Securities Regulation Daily Wrap Up, ENFORCEMENT—SG Americas Securities will pay over $800,000 for improper handling of ADRs, (Sept. 25, 2018)

Securities Regulation Daily Wrap Up

Click to open document in a browser

By Brad Rosen, J.D.

The SEC issued an order simultaneously filing and settling charges against SG Americas, a registered broker-dealer and subsidiary of Paris-based Societe Generale S.A., where the respondent will pay in excess of $800,000 in connection with the for the improper handling of "pre-released" American Depositary Receipts (ADRs). The SEC found that SG America's predecessor entity, Newedge USA LLC, had engaged in misconduct by allowing pre-released ADRs to be issued that were not backed by the appropriate number of ordinary shares (*In the Matter of SG Americas Securities, LLC*, September 25, 2018).

Agency findings. The SEC found that Newedge improperly provided thousands of pre-released ADRs over a more than three-year period when neither the broker nor its customers had the requisite shares. This resulted in the additional finding that that SG Americas violated Section 17(a)(3) of the Securities Act of 1933 and failed reasonably to supervise its securities lending desk personnel.

Specifically, the SEC's order found that from at least June 2012 through March 2013, Newedge was a pre-release broker that obtained pre-released ADRs directly from a depositary pursuant to a pre-release agreement. Contrary to certain provisions in relevant agreements, associated persons on Newedge's securities lending desk regularly obtained pre-released ADRs from the depositary institution and loaned them to borrowers without taking reasonable steps to determine whether the requisite number of ordinary shares was owned and custodied by Newedge or its borrowers. As a result, ADRs were issued that in many instances were not backed ordinary shares as required by applicable agreements, and section 17(a) of the Securities Act.

An industry-wide investigation continues. According to the SEC's release, this is the fifth action against a depository bank or broker for abusive pre-release practices resulting from the SEC's ongoing investigation into abuses involving pre-released ADRs. The SEC noted that these practices have the potential to artificially inflate the total number of a foreign issuer's tradeable securities, diluting existing shareholders' equity. Moreover, some of the pre-released ADRs could be used for short selling that might not otherwise have occurred thereby suppressing the price of the issuer's securities.

Sanjay Wadhwa, a senior associate director for enforcement, stated, "The SEC continues to hold accountable those parties that abused the ADR markets", adding, "U.S. investors who invest in foreign companies through ADRs have a right to expect that issuances of those ADRs are properly backed by foreign shares." The SEC's continuing industry-wide investigation is being conducted by personnel out of its New York Regional Office.

Sanctions and restitution. Without admitting or denying the SEC's findings, SG Americas agreed to return more than $480,000 of alleged ill-gotten gains, $82,000 in prejudgment interest, and pay penalty to the SEC in the amount of $250,000. Lastly, the SEC's order acknowledged the respondent's cooperation in the investigation and its remedial acts.

The case is No. 10560.

LitigationEnforcement: BrokerDealers CorporateFinance InternationalNews SECNewsSpeeches SecuritiesOfferings