

August 22, 2014

Gail S. Ennis

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+1 202 663 6014(t)

+1 202 663 6363(f)

gail.ennis@wilmerhale.com

Sebastian Gomez Abero, Esq.
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: *Securities and Exchange Commission v. Citigroup Global Markets Inc.*,
Case No. 11-CV-7387 (S.D.N.Y. Aug. 5, 2014)

Dear Mr. Gomez Abero:

This letter is submitted on behalf of our client, Citigroup Global Markets Inc. (“CGMI”), the settling defendant in an injunctive action arising out of the above-captioned investigation by the Securities and Exchange Commission (the “Commission”). CGMI hereby requests, pursuant to Rule 506 of Regulation D of the Commission promulgated under the Securities Act of 1933 (the “Securities Act”), waivers of any disqualifications from relying on exemptions under Rule 506 of Regulation D that may be applicable to CGMI and any of the issuers described below as a result of the entry of Final Judgment as to Defendant CGMI (the “Final Judgment”). The Final Judgment is also described below.

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 brought alleging violations of Sections 17(a)(2) and (3) of the Securities Act of 1933 (the “Securities Act”). As a result of these discussions, 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 United States District Court for the Southern District of New York (“Court”) when the Commission filed its complaint against CGMI in a civil action (“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 a final judgment as described below, without admitting or denying allegations made in the above-captioned proceeding (other than those relating to jurisdiction of the district court over it and the subject matter solely for purposes of that action).

As filed on October 19, 2011, the Complaint alleged that the marketing materials for one particularized CDO transaction sold in 2007 were materially misleading because they suggested that CGMI, along with certain of its affiliates, (together, “Citi”) was acting in the traditional role

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of an arranging bank, when in fact Citi had allegedly exercised influence over the selection of the assets and had retained a proprietary short position of the assets it had helped select, which gave Citi allegedly 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.

On November 28, 2011, the 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, which, on March 15, 2012, granted a stay of the Court proceedings pending resolution of the appeals. The parties have briefed their appeals, and the Second Circuit held oral argument on February 8, 2013. On June 4, 2014, the Second Circuit vacated the District Court's November 28, 2011 order and remanded the case for further proceedings. The District Court entered the Final Judgment on August 5, 2014.

DISCUSSION

CGMI understands that the entry of the Final Judgment has disqualified it, affiliated entities, and other issuers from relying on the exemption under Rule 506 of Regulation D promulgated under the Securities Act. CGMI is concerned that, should it or any of its affiliated entities be deemed to be an issuer, predecessor of the issuer, affiliated issuer, general partner or managing member of the issuer, a promoter, or the underwriter of the securities, for the purposes of Securities Act Rule 506(d)(1)(ii), CGMI, its issuer affiliates, and other issuers with which it is associated in one of those listed capacities and which rely upon or may rely upon these offering exemptions when issuing securities would be prohibited from doing so. The Commission has the authority to waive the Rule 506 exemption disqualification upon a showing of good cause that such disqualification is not necessary under the circumstances. *See* 17 C.F.R. §230.506.

CGMI requests that the Commission waive any disqualifying effects that the Final Judgment has and will have under Rule 506 of Regulation D with respect to CGMI, its issuer affiliates, or third-party issuers on the following grounds:

1. CGMI's alleged conduct in the Complaint relates in part to securities offerings in connection with marketing materials for a CDO that were materially misleading. The alleged

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conduct in the Complaint was non-scienter-based and involved a small number of employees.¹ Moreover, the conduct was isolated in so far as it was limited to the marketing materials involved in a single CDO transaction that was offered over seven years ago over a short period of time (a two-month period) to a small number of investors.

2. 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 requires CGMI for a period of three years from the date of the entry of the Final Judgment to comply with the following undertakings:

a. Product Review and Approval: The role of the relevant Capital Markets Approval Committee or Commitment Committee (the "Responsible Committees") (or any other committee performing the function currently performed by either of the Responsible Committees) will be expanded to include all initial offerings of residential mortgage-related securities (other than agency RMBS), 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 ("mortgage securities offerings"). The Responsible Committees shall ensure that processes are in place so that written marketing materials for such mortgage securities do not include any material misstatement or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

b. Role of Internal Legal and Compliance: For all mortgage securities offerings, Representatives of CGMI's Legal Department or Compliance Department will review (i) all written marketing materials used by CGMI in connection with mortgage securities offerings (i.e., term sheets, investor presentations or "pitch books", and other non-prospectus marketing materials), (ii) all offering circulars/prospectuses used by CGMI in connection with mortgage securities offerings, where CGMI does not retain outside counsel to review such materials; and (iii) any written submissions to either CGMI's Capital Markets Approval Committee or Commitment Committee (the "Responsible Committees") (or any

¹ At the same time of the filing of the Complaint, the Commission brought a litigated civil action in the 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.

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other committee performing the function currently performed by either of the Responsible Committees) regarding any such mortgage securities offering. CGMI will establish a procedure for recording the occurrence of any such review, including the name of the Legal Department employee or Compliance Department employee who conducted the review, the date of the review and the particular materials that were reviewed.

c. Role of Outside Counsel: For all mortgage securities offerings where CGMI retains outside counsel to advise on the offering, such outside counsel will be asked to review all written marketing materials and offering circulars/prospectuses used in connection with the offering. To assist in this review, such outside counsel will be provided with documents sufficient to reflect all material terms of the transaction.

d. Internal Audit: CGMI will conduct an internal audit review, on at least an annual basis, to determine that items (a), (b), and (c) are being complied with. Any deficiencies noted by internal audit shall be promptly addressed by CGMI.

e. Certification of Compliance by CGMI: The General Counsel or the Global Head of Compliance of CGMI shall certify annually (one year, two years, and three years, respectively, after the date of entry of this Final Judgment), in writing, compliance in all material respects with the undertakings set forth above. The certification and any further evidence of compliance will be submitted to the Commission staff.

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).

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3. The disqualification of CGMI and any of its affiliates from using (or participating in transactions using) the exemptions under Rule 506 of Regulation D has and will continue, we believe, to have an adverse impact on third parties that have retained, or may retain, CGMI and its affiliates in connection with transactions that rely on this exemption. CGMI currently acts as placement agent for at least 33 pooled investment funds that use the offering exemption under Rule 506 for numerous transactions that raise or will raise approximately \$3 billion. CGMI also currently acts as placement agent for 6 private equity and real estate funds that raise or will raise approximately \$300 million. Citibank, N.A. (Citibank), an affiliate of CGMI, currently acts as depositary bank (Depositary) for 147 Global Depositary Receipts programs (GDRs) totaling approximately \$21.2 billion and for 415 Global Depositary Notes programs (GDNs) totaling approximately \$6.1 billion, and relies on Rule 506 and Regulation S to issue GDRs and GDNs in transactions exempt from registration under the Securities Act to Qualified Institutional Buyers and to persons other than US persons, respectively. Generally, the Depositary issues GDRs and GDNs (i) in connection with primary offerings exempt from registration under the Securities Act (under Regulation D/ Rule 144A and Regulation S) conducted by U.S. and non-U.S. institutions (including CGMI) acting as placement agents for the equity or fixed income securities represented by the GDRs and GDNs and (ii) in connection with secondary market transactions in which U.S. and non-U.S. institutions acting as broker/dealers (including CGMI) for their clients purchase equity or fixed income securities on a stock exchange or over the counter market abroad and deposit such securities with Citibank for the purpose of receiving the corresponding GDRs or GDNs the Depositary. In light of the entry of the Final Judgment, CGMI and its affiliates have suspended activities conducted in reliance on Rule 506 and, where applicable, are relying on other available offering exemptions until such time as the requested relief may be granted. This reliance on other available offering exemptions applies to some, but not all, of the Rule 506 offerings described above. CGMI, certain of its affiliates, and certain third party issuers that use CGMI and its affiliates in their offerings and related transactions in many cases would not be able to rely on any other offering exemption provided in the Securities Act now or in the future due to certain limitations on marketing efforts and the number of offerees typically applied to transactions under these other offering exemptions. In addition, current market practice favors the use of Rule 506 in certain private placement offerings because it provides CGMI, certain of its affiliates, and other third party issuers that use CGMI and its affiliates the benefit of a safe harbor for an exempt offering. CGMI, certain of its affiliates, and these other third party issuers would not be able to participate in certain offerings and related transactions, absent a waiver, now or in the future creating a disadvantage to the business opportunities of CGMI, certain of its affiliates, and the third party issuers that rely on CGMI in certain offerings.

4. For a period of five years from the date of the Final Judgment, CGMI will furnish (or cause to be furnished) to each purchaser in a Rule 506 offering that would otherwise be subject to the disqualification under Rule 506(d)(1) as a result of the Final Judgment, a description in writing of the Final Judgment a reasonable time prior to sale.

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The disqualification from relying on the exemption available under Rule 506 of Regulation D became effective on September 23, 2013, approximately two years after the settlement agreement was finalized between CGMI and the Commission and filed with the Court. Neither CGMI nor the Commission anticipated that there would be a two year procedural delay at the time the Complaint and Consent were filed on October 19, 2011. On November 28, 2011, the 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, which, on March 15, 2012, granted a stay of the Court proceedings pending resolution of the appeals. The parties fully briefed their appeals, and the Second Circuit held oral argument on February 8, 2013. On June 4, 2014, the Second Circuit vacated the District Court's November 28, 2011 order and remanded the case for further proceedings. The District Court entered the Final Judgment on August 5, 2014. When the Complaint and Consent were filed on October 19, 2011, relief applications had been filed and processed for each and every then-applicable disqualification. CGMI could not have filed any relief application pursuant to Rule 506 at the time the settlement terms were finalized because no such disqualification existed.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary, in the public interest, or for the protection of investors, and that CGMI has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, pursuant to Rule 506 of Regulation D, to waive the disqualification provisions in Rule 506 of Regulation D to the extent they are or will be applicable to CGMI, any affiliated issuers, and certain third-party issuers described above as a result of the entry of the Final Judgment.²

² We note in support of this request that the Commission has granted relief under Rule 506 of Regulation D for similar reasons or in similar circumstances. *See, e.g.*, Dominick & Dominick LLC, Securities Act Rel. No. 9619 (July 28, 2014); Certain Current Funds, Third Party Issuers and Portfolio Companies affiliated with Credit Suisse AG, Securities Act Rel. No. 9589 (May 19, 2014); Jefferies LLC, S.E.C. No-Action Letter (pub. avail. Mar. 12, 2014); Diamond Foods, Inc., S.E.C. No-Action Letter (Mar. 6, 2014); Instinet, LLC, S.E.C. No-Action Letter (pub. avail. Dec. 26, 2013); RBS Securities Inc., S.E.C. No-Action Letter (pub. avail. Nov. 25, 2013). CGMI is not requesting waivers of the disqualifications from relying on Regulation A and Rule 505 of Regulation D at this time because it does not now use or participate in transactions under such offering exemptions. CGMI understands that it may request such waivers in a separate request if circumstances change.

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Please do not hesitate to call me at the number listed above if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Gail S. Ennis". The signature is written in black ink and is positioned above the printed name.

Gail S. Ennis