Press Release

Industrial and Commercial Bank of China Affiliate to Pay More Than $42 Million for Improper Handling of ADRs

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Washington D.C., June 14, 2019 — The Securities and Exchange Commission today announced that Industrial and Commercial Bank of China Financial Services LLC (ICBCFS), a wholly-owned subsidiary of Industrial and Commercial Bank of China Limited, will pay more than $42 million to settle charges for improper handling of "pre-released" American Depositary Receipts (ADRs). The settlement marks the largest recovery against a broker in the SEC's ongoing investigation of ADR practices, which thus far has resulted in settlements with 10 financial institutions exceeding $414 million.

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 ADRs represent.

The SEC's order finds that ICBCFS improperly obtained pre-released ADRs from depositary banks when ICBCFS should have known that neither the firm nor its customers owned the foreign shares needed to support those ADRs. This inflated the total number of a foreign issuer's tradeable securities and resulted in abusive practices such as inappropriate short selling and dividend arbitrage. In certain countries, demand for ADR borrowing increased around dividend record dates, so that certain tax-advantaged borrowers could – through a series of transactions – collect dividends without any corresponding tax withholding. Pre-released ADRs that were improperly obtained by ICBCFS were used to satisfy that demand.

"With these charges, ICBCFS is being held accountable for its unlawful ADR practices," said Sanjay Wadhwa, Senior Associate Director of the SEC's New York Regional Office. "By falsely representing that the firm or its customers owned the foreign shares to support pre-release transactions, ICBCFS often played the role of middleman between depositary banks and other market participants in the issuance of what amounted to phantom securities."

The SEC's order finds that ICBCFS violated the antifraud provisions of Section 17(a)(3) of the Securities Act of 1933 and failed reasonably to supervise its securities lending desk personnel.

Without admitting or denying the SEC's findings, ICBCFS agreed to be censured, return nearly $24 million in ill-gotten gains, and pay $4.4 million in prejudgment interest and a $14.3 million penalty.

The U.S. Department of Justice's Antitrust Division today separately announced that ICBCFS pled guilty to an antitrust charge relating to the bid-rigging of pre-released ADRs by the same securities lending desk.

The SEC's continuing investigation is being conducted by Andrew Dean, 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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Related Materials

- SEC Order