

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83253 / May 16, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18488

In the Matter of

**INDUSTRIAL AND
COMMERCIAL BANK OF
CHINA FINANCIAL
SERVICES, LLC,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Industrial and Commercial Bank of China Financial Services, LLC (“ICBCFS”).

II.

In anticipation of the institution of these proceedings, Respondent 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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 Respondent's Offer, the Commission finds¹ that:

SUMMARY

In late 2012, ICBCFS, a registered broker-dealer, developed a new line of business clearing equity securities. One of ICBCFS's correspondents was Chardan Capital Markets, LLC ("Chardan"). From at least October 2013 through June 2014 (the "relevant period"), ICBCFS cleared billions of shares of transactions in low-priced securities on behalf of certain of Chardan's customers, primarily in delivery-versus-payment accounts. ICBCFS contacted Chardan numerous times about its customers' transactions, and ultimately ended trading in penny stocks by the relevant Chardan customers. Nonetheless, ICBCFS did not file Suspicious Activity Reports ("SAR" or "SARs") related to these transactions when it knew, suspected, or had reason to suspect that these transactions involved the use of ICBCFS to facilitate fraudulent activity, or had no business or apparent lawful purpose.

Aside from its failure to file SARs, ICBCFS also failed to promptly produce certain documents missing from its production during the Commission's investigation, despite repeated requests by the staff of the Division of Enforcement. During its investigation, the staff issued several written requests to ICBCFS for required records. Upon discovering chronological gaps in the emails and other records produced by ICBCFS, the staff informed ICBCFS's counsel of the staff's concerns that the firm's production was incomplete. It ultimately took ICBCFS 15 months to produce the requested records.

By failing to file SARs as required, ICBCFS willfully² violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, and by failing to promptly produce required records, ICBCFS willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(j) thereunder.

RESPONDENT

ICBCFS is a registered broker-dealer headquartered in New York. ICBCFS has been registered with the Commission since 2004. ICBCFS derives the majority of its revenues from

¹ 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.

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)).

clearing and financing fixed income and equity securities. It is wholly-owned by Industrial and Commercial Bank of China Limited, a state-owned multinational, commercial banking company in the People's Republic of China.

FACTS

Background

1. In late 2012, ICBCFS developed a new line of business clearing equity securities. Despite starting this new line of business, which included clearing transactions for correspondents that conducted a large volume of low-priced securities transactions, ICBCFS did not update its AML policies and procedures to reflect the risks of clearing low-priced equity securities.

2. ICBCFS relied on employee reporting, review of trade blotters, reviews of securities deposits, and internal reports to monitor suspicious activity. Nonetheless, these practices resulted in no suspicious activity being reported by ICBCFS from late 2013 to late 2016.

3. Chardan is a registered broker-dealer headquartered in New York. Beginning in late 2013, Chardan on-boarded seven new customers who routinely sold billions of shares of thinly-traded penny stocks. Trades by these customers were cleared through ICBCFS. Those transactions raised or should have raised red flags for ICBCFS, as detailed below.

ICBCFS's Failure to File SARs

4. Specifically, during the relevant period, seven of Chardan's customers sold over 12.5 billion shares of penny stocks. These sales were often in large volumes, constituting a material percentage of the daily sales volume in the security. Each of the seven customers engaged in at least one transaction where the customer's sales of a particular penny stock accounted for over 50 percent of the sales volume in that penny stock during a single trading day, and four of the seven customers engaged in at least one such transaction where the customer's sales exceeded 70 percent of the sales volume in a penny stock during a single trading day. Moreover, while not identified by ICBCFS at the time, the liquidations by the seven customers at Chardan frequently occurred where the issuers had ongoing promotional campaigns or had large accumulated deficits.

5. On January 27, 2014, ICBCFS requested that Chardan have a customer stop trading "all these sub penny stocks today." Despite this prohibition, that customer sold multiple sub-penny stocks after this date. ICBCFS failed to file a SAR related to these transactions and did not produce a written analysis or other records supporting the reasonableness of why a SAR did not need to be filed.

6. On March 18, 2014, ICBCFS asked Chardan for a description of another customer's sales transactions, indicating that unless it received sufficient information about that customer's background, it would close the account. ICBCFS closed that account a few days later, but failed to file a SAR related to the customer and did not produce a written analysis or other records supporting the reasonableness of why a SAR did not need to be filed.

7. On June 23, 2014, ICBCFS asked Chardan for more information on two specific transactions by customers trading low-priced securities. ICBCFS failed to file a SAR related to these transactions and did not produce a written analysis or other records supporting the reasonableness of why a SAR did not need to be filed.

8. On June 25, 2014, ICBCFS asked Chardan about ten specific transactions in low-priced securities. ICBCFS failed to file a SAR related to these transactions and did not produce a written analysis or other records supporting the reasonableness of why a SAR did not need to be filed.

9. On June 26, 2014, ICBCFS asked Chardan about eight specific transactions in low-priced securities. ICBCFS failed to file a SAR related to these transactions and did not produce a written analysis or other records supporting the reasonableness of why a SAR did not need to be filed.

10. On June 27, 2014, a Vice President at ICBCFS told Chardan's President that ICBCFS had closed certain customer accounts at a broker-dealer specializing in low-priced security trades, and those customer accounts were migrating to Chardan. Three of the accounts listed in the email had opened and begun trading in February 2014, and the fourth had opened and begun trading in October 2013. ICBCFS did not conduct a review of these customers' trading activities despite flagging these issues. ICBCFS failed to file any SARs related to these transactions or customers and did not produce a written analysis or other records supporting the reasonableness of why SARs did not need to be filed.

11. By late June 2014, ICBCFS effectively ceased clearing transactions in penny stock securities by certain of Chardan's customers.

ICBCFS's Failure to Promptly Produce Documents

12. During the course of its investigation, the staff issued several written requests to ICBCFS for required records pursuant to Section 17(a) of the Exchange Act. Upon discovering chronological gaps in the emails and other records initially produced by ICBCFS, the staff contacted ICBCFS's counsel and informed counsel of the staff's concerns that the firm's production was incomplete. Despite repeated requests by the staff that ICBCFS produce the missing documents, ICBCFS failed to produce the requested records for 15 months.

13. The staff issued its initial request for documents to ICBCFS on August 28, 2015. This request sought, among other things, relevant emails. Between November 18, 2015 and January 15, 2016, ICBCFS made a handful of production, none of which included emails, despite explicit requests from the staff to produce such documents. In January 2016, the staff again requested that ICBCFS produce all responsive emails between ICBCFS and Chardan called for pursuant to the staff's August 28, 2015 request.

14. On February 24, 2016, ICBCFS produced what it claimed were the remaining documents responsive to the staff's August 28, 2015 request. While this production included emails, it became apparent to the staff that a large number of emails were still missing.

15. In May 2016, the staff informed counsel that emails from four months of the relevant period appeared to be missing from the production. Counsel initially informed the staff that no responsive emails were found for this time period. ICBCFS thereafter re-collected data from its primary email archive for the relevant period and supplemented its production with approximately 500 to 550 responsive emails had been identified in the new document collection and review process.

16. Nevertheless, it was apparent to the staff that emails from the four-month period were still missing. To address this issue, the staff issued a new document request under Section 17(a) of the Exchange Act to ICBCFS on June 24, 2016, which called for, among other things, certain categories of emails.

17. ICBCFS produced documents in response to the June 24, 2016 document request, but again failed to include emails for four months of the relevant period.

18. Thereafter, the staff identified to ICBCFS a number of specific emails from Chardan's document production in the matter that were not included in ICBCFS's production. ICBCFS further investigated and identified an issue that prevented emails from certain users from being properly archived to the primary email archive for a portion of the relevant period.

19. The staff learned that the archiving issue affecting ICBCFS's primary email archive impacted approximately 30 ICBCFS employees who had been migrated to a different database in late 2015 and that ICBCFS failed to search the back-up email archive in responding to the staff's requests for documents. ICBCFS ultimately completed its production in November 2016, which included over 40,000 emails, many of which were responsive to the staff's August 28, 2015 request.

VIOLATIONS

20. The BSA, and implementing regulations promulgated by Financial Crimes Enforcement Network ("FinCEN"), require that broker-dealers file SARs with FinCEN to report a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating to at least \$5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2) ("SAR Rule").

21. Exchange Act Rule 17a-8 requires broker-dealers registered with the Commission to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

22. As a result of its customers' activity described in Section III. above, ICBCFS knew, suspected, or had reason to suspect that Chardan's customers were clearing transactions through ICBCFS to facilitate unlawful activity. Furthermore, Chardan's customers' deposits and subsequent liquidations of penny stocks were suspicious because they lacked any apparent business or lawful purpose.

23. By failing to file SARs with FinCEN as required by the BSA with respect to any of its customers' activities described above, ICBCFS willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

24. As a result of the conduct described in Section III, above, ICBCFS willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(j) thereunder, which require broker-dealers registered with the Commission to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of ICBCFS that were required to be preserved under Rule 17a-4 or any other records of ICBCFS subject to examination under Exchange Act Section 17(b) that are requested by the representative of the Commission.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent ceases and desists from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rules 17a-8 and 17a-4(j) promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay civil penalties of \$860,000, to the Securities and Exchange Commission within thirty (30) days of the entry of this Order for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3).

D. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. 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 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 Sanjay Wadhwa, Senior Associate Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office 200 Vesey Street, Suite 400, New York, New York 10281.

E. 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, Respondent agrees that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they 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, Respondent 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 Securities and Exchange Commission. 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.

By the Commission.

Brent J. Fields
Secretary