BNY Mellon to Pay More Than $54 Million for Improper Handling of ADRs

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Washington D.C., Dec. 17, 2018 —

The Securities and Exchange Commission today announced that Bank of New York Mellon will pay more than $54 million to settle charges of improper handling of “pre-released” American Depositary Receipts (ADRs).

ADRs – U.S. securities that represent foreign shares of a foreign company – require a corresponding number of foreign shares to be held in custody at a depositary bank. The practice of “pre-release” allows ADRs to be issued without the deposit of foreign shares provided brokers receiving them have an agreement with a depositary bank and the broker or its customer owns the number of foreign shares that corresponds to the number of shares the ADR represents.

The SEC’s order found that BNY Mellon improperly provided ADRs to brokers in thousands of pre-release transactions when neither the broker nor its customers had the foreign shares needed to support those new ADRs. Such practices resulted in inflating the total number of a foreign issuer’s tradeable securities, which resulted in abusive practices like inappropriate short selling and dividend arbitrage that should not have been occurring.

This is the seventh action against a bank or broker and third action against a depositary bank resulting from the SEC’s ongoing investigation into abusive ADR pre-release practices. Information about ADRs is available in an SEC Investor Bulletin.

“Our ongoing industry-wide investigation into Wall Street misconduct marches on,” said Sanjay Wadhwa, Senior Associate Director of the SEC’s New York Regional Office. “BNY Mellon is the seventh bank or broker being held accountable for improper practices that allowed banks and brokerage firms to profit handsomely while market participants were unaware of how the market was being abused.”

Without admitting or denying the SEC’s findings, BNY Mellon agreed to disgorge more than $29.3 million in alleged ill-gotten gains plus pay $4.2 million in prejudgment interest and a $20.5 million penalty for total monetary relief of more than $54 million. The SEC’s order acknowledges BNY Mellon’s cooperation in the investigation and remedial acts.

The SEC’s continuing investigation is being conducted by Andrew Dean, William Martin, Elzbieta Wraga, Philip Fortino, Joseph P. Ceglio, Richard Hong, and Adam Grace of the New York Regional Office, and is being supervised by Mr. Wadhwa.

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