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BY ELECTRONIC MAIL AND FEDERAL EXPRESS

Mary J. Kosterlitz, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: *Securities and Exchange Commission v. Citigroup Global Markets Inc.*, Case No. 11-CV-7387 (JSR) (S.D.N.Y.) (Consent to Final Judgment filed October 25, 2011)

Dear Ms. Kosterlitz:

This letter is submitted on behalf of our client, Citigroup Inc. ("Citigroup"), in connection with the settlement of the above-captioned civil proceeding by the Securities and Exchange Commission (the "Commission") against Citigroup Global Markets Inc., a broker-dealer subsidiary of Citigroup, along with certain of its affiliates (collectively "CGMI"). The settlement resulted in the entry of a final judgment against CGMI in an action that was initially filed by the Commission in the United States District Court for the Southern District of New York (the "District Court") in 2011, as described below (the "Final Judgment").

Pursuant to Rule 405 promulgated under the Securities Act of 1933 (the "Securities Act"), Citigroup hereby respectfully requests that the Director of the Division of Corporation Finance ("Director"), pursuant to the delegation of authority of the Commission,[1] determine that for good cause shown it is not necessary under the circumstances that Citigroup be considered an

[1] 17 C.F.R. § 200.30-1(a)(10).

"ineligible issuer" under Rule 405. We note that this request involves a reprise of discussions held on behalf of Citigroup with the staff of the Division in 2011 with respect to Citigroup's potential ineligible issuer status arising out of this action.

The staff of the Division of Enforcement has informed us that it does not object to the grant of the requested waiver.

BACKGROUND

In and prior to 2011, the staff of the Division of Enforcement engaged in settlement discussions with CGMI in connection with the above-captioned civil proceeding, which was filed with a civil complaint alleging violations of Sections 17(a)(2) and (3) of the Securities Act. Sections 17(a)(2) and (3) encompass non-scienter-based conduct under the federal securities laws, and indeed it is only non-scienter-based conduct that was the subject of the instant matter.[2] As a result of the settlement discussions, on October 19, 2011, CGMI submitted an executed Consent of the Defendant Citigroup Global Markets Inc. to Entry of Final Judgment (the "Consent") that was presented by the staff of the Commission to the District Court when the Commission filed its civil complaint against CGMI (the "Complaint"). In the Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or in which the Commission is a party, CGMI agreed to consent to the entry of the Final Judgment as described below.

As filed on October 19, 2011, the Complaint alleged that the marketing materials for one particular collateralized debt obligation transaction ("CDO") sold in 2007 were materially misleading because they suggested that CGMI was acting in the traditional role of an arranging bank, when in fact, the Complaint alleged, CGMI had exercised influence over the selection of the assets and had retained a proprietary short position with respect to the assets it had helped select, which gave CGMI undisclosed economic interests adverse to those of the investors in the CDO. The Final Judgment, among other things, restrains and enjoins CGMI from violating Sections 17(a)(2) and (3) of the Securities Act in the offer or sale of any security or security-based swap agreement. Additionally, pursuant to the Final Judgment, CGMI will pay disgorgement in the amount of $160 million, prejudgment interest in the amount of $30 million, and a civil penalty in the amount of $95 million. The Final Judgment also requires CGMI to comply with certain undertakings with which, as discussed below, CGMI has been voluntarily complying since late 2011.

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[2] As noted by the District Court, and the appellate briefs of both the SEC and CGMI, the evidence in this case did not support a finding of scienter. *See, e.g.*, Opinion and Order p.2, dated November 28, 2011, entered by the District Court in *SEC* v. *CGMI*, No. 11 Civ. 7387 (S.D.N.Y.); SEC's Memorandum of Law, dated May 14, 2012, filed with the Second Circuit in *SEC* v. *CGMI*, 11-5227 (2d Cir.); CGMI's Memorandum of Law, dated May 14, 2012, filed with the Second Circuit in *SEC* v. *CGMI*, 11-5227 (2d Cir.). Indeed, at a November 9, 2011 hearing before the District Court, Matthew Martens, then-Chief Litigation Counsel for the SEC Division of Enforcement, explained that after evaluating the factual record and applicable law, the SEC "concluded that in this instance, there was not sufficient evidence to support a finding of scienter." pp. 52, 54.

As the Commission is aware, on November 28, 2011, the District Court issued an order refusing to approve the proposed settlement and ordering trial to begin on July 16, 2012. The parties appealed from this order to the United States Court of Appeals for the Second Circuit ("Second Circuit"), which, on March 15, 2012, granted a stay of the District Court proceedings pending resolution of the appeals. On June 4, 2014, the Second Circuit vacated the November 28, 2011 order and remanded to the District Court for further proceedings consistent with its opinion. The District Court entered the Final Judgment on August 5, 2014.

DISCUSSION

A well-known seasoned issuer ("WKSI") is a category of issuer created under Rule 405 that is eligible for significant securities offering reforms adopted by the Commission in 2005 that have changed the way corporate finance transactions for larger issuers are planned, brought to market and executed.[3] At the same time, the Commission created another category of issuer under Rule 405, the "ineligible issuer." Rule 405 deems an issuer ineligible when, among other things, "[w]ithin the past three years . . . the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that . . . prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws . . . ." An ineligible issuer is excluded from the category of "well-known seasoned issuer" and is thus prohibited from taking advantage of the significant securities offering reforms referred to above.

Securities Act Rule 405 authorizes the Commission to determine, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer."[4] As noted above, the Commission has delegated the function of granting or denying such applications to the Director of the Division of Corporation Finance.

The entry of the Final Judgment would make Citigroup an ineligible issuer under Rule 405.

REASONS FOR GRANTING A WAIVER

Under the facts and circumstances of this action and considering the alleged conduct involved as described in the Complaint and Final Judgment and related proceedings, Citigroup respectfully submits that granting Citigroup a waiver from ineligible issuer status is in the public interest and that according ineligible issuer status on Citigroup is not necessary for the protection of investors. In making this request, Citigroup has carefully considered the policy statement on the framework for well-known seasoned issuer waivers[5] and, as discussed in more detail below,

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[3] *See* Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

[4] Securities Act Rule 405, 17 C.F.R. § 230.405.

[5] Division of Corporate Finance "Revised Statement on Well-Known Seasoned Issuer Waivers," April 24, 2014.

believes that the granting of the waiver request would be consistent with the policy statement. In addition, granting of the waiver request would be consistent with the waivers granted by the Director in recent CDO-related actions, including a number where the action was taken following the original entering into of the settlement in 2011 in the instant matter, involving similarly situated issuers and similar circumstances.[6]

Responsibility for and Duration of the Alleged Violations

As noted above, the Complaint alleged that CGMI's marketing materials for the CDO were materially misleading because they suggested that CGMI was acting in the traditional role of an arranging bank, when in fact, the Complaint alleged, CGMI had exercised influence over the selection of the assets and had retained a proprietary short position of the assets it had helped select, which gave CGMI undisclosed economic interests adverse to those of the investors in the CDO.

The alleged conduct addressed in the Complaint does not pertain to activities undertaken by Citigroup in connection with Citigroup's role as an issuer of securities (or any disclosure related thereto). No conduct by Citigroup and no conduct in respect of Citigroup's disclosures is implicated. No employees of Citigroup are named in the Complaint or Final Judgment, and the Commission did not allege that any of the directors or senior management of Citigroup engaged in any deliberate misconduct or were aware of violative conduct or ignored any warning signs or "red flags" regarding the conduct.

Rather, the alleged conduct involved non-scienter-based, isolated conduct by a small number of employees that took place at the subsidiary level, without involvement by Citigroup. Moreover, the isolated conduct was limited to disclosure, for which CGMI was responsible, in the marketing materials for a single CDO transaction that was offered by CGMI over a short period of time (a two-month period in 2007) to a small number of investors in a private offering. No one found to be involved had or has any involvement in or influence over Citigroup's periodic or other disclosures.[7]

Remedial Steps

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[6] *See* Morgan Stanley, SEC No-Action Letter (pub. avail. July 24, 2014); Bank of America Corporation, SEC No-Action Letter (pub. avail. Dec. 12, 2013); UBS AG, SEC No-Action Letter (pub. avail. Aug. 6, 2013); Mizuho Financial Group, Inc., SEC No-Action Letter (pub. avail. July 27, 2012); JPMorgan Chase & Co., SEC No-Action Letter (pub avail. June 29, 2011); Wells Fargo & Company, SEC No-Action Letter (pub. avail. April 7, 2011); and Goldman Sachs Group, Inc., SEC No-Action Letter (pub. avail. July 23, 2010).

[7] At the same time of the filing of the Complaint, the Commission brought a litigated civil action in the District Court against a former employee of CGMI who allegedly was primarily responsible for structuring the CDO and brought an administrative proceeding against the collateral manager and its portfolio manager who were allegedly primarily responsible for selecting the collateral for the CDO. Following a trial, the jury found the former employee of CGMI not liable for violations of the federal securities laws related to the CDO.

Since 2008, Citigroup and CGMI have cooperated with the investigation into this matter by the Division of Enforcement. In addition, since late 2011, CGMI has voluntarily complied with the undertakings set forth in the Final Judgment relating to: (i) the role of the relevant Capital Markets Approval Committee or Commitment Committee with respect to the processes in place concerning written marketing materials for residential mortgage-related securities (other than agency residential mortgage-backed securities), including collateralized debt obligations referencing or including such securities (collectively "mortgage securities") in which CGMI is the lead underwriter, placement agent, or plays a similar role; (ii) the role of CGMI's Legal and Compliance Department with respect to the review of marketing materials, offering circulars/prospectuses, and written submissions to either CGMI's Capital Markets Approval Committee or Commitment Committee used in connection with mortgage securities offerings; (iii) the review of the written marketing materials and offering circulars/prospectuses used in connection with mortgage securities by outside counsel when CGMI is the lead underwriter, placement agent, or plays a similar role in an offering of mortgage securities and retains outside counsel to advise on the offering; and (iv) annual internal audits to determine that CGMI is complying with items (i), (ii), and (iii). CGMI intends to continue its compliance with these undertakings for, at a minimum, the required period of time in the Final Judgment and, now that the Final Judgment has been entered, will comply with the annual certification to the Commission staff that CGMI has complied in all material respects with the undertakings.

As the staff is aware, Citigroup has previously requested a waiver regarding its WKSI status from the Division of Corporation Finance in connection with a settlement involving CGMI. Such waiver was granted on December 23, 2008 and related to CGMI's settlement with the Commission in connection with the marketing and sale of auction rate securities ("ARS"). Pursuant to that settlement, CGMI undertook to buy back at par from all individual investors ARS that were not auctioning and strengthened its compliance programs. As noted, similar to the alleged conduct at issue in the Complaint and Final Judgment, the alleged conduct at issue in 2008 involved CGMI and its marketing of ARS transactions, and did not relate to Citigroup's disclosures.

In 2010, Citigroup was deemed an ineligible issuer, and thus lost its WKSI status, because of its settlement with the Commission in connection with alleged material misstatements about exposure to sub-prime mortgages.[8] Citigroup itself was the named party in this action. In connection with the settlement, Citigroup agreed to comply with certain undertakings, all of which were already in place at the time of the settlement, related to its policies, practices, and procedures concerning the disclosure of its earnings and other information related to its financial performance in quarterly press releases, including (i) maintaining a Disclosure Committee and a set of controls and procedures for that committee; (ii) maintaining an Earnings Subcommittee of the Disclosure Committee; (iii) requiring certain individuals to sign and date Statements of Accountability prior to release of Citigroup's quarterly earnings information; and (iv) quarterly execution by the Disclosure Committee of a certification regarding the effectiveness of

[8] *See* Securities and Exchange Commission v. Citigroup Inc., 1:10-cv-01277 (D.D.C. Oct. 19, 2010).

Citigroup's disclosure controls and procedures. These practices and policies remain in place. Citigroup regained WKSI status in late 2013 at the end of the three-year period specified in Securities Act Rule 405.

In short, CGMI has consistently implemented remedial measures to protect against conduct for which it has been sanctioned, including before the regulatory action relating to such conduct has become final. The alleged conduct at issue in the Complaint and Final Judgment does not call into question the adequacy of Citigroup's disclosures or the efficacy of its procedures, now or in the future.

Thus, all of the facts support a clear conclusion that Citigroup can demonstrate and has demonstrated that ineligible issuer status is not necessary for the public interest or the protection of investors because, particularly in light of the nature of the conduct described in the Complaint and Final Judgment and the remedial steps described above, the conduct giving rise to the ineligibility in no way calls into question the reliability of Citigroup's current and future disclosures. All of the facts also support a clear conclusion that the granting of a waiver would be entirely consistent with the guidelines for relief established in the framework most recently published by the Division of Corporation Finance and with the precedents of a significant number of waivers granted in similar circumstances.

Impact on Issuer

The Final Judgment is the result of substantial negotiations, largely occurring during 2011, between CGMI and the staff of the Commission's Division of Enforcement. The Final Judgment directs CGMI to pay a financial penalty, enjoins it from violating Sections 17(a)(2) and (3) of the Securities Act in the offer or sale of any security or security-based swap agreement, and also involves the undertakings described above. Applying ineligible issuer status to Citigroup would be disproportionately severe given the non-scienter-based alleged violations that are the subject of the action.

Citigroup is a frequent issuer of securities that are registered with the Commission and offered and sold under its current Form S-3 registration statement (the "WKSI shelf"). Since November 2013, Citigroup has issued a variety of securities that are registered under the WKSI shelf, including unsecured senior or subordinated debt securities and preferred stock and related depositary shares, and has the ability to issue its common stock, common stock warrants, index warrants, stock purchase contracts, and stock purchase units off the WKSI shelf. Since November 2013, Citigroup has issued off the WKSI shelf approximately $2.23 billion of regulatory capital securities (in the form of preferred stock), which represents approximately 70% of all regulatory capital securities issued by Citigroup in that period. In that same period, the value of all securities issued by Citigroup off the WKSI shelf was approximately $9.5 billion. These figures demonstrate the importance of the WKSI shelf to Citigroup in meeting its capital, funding, and business requirements.

As an ineligible issuer, Citigroup would lose significant flexibility, most importantly the ability to register additional types of securities not covered by the WKSI shelf by filing a new

registration statement or post-effective amendment that becomes immediately effective. The adverse market and issuer impact of the potential loss of flexibility with respect to new types of securities is particularly important to Citigroup in light of current regulatory and market conditions and uncertainties that are significantly transforming the landscape for financial institutions like Citigroup. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Financial Reform Act"), the Board of Governors of the Federal Reserve System (the "Federal Reserve") has imposed, and has the authority to impose further, prudential standards on financial institutions. These standards include heightened capital, leverage and liquidity standards; many have only been recently finalized. Based on the final U.S. capital rules, adopted as recently as July 2013,[9] the capital requirements for institutions such as Citigroup have been enhanced starting January 1, 2014, and will be raised significantly through a phase-in that will occur through 2018. In addition to the general increases required, these new rules allow the U.S. bank regulators to impose "counter-cyclical" capital buffers at any time based "on a range of macroeconomic, financial, and supervisory information indicating an increase in systemic risk." Over the next few years, the U.S. bank regulators are also expected to impose new capital and liquidity requirements on institutions such as Citigroup, the outlines and impacts of which are not currently known.

Finally, under the annual stress tests administered by the Federal Reserve, the parameters and requirements of which change annually, significant capital buffers, above the regulatory minimum levels, are required for financial institutions to be able to withstand a severe economic downturn hypothesized by the Federal Reserve for purposes of the stress tests. The results of the stress tests could dictate additional capital needs. Although qualifying regulatory capital currently generally consists of common equity, preferred equity and certain subordinated debt, given all of the recent and potential future changes to Citigroup's capital and liquidity requirements, it is likely that capital raising efforts going forward will involve the issuance of new types of securities. Implementation of a buffer requirement and uncertainty as to its design, as well as the other potential capital needs described above, could impose additional needs on Citigroup to access the capital markets, including through the use of securities with characteristics that are not yet known and therefore are difficult to anticipate in a shelf registration statement. "File and launch" for the public offering of new securities has developed as the market standard for large issuers since the advent of the Commission's securities offering reform in 2005. Without a waiver of ineligible issuer status, by the time Citigroup may be able to enter the market (i.e., after it files an amendment to its non-WKSI shelf registration statement subject to staff review and approval), the market could be saturated, there may not be the same level of demand or pricing terms may have become disadvantageous.

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[9] We note that, in April 2014, the U.S. banking regulators issued a notice of proposed rulemaking to amend the final U.S. capital rules to revise the calculation of certain of Citigroup's required capital ratios, specifically the Supplementary Leverage ratio, which such proposal remains outstanding.

In sum, Citigroup respectfully submits that, based on the factors set forth in the framework, the loss to Citigroup of certainty and flexibility if it were to become an ineligible issuer would be a disproportionate hardship in light of the nature of the alleged conduct which is the subject of the Complaint and Final Judgment. More importantly, because the alleged conduct at issue in this matter in no way relates to Citigroup's ability to produce reliable disclosures, including in its role as an issuer of securities, granting a waiver in this instance is consistent with the public interest and the protection of investors. We respectfully request the Director to make that determination.

Please contact me at 1-212-225-2450 or by email at abeller@cgsh.com if you should have any questions regarding this request.

Sincerely,

Alan L. Beller