

ADMINISTRATIVE PROCEEDING
File No. 3-18341

Industrial and Commercial Bank of China Financial Services LLC Agrees to Settle SEC Charges Relating to Numerous Regulation SHO Violations That Resulted in Prolonged Fails to Deliver

January 18, 2018 - The Securities and Exchange Commission today announced that Industrial and Commercial Bank of China Financial Services LLC (“ICBCFS”) has agreed to pay \$1.25 million to settle charges that it repeatedly violated Rule 204 of Regulation SHO, and to cooperate in all related investigations and proceedings.

The SEC adopted Rule 204 in order to address the negative effects of persistent fails to deliver equity securities. Under Rule 204(a), broker-dealers that incur Continuous Net Settlement fails to deliver for sales of equity securities must close out the fails by purchasing or borrowing securities by the applicable deadline. Broker-dealers may claim credit against their close-out obligations if they meet specific requirements.

According to the SEC’s order, an investigation found that ICBCFS willfully violated Rule 204(a) under Regulation SHO thousands of times between April 2013 and August 2016 because it improperly:

- Claimed credit based on purchases that occurred after the settlement date, on days when it had a net short position, or when the purchases only partially covered its fail to deliver positions;
- Claimed credit based on purchases its correspondent broker-dealers claimed they were going to make but in fact never did;
- Claimed credit when its correspondents made purchases but then immediately resold the same securities in the same amount, thus re-establishing the fail to deliver position; and
- Double-counted purchases against multiple close-out obligations in the same security.

The SEC’s order also finds that, as a result of its improper credit claims, ICBCFS incurred numerous, prolonged fails to deliver. Further, ICBCFS had institutional knowledge of the prolonged fail to deliver positions through internal reports that tracked its aged fails, but for more than two years it did not utilize those reports as part of its Rule 204(a) compliance procedures.

Without admitting or denying the SEC’s findings, ICBCFS consented to the order, which charges ICBCFS with willfully violating Rule 204(a), censures the firm, and requires it to pay a \$1.25 million penalty and to cease and desist from committing or causing violations of Rule 204(a). Additionally, ICBCFS has entered into an undertaking to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the order.

The SEC’s investigation was conducted by Jonathan Warner and Jay Scoggins of the Market Abuse Unit and Denver Regional Office. The case was supervised by Joseph Sansone and Robert Cohen. The SEC’s Office of Compliance Inspections and Examinations, Division of Economic and Risk Analysis, and Division of Trading and Markets provided substantial assistance.

See also: [Order](#)