Cantor Fitzgerald and BMO Capital to Pay $4.5 Million for Improper Handling of ADRs

The Securities and Exchange Commission has charged brokers Cantor Fitzgerald & Co. and BMO Capital Markets Corporation for improper handling of “pre-released” American Depositary Receipts (ADRs).

Cantor Fitzgerald will pay more than $647,000 and BMO Capital will pay more than $3.9 million to settle the charges. The regulators noted that both firms cooperated with the investigation.

The SEC has charged 13 financial institutions in its ongoing investigation into what it deems as abusive ADR pre-release practices, and monetary settlements have exceeded $427 million so far.

ADRs are U.S. securities that represent foreign shares of a foreign company, and 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 the ADRs 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.

According to the SEC’s orders, both Cantor Fitzgerald and BMO Capital obtained pre-released ADRs when they should have known that the pre-release transactions were not backed by foreign shares.

The SEC claims that both brokers improperly obtained pre-released ADRs indirectly from other broker-dealers, while

Cantor Fitzgerald also improperly obtained pre-released ADRs directly from depositary banks.

“The SEC continues to hold accountable parties that abused the ADR markets over an extended period of time,” said Sanjay Wadhwa, senior associate director for enforcement in the SEC’s New York regional office. “U.S. investors who invest in foreign companies through ADRs have a right to expect that market professionals aren’t gaming the system.”

Without admitting or denying the SEC’s findings, Cantor agreed to pay more than $359,000 in disgorgement of ill-gotten gains, $88,000 in prejudgment interest, and a $200,000 penalty, totaling more than $647,000.

With respect to BMO Capital, without admitting or denying the findings, the broker agreed to pay more than $2.2 million in disgorgement of ill-gotten gains, $546,000 in prejudgment interest, and a $1.2 million penalty, totaling more than $3.9 million.