



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

December 23, 2008

DIVISION OF  
CORPORATION FINANCE

Kevin P. McEnery  
Wilmer Cutler Pickering Hale and Dorr LLP  
1875 Pennsylvania Avenue, NW  
Washington, DC 20006

Re: In the Matter of Auction Rate Securities Liquidity Issues (File No. HO-10868)  
**Regarding Citigroup Global Markets, Inc. - Waiver Request of Ineligible  
Issuer Status under Rule 405 of the Securities Act**

Dear Mr. McEnery:

This is in response to your letter dated December 6, 2008, written on behalf of Citigroup Inc. ("Company") and constituting an application for relief from the Company being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 ("Securities Act"). The Company requests relief from being considered an "ineligible issuer" under Rule 405, arising from the settlement of a civil injunctive action with the Commission. On December 11, 2008, the Commission filed a civil injunctive complaint against Citigroup Global Markets, Inc., ("CGMI") alleging, that CGMI violated Section 15(c) of the Exchange Act of 1934 ("Exchange Act"). CGMI filed a consent in which it agreed, without admitting or denying the allegations of the Commission's complaint, to the entry of a Final Judgment against it. The Final Judgment, as entered on December 23, 2008, among other things, permanently enjoins CGMI from violating Section 15(c) of the Exchange Act.

Based on the facts and representations in your letter, and assuming the Company and CGMI comply with the Final Judgment, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Final Judgment. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or non-compliance with the Final Judgment might require us to reach a different conclusion.

Sincerely,

A handwritten signature in cursive script that reads "Mary Kosterlitz".

Mary Kosterlitz  
Chief, Office of Enforcement Liaison  
Division of Corporation Finance

**Kevin P. McEnery**

+1 202 663 6596 (t)

+1 202 663 6363 (f)

kevin.mcenery@wilmerhale.com

December 6, 2008

**BY E-MAIL AND MESSENGER**

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: In the Matter of Auction Rate Securities Liquidity  
Issues Regarding Citigroup Global Markets, Inc., File No. HO-10868

Dear Ms. Kosterlitz:

We submit this application on behalf our client Citigroup Inc. ("Citigroup") in connection with a contemplated settlement arising out of the above-entitled investigation by the Securities and Exchange Commission (the "Commission"). The contemplated settlement will result in the entry of a judgment (the "Proposed Judgment") by the Commission in federal district court in a civil action to be filed against Citigroup Global Markets Inc. ("CGMI"), an indirect wholly-owned subsidiary of Citigroup.

Citigroup hereby requests, pursuant to Rule 405 promulgated under the Securities Act of 1933 (the "Securities Act"), 17 C.F.R. § 230.405, that the Commission 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 Proposed Judgment. It is our understanding that the Staff of the Commission's Division of Enforcement does not object to the Division of Corporation Finance providing the requested determination under Rule 405.

**BACKGROUND**

The Staff of the Commission's Division of Enforcement and CGMI have reached agreement on the terms of a settlement. CGMI has submitted an executed Consent of Defendant Citigroup Global Markets Inc. (the "Consent") in which it neither admits nor denies the allegations of Commission's Complaint but in which it consents to the entry of a judgment in the form attached to the Consent. The Commission's Complaint and the Proposed Judgment will address CGMI's conduct in connection with the marketing and sale of auction rate securities

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("ARS") and will allege that CGMI violated Section 15(c) of the Securities Exchange Act of 1934 ("Exchange Act"), an anti-fraud provision of the federal securities laws. More specifically, the Complaint will allege that CGMI misled tens of thousands of its customers regarding the fundamental nature and increasing risks associated with ARS that CGMI underwrote, marketed, and sold. The Complaint further will allege that, through its financial advisers, sales personnel, and marketing materials, CGMI misrepresented to customers that ARS were safe, highly liquid investments comparable to money market instruments. The Complaint also will allege that, as a result, numerous customers invested in ARS funds they needed to have available on a short-term basis. In addition, the Complaint will allege that (i) in mid-February 2008, CGMI decided to stop supporting the auctions, and (ii) as a result of failed auctions, tens of thousands of CGMI customers held approximately \$45 billion of illiquid ARS, instead of the liquid short-term investments CGMI had represented ARS to be. The Proposed Judgment will: permanently enjoin CGMI from violating Section 15(c) of the Exchange Act; and order CGMI to, among other things, offer to buy back at par certain ARS from certain customers.

Citigroup is a publicly traded company listed on the New York Stock Exchange and is a reporting company under the Exchange Act. Citigroup has identified itself in filings with the Commission as a well-known seasoned issuer. CGMI is registered as an investment adviser under the Investment Advisers Act of 1940 and as any broker-dealer under the Exchange Act. Citigroup is at this time the only issuer that is a parent of CGMI.

### DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.<sup>1</sup> As part of its reform, the Commission added a new category of issuer, *i.e.*, a well-known seasoned issuer, that will be permitted to benefit to the greatest degree from the changes to the rules governing the offering process. The Commission defined a well-known seasoned issuer as an issuer that is required to file reports pursuant to Section 13(a) or Section 15(d) of the Exchange Act and that satisfies other requirements, including the requirement that the issuer not be an ineligible issuer. The Commission also adopted rules permitting the use of free-writing prospectuses in registered offerings by issuers, including, but not limited to, well-known seasoned issuers and other offering participants. Pursuant to Securities Act Rules 164 and 433, an issuer may use a free-writing prospectus only if it is not an ineligible issuer.<sup>2</sup>

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<sup>1</sup> 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).

<sup>2</sup> This request for relief is being made not only for the purpose of continuing to qualify as a well-known seasoned issuer, but for all purposes of the definition of "ineligible issuer" in Rule 405, *i.e.*, for

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Securities Act Rule 405 makes an issuer ineligible when, among other things:

(vi) Within the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), 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:

(A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws;

(B) Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or

(C) Determines that the person violated the anti-fraud provisions of the federal securities laws.

Securities Act Rule 405 also 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.” The Commission delegated the function of granting or denying such applications to the Director of the Division of Corporation Finance.<sup>3</sup>

Citigroup therefore requests that the Commission or its delegate determine that it is not necessary for Citigroup to be considered an ineligible issuer, now or in the future, on the following grounds:

1. **The conduct to be addressed in the Complaint and by the Proposed Judgment does not relate to disclosures and offerings of securities by Citigroup.** The Complaint and Proposed Judgment will concern the marketing and selling of ARS by CGMI.

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whatever purpose the definition may now or hereafter be used under the federal securities laws, including SEC rules.

<sup>3</sup> Rule 30-1 provides in relevant part that “[p]ursuant to the provisions of Public Law No. 87-592 . . ., the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Division of Corporation Finance to be performed by him or under his direction by such person . . . as may be designated from time to time by the Chairman of the Commission: [Securities Act Functions] (a) With respect to registration of securities pursuant to the Securities Act . . . (10) To authorize the granting or denial of applications, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer as defined in Rule 405.” 17 C.F.R. § 200.30-1(a)(10).

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2. **A determination that Citigroup will be an “ineligible issuer” would be disproportionately and unduly severe.** A determination that Citigroup will be an ineligible issuer as a result of the anticipated entry of the Proposed Judgment would be unduly and disproportionately severe, given the lack of any relationship between the allegations in the Complaint and any disclosure or offering activity conducted by Citigroup. Moreover, the anticipated settlement will be the result of intensive negotiations between CGMI and the Division of Enforcement. Its terms will have been carefully crafted to meet and balance the competing concerns of all involved. In connection with the anticipated settlement, CGMI has undertaken to buy back at par ARS that are not auctioning from all CGMI individual investors who bought those ARS from CGMI prior to February 11, 2008, and CGMI will be enjoined permanently from violating Section 15(c) of the Exchange Act. In addition, the Commission reserves the right to seek the imposition of a civil money penalty in the event that it believes that CGMI has not satisfied its obligations under the settlement agreement. Applying the designation of ineligible issuer to CGMI’s parent issuer, with the consequences thereof, would, in effect, unfairly impose an additional punishment in excess of the agreed-upon settlement terms negotiated by CGMI in good faith.

3. **CGMI has taken significant steps to ensure that the violative conduct alleged in the Complaint does not recur.** The Commission will state in the Complaint and the Proposed Judgment that CGMI, both before and after entering into the settlement agreement with the Commission, afforded cooperation to the Commission Staff during its investigation. CGMI also has taken remedial steps to prevent the improper marketing and sale of ARS, including the offer to buy back at par ARS from individual investors. Pursuant to the undertakings in its Consent, CGMI will undertake 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 Complaint.

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In light of the foregoing, Citigroup believes that any determination that the contemplated Proposed Judgment will render it an ineligible issuer would be unwarranted, contrary to the public interest, and unnecessary for the protection of investors, and that Citigroup has shown good cause for a determination by the Commission, or its delegate, that Citigroup will not be deemed to be an ineligible issuer upon entry of the anticipated Judgment.

Accordingly, Citigroup respectfully urges the Commission, or its delegate, pursuant to Securities Act Rule 405 or Rule 30-1(a)(10), to determine, effective upon entry of the Judgment, that it is not necessary that Citigroup be considered an ineligible issuer for any purpose under the Commission rules. Citigroup previously has not sought or obtained such relief.

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If you have any questions regarding this request, please contact me at the above-listed number.

Very truly yours,

  
Kevin McEnergy