PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

UNIT 3601, OFFICE TOWER A, BEIJING FORTUNE PLAZA
NO. 7 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

WRITER'S DIRECT DIAL NUMBER

212-373-3124

WRITER'S DIRECT FACSIMILE

(212) 492-0124

WRITER'S DIRECT E-MAIL ADDRESS

dhuntington@paulweiss.com

July 23, 2015

<u>FIRST CLASS MAIL AND EMAIL</u>

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

Re: <u>In the Matter of Citigroup Global Markets Inc. and Citigroup Alternative Investments LLC (File No. NY-7933) – Waiver Request under Rule 405</u>

Dear Ms. Kosterlitz:

We submit this letter on behalf of our client, Citigroup Inc. ("<u>Citigroup</u>"), in connection with the settlement of the above referenced administrative proceeding by the Securities and Exchange Commission (the "<u>Commission</u>") against Citigroup Global Markets Inc., ("<u>CGMI</u>") and Citigroup Alternative Investments, LLC, ("<u>CAI</u>") (together, the "<u>Settling Firms</u>").

CGMI, a broker-dealer subsidiary of Citigroup, provides a broad array of investment services. During the relevant time period, its businesses ranged from investment banking to private client wealth management, and included the retail brokerage business formerly known as Smith Barney (which has since been sold to Morgan Stanley). CAI, a registered investment advisor subsidiary of Citigroup, oversaw the production and marketing of various alternative investments ranging from hedge funds to private equity funds. During the relevant time period, CAI oversaw and marketed to private clients the ASTA/MAT and Falcon Strategies hedge funds at issue in this administrative proceeding. Following the events that are the subject of this settlement, Citigroup has spun off CAI and wound down its business.

Pursuant to Rule 405 promulgated under the Securities Act of 1933, as amended (the "Securities Act"), Citigroup hereby respectfully requests that the Director of the Division of Corporation Finance, 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 "ineligible issuer" under Rule 405. Citigroup requests that this determination be effective upon the entry of the Order.

BACKGROUND

The Settling Firms have engaged in settlement discussions with the staff of the Division of Enforcement in connection with the administrative proceedings referenced above, which were brought pursuant to Section 8A of the Securities Act, Section 15(b)(4) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, as amended (the "Advisers Act"). As a result of these discussions, the Settling Firms submitted an offer of settlement, pursuant to which they consented to an Order of the Commission (the "Order"). Under the terms of the offer of settlement, the Settling Firms neither admitted nor denied any of the findings in the Order, except as to jurisdiction and subject matter.

The Order relates to alleged violations of the federal securities laws by the Settling Firms as a result of misstatements and omissions in the marketing of two alternative investment hedge funds, the ASTA/MAT funds and the Falcon funds, which were offered between 2002 and 2007. The Commission alleges that the fund manager and financial advisors misled investors about the funds' risks, and that the Settling Firms failed to implement a system in which the fund manager's authority was checked adequately to ensure the accuracy of those communications.

Under the terms of the Order, the Commission will:

(i) Require CAI and CGMI to cease and desist from committing or causing any violations or any future violations of Sections 17(a)(2) and (3) of the Securities Act, require CGMI to cease and desist from committing or causing any violations or any future violations of Section 206(2) of the Advisers Act, and require CAI to cease and desist from committing or causing any violations or any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder;

[1] 17 C.F.R. § 200.30-1(a)(10).

(ii) Censure CAI and CGMI; and

(iii) Require CGMI and CAI to pay disgorgement of $139,950,239 and prejudgment interest of $39,612,089.

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.[2] 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.

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

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." As noted above, the Commission has delegated the function of granting or denying such applications to the Director of the Division of Corporation Finance.

REASONS FOR GRANTING A WAIVER

Under the facts and circumstances of this action and considering the alleged conduct involved as described in the Order, 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[3] and, as discussed in more detail below, believes that the granting of the waiver request would be consistent with the policy statement.

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[2] *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).

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

Responsibility for and Duration of the Alleged Violations

The Order alleges that the Settling Firms' marketing of the ASTA/MAT and Falcon hedge funds was materially misleading because their financial advisers and fund managers did not adequately disclose, or otherwise minimized, the risks posed by the funds' investment strategies.

The alleged conduct addressed in the Order 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 are implicated. No employees of Citigroup are named as respondents in the proceeding, 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. The Order does not find that Citigroup's disclosure controls and procedures or filings with the Commission during this time period were deficient.

Rather, the alleged conduct involved non-scienter-based conduct at the subsidiary level, without involvement by Citigroup. Moreover, the alleged mismarketing of the funds by financial advisers occurred 7 to 12 years ago, in significant part through the Smith Barney brokerage business that Citigroup no longer owns. In fact, the 16 top-selling Smith Barney financial advisers alone sold approximately $746 million of the total $2.9 billion invested in the funds. The fixed-income alternatives division of CAI responsible for managing and marketing the ASTA/MAT and Falcon funds has since been spun off into Napier Park Global Capital, in which Citigroup has only a passive investment under the terms of the spin-off.

The staff also does not contend that the written offering materials provided to investors were misstated but, rather, that the funds were misrepresented in oral communications. (See Order p. 2 ("[W]hile the risk of principal loss was disclosed in written materials provided to clients, certain financial advisers and the fund manager orally minimized the significant risk of loss resulting from, among other things, the funds' investment strategy and use of leverage.").) Indeed, the funds were sold pursuant to offering memoranda, private placement memoranda, and subscription agreements that accurately described the funds' strategies and contained detailed risk disclosures.

Remedial Steps

Since 2008, the Settling Firms have cooperated with the investigation into this matter by the Division of Enforcement.

In early 2008, Citigroup made substantial efforts to prevent the collapse of the funds and ensure an orderly wind-out of investments in the funds. Among other measures, Citigroup made a loan to Falcon of $500 million in February 2008 and made an equity investment in ASTA/MAT of $661 million in March 2008 – both intended to prevent the sale of assets at fire-sale prices and to preserve value for investors. Citigroup subsequently made tender offers to investors in several of the funds at substantial premiums, which premiums totaled over $276 million. Following the collapse of the funds, a number of investors filed lawsuits or arbitrations, and Citigroup has resolved those cases through settlements or judgments totaling approximately $186.8 million in compensatory payments to investors.

In addition, subsequent to the wind-out of investments in the funds, Citigroup has wound down the CAI business (which, while CAI continues to exist as a corporate entity, no longer manages an active fixed-income alternative investment platform). Further, Citigroup no longer has an ownership interest in the Smith Barney brokerage business, which was sold to Morgan Stanley in several stages in the years following the collapse of the ASTA/MAT and Falcon funds.

Additionally, the fund manager involved in the relevant events has not been employed by Citigroup since he resigned from CAI in 2008. Shortly before the collapse of the funds, in late 2007, CAI hired new managers for the fixed income alternatives platform, who ultimately assumed responsibility for communications with investors and the wind-down of the funds and the tender offers in lieu of the original fund manager.

As the staff is aware, Citigroup has previously requested waivers regarding its WKSI status from the Division of Corporation Finance in connection with settlements involving CGMI. Waivers have previously been granted concerning (a) CGMI's settlement with the Commission in connection with the marketing and sale of auction rate securities on May 31, 2006; (b) CGMI's settlement with the Commission in connection with the marketing and sale of auction rate securities on December 23, 2008; (c) CGMI's settlement with the Commission in connection with its 2007 marketing of a collateralized debt obligation on September 26, 2014; (d) the settlement agreement between Citicorp and the Department of Justice dated May 20, 2015 in connection with Citigroup's conduct and practices in the foreign exchange spot market; and (e) Citigroup's compliance with the Division of Enforcement's Municipalities Continuing Disclosure Cooperation Initiative by order dated June 18, 2015. Like the alleged conduct at issue here, the alleged conduct at issue in those matters involved marketing for and disclosure related to specific types of financial products, and did not relate to Citigroup's disclosures. Further, these matters did not involve the marketing of alternative investment products manufactured and marketed by CAI. Because these matters did not involve CAI and, to the extent they involved CGMI, involved groups responsible for different products within the CGMI business, the remedial steps taken in response to the alleged conduct at issue in these prior matters are not implicated by the alleged conduct at issue here.[4]

[4] Under the May 31, 2006 settlement agreement, CGMI agreed to make a description of its material auction practices and procedures available on its website and to provide written descriptions of CGMI's auction practices and procedures to certain groups of holders, purchasers, issuers, and brokers of auction rate securities. Under the December 23, 2008 settlement agreement, CGMI agreed to extend offers to purchase all outstanding auction rate securities held by customers, to reimburse customers who took out loans secured by auction rate securities, and to make whole any customers who sold auction rate securities below par. Under the September 26, 2014 settlement agreement, CGMI agreed to enhance its review and approval policies regarding offerings of certain residential mortgage-related securities. Under the May 20, 2015 settlement agreement, CGMI agreed to enhance its compliance and internal control framework regarding certain foreign exchange spot market trading and activities. Under the June 18, 2015 order, CGMI agreed to retain an independent consultant to conduct a review of CGMI's policies and procedures relating to municipal securities underwriting due diligence. None of these remedial efforts relate to sales and marketing of alternative investment hedge fund products by CAI and CGMI, the issue in the present settlement.

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.[5] Citigroup itself was the named party in that 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 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 sum, since the ASTA/MAT and Falcon funds were last sold in 2007, Citigroup has liquidated the funds, wound down the business at CAI responsible for the management and marketing of the funds, and sold its interest in the Smith Barney brokerage business. In addition, through equity investments and loans to the funds in early 2008, Citigroup took steps to lessen the losses incurred by the funds' investors during the liquidation of the assets of the funds. Citigroup subsequently made hundreds of millions of dollars in compensatory payments to investors, both through tender offer premiums and litigation and arbitration settlements and judgments. The alleged conduct at issue here in no way suggests that Citigroup affiliates did not adequately implement remedial steps in other, earlier settlements involving other businesses and other products. All of these facts concerning Citigroup's remedial efforts support the grant of the requested waiver.

Impact on Issuer

The Order is the result of substantial negotiations, beginning in 2011, between the Settling Firms and the staff of the Division of Enforcement. Its terms have been carefully crafted to meet and balance the competing concerns of all involved. The Order censures the Settling Firms, requires them to pay disgorgement, and requires them to cease and desist from violating Sections 17(a)(2) and (3) of the Securities Act and Sections 206(2) and (4) of the Advisers Act and Rule 206 (4)-8 promulgated thereunder. Determining to maintain ineligible issuer status for Citigroup would, in effect, impose a sanction that would go beyond the agreed-upon settlement terms negotiated by CGMI in good faith, and that would be disproportionately severe given the non-scienter-related alleged violations that are the subject of the action, the lack of any nexus to Citigroup's public disclosures, and the duration of time that has passed since the relevant events.

As the Staff is aware, 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

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

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 regaining its WKSI status in November 2013, Citigroup has issued off the WKSI shelf approximately $7.2 billion of regulatory capital securities (in the form of preferred stock represented by depositary shares), approximately 52% 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 $38.5 billion in over 400 offerings. These figures demonstrate the importance of the WKSI shelf to Citigroup in meeting its capital, funding and business requirements.

In connection with those 400+ public offerings, Citigroup utilized approximately 190 free writing prospectuses ("FWPs"), more than half for offerings of structured notes under Citigroup's medium-term note ("MTN") program. Approximately 45% of these MTN FWPs consisted of marketing materials that could not be used by an ineligible issuer without modification. Moreover, many of Citigroup's MTN offerings are distributed through third-party distributors. These distributors often produce their own MTN FWPs and may object to being limited to only those FWPs available to ineligible issuers. This limitation may cause third-party distributors to no longer offer Citigroup MTNs to their clients, significantly limiting this source of funding for Citigroup.

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 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 new rules relating to heightened capital, leverage and liquidity standards; many of these rules have only been recently finalized. Moreover, 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," and certain of these regulators have indicated they are considering higher capital buffers for institutions like Citigroup. Based on the final U.S. capital rules, adopted as recently as September 2014, the capital requirements for institutions such as Citigroup have been enhanced as of January 1, 2014, and will continue to be raised significantly through a phase in that will last through 2018. In addition, over the next few years, the U.S. bank regulators and certain international bodies, such as the Financial Stability Board, are expected to recommend or impose further capital, liquidity or similar requirements on institutions such as Citigroup (*e.g.*, such as "total loss absorbing capacity," or TLAC), the outlines and impacts of which are not fully 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 can further 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, liquidity and similar 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. 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.

* * *

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 Order. 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 that the Director of the Division of Corporation Finance to make that determination.

Please do not hesitate to contact me at (212) 373-3124 if you should have any questions regarding this request.

Sincerely yours,

David S. Huntington

David S. Huntington

cc: Joshua E. Levine, Citigroup Inc.