 (Jan. 19, 2001), aff'd, KPMG, LLP v. SEC, 289 F.3d 109, 120 (D.C. Cir. 2002).

28. Section 17(a) of the Exchange Act requires, among other things, that brokers or dealers make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the securities laws. The information contained in required books and records must be accurate, regardless of whether the information entered into those records is itself mandated by the Commission's rules. In the Matter of Merrill Lynch, et al., Exchange Act Rel. No. 33367, 1993 SEC LEXIS 3516, at \*20 (Dec. 22, 1993). OZ Management should have known that its conduct, described below, would cause four prime brokers to have inaccurate books and records, which violated Section 17(a) of the Exchange Act and rules promulgated by the Commission thereunder.

29. Rule 17a-3(a)(3) requires brokers or dealers to make and keep certain ledger accounts that, among other things, itemize separately all purchases and sales of securities. As described above, prime brokers for OZ Management funds used OZ Management's trade files to

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filing of a registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).



make the ledger account records required under Rule 17a-3(a)(3). OZ Management failed to inform four prime brokers that it sometimes did not provide the trade type accurately, despite its agreements with its prime brokers and the specifications for the trade files, which required OZ Management to identify sales transactions as long or short. This resulted in the prime brokers' ledger accounts inaccurately identifying sales of securities as either long sales or short sales. Because its trade files contained inaccurate information, OZ Management should have known that it would cause the four prime brokers to have inaccurate books and records, which was a violation of Rule 17a-3(a)(3).

30. Rule 17a-25 requires brokers or dealers, upon request, to electronically submit to the Commission securities transaction information that specifies, among other things, "whether each transaction was a purchase, sale or short sale." This transaction data has become known as "blue sheet" data.

31. As described above, four prime brokers for OZ Management funds used incorrect information that they received from OZ Management to create reports in response to Commission blue sheet requests. OZ Management did not inform four prime brokers that it sometimes provided the trade type inaccurately. Blue sheets pertaining to thousands of sales by OZ Management therefore were recorded with an inaccurate trade type, and were provided to the Commission in response to its requests. Because the trade files contained inaccurate information, OZ Management should have known that it would cause the four prime brokers to create inaccurate blue sheet reports in response to Commission requests, which was a violation of Rule 17a-25.

## **B. Rule 105 of Regulation M**

32. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; see Short Selling in Connection with a Public Offering, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Form 1-A or Form 1-E and ending with pricing. 17 C.F.R. § 242.105(a)(1) and (a)(2).

33. The Commission adopted Rule 105 "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Id.

34. As described above, OZ Management purchased shares in the EOG secondary offering after OZ Management had sold short EOG securities during the restricted period. As a result, OZ Management violated Rule 105 of Regulation M.

### **OZ Management's Remedial Efforts**

In determining to accept the Offer, the Commission considered remedial acts undertaken by OZ Management and cooperation afforded the Commission staff.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in OZ Management's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, OZ Management shall cease and desist from causing any violations and any future violations of Section 17(a) of the Exchange Act and Rules 17a-3(a)(3) and 17a-25 promulgated thereunder, and from committing or causing any violations or future violations of Rule 105 of Regulation M of the Exchange Act.

B. OZ Management shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$4,250,000 (\$4.25 million) to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment of the civil monetary penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. OZ Management also shall, within ten (10) days of the entry of this Order, pay disgorgement of \$214,380, which represents profits gained as a result of the conduct described herein, and prejudgment interest of \$29,047 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment of disgorgement plus prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 OZ Management 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 Daniel M. Hawke, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, One Penn Center, 1617 JFK Boulevard, Suite 520, Philadelphia, PA 19103.

By the Commission.

Brent J. Fields  
Secretary