



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

August 28, 2019

Giovanni Prezioso  
Cleary Gottlieb Steen & Hamilton LLP  
2112 Pennsylvania Avenue, NW  
Washington, DC 20037

Re: Request for Exemption from Rule 10b-10

Dear Mr. Prezioso:

In your letter dated August 26, 2019, you request an exemption pursuant to Rule 10b-10(f) under the Securities Exchange Act of 1934 ("Exchange Act") on behalf of your client, Citigroup Global Markets Inc. ("CGMI"), a registered broker-dealer, from the requirement under Rule 10b-10(a) to deliver trade-by-trade confirmations in connection with execution of multiple intra-day orders on behalf of institutional customers.<sup>1</sup> In lieu of trade-by-trade confirmations for each individual transaction, CGMI will send, upon request of an institutional customer, a single confirmation reflecting aggregated execution information for one or more same-side orders executed in each security during that trading day.

The Division pursuant to delegated authority hereby grants an exemption from Rule 10b-10(a) under the Exchange Act subject to the facts and terms and conditions described in your letter. This exemption from Rule 10b-10(a) is based solely on the representations you have made and is limited strictly to the facts and terms and conditions described in your letter. In particular, we note your representations that confirmations provided by CGMI on end-of-day confirmations would include: (i) the date and a notice that execution times are available upon request, consistent with Rule 10b-10(a)(1); (ii) whether the confirmation applied to purchase or sale orders; (iii) a weighted average price, which would be calculated by averaging the execution prices of each individual execution that filled the customer's orders and weighting that price by the size of the execution; (iv) the capacity or capacities in which CGMI acted in executing the customer's orders; (v) where required, the total remuneration received; (vi) all other information required by Rule 10b-10, as applicable; and (vii) notification that, at the customer's request, CGMI would provide the information required by Rule 10b-10 for each individual transaction, including the actual price and capacity in which CGMI acted. In addition, you represent that CGMI would create and maintain records pursuant to Rules 17a-3 and 17a-4 under the Exchange Act and report each execution separately to

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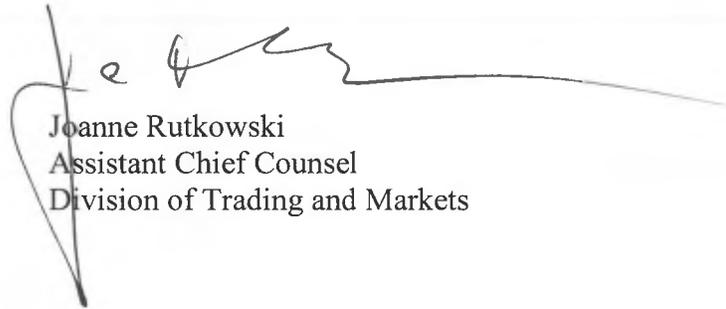
<sup>1</sup> For purposes of this exemption, you represent that an "institutional customer" is a customer that meets the definition of "institutional account" in Financial Industry Regulatory Authority (FINRA) Rule 4512(c).

the appropriate trade facility, and CGMI would continue to be subject to its best execution obligations with respect to all orders.

In the event that a material change occurs with respect to any of the facts or representations presented, the use of trade-by-trade confirmations as required by Rule 10b-10(a) should be reinstated for the transactions described in the letter. In addition, persons relying on this exemption are subject to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This exemption should not be considered a view with respect to other questions that the proposed transactions may raise, including the applicability of any other federal or state laws or the applicability of self-regulatory organization rules concerning customer account statements or confirmations.

The exemption granted in this letter is subject to modification or revocation at any time if the Commission determines that such action is necessary or appropriate in the public interest or otherwise in furtherance of the purposes of the Exchange Act.

For the Commission, by Division of Trading and Markets pursuant to delegated authority,<sup>2</sup>



Joanne Rutkowski  
Assistant Chief Counsel  
Division of Trading and Markets

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<sup>2</sup> 17 C.F.R. §200.30-3(a)(32).

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JEANNE PALOMA ZELMATI  
ASSOCIATES

\* Admitted only to a bar other than that of the District of Columbia. Working under the supervision of principals of the Washington office.

\*\* Special Legal Consultant qualified in the People's Republic of China.

August 26, 2019

Emily Westerberg Russell, Esq.  
Chief Counsel, Office of Chief Counsel  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Request for an Exemption from Rule 10b-10 under the Securities Exchange Act of 1934

Dear Ms. Russell:

On behalf of our client, Citigroup Global Markets Inc. ("CGMI"), we are writing to request an exemption from Rule 10b-10 under the Securities Exchange Act of 1934 (the "Exchange Act") pursuant to Rule 10b-10(f) in connection with CGMI sending each institutional customer<sup>1</sup> on whose behalf it executes multiple intra-day orders a single confirmation reflecting aggregated execution information, as described more fully below, for one or more same-side orders executed in each security during that trading day.

<sup>1</sup> An "institutional customer" is a customer that meets the definition of "institutional account" in Financial Industry Regulatory Authority (FINRA) Rule 4512(c).

## **I. Background**

CGMI is registered as a broker-dealer and investment adviser with the Securities and Exchange Commission (the “Commission”), a municipal securities dealer with the Municipal Securities Rulemaking Board, and swap dealer and futures commission merchant with the Commodity Futures Trading Commission and is a member of FINRA, the Securities Investor Protection Corporation, the National Futures Association, and other self-regulatory organizations.

In the course of its business as a broker-dealer, CGMI frequently receives and executes multiple intra-day orders for transactions in a particular security on behalf of its institutional customers. A large percentage of these orders may be received electronically and, in some instances, multiple orders may overlap, resulting in orders being entered before CGMI has completed executing a previous order. CGMI, consistent with its best execution obligations, executes such orders in a variety of ways, including by internalizing, routing to other broker-dealers and trading centers, or effecting riskless principal transactions. Accordingly, CGMI might act as either agent, principal, or both. Most orders are completed through multiple executions of portions of the original order and at multiple prices. Each execution is separately reported to the appropriate trade reporting facility.

In many instances, CGMI’s institutional customers, including its investment manager customers, placing multiple orders for a security would prefer that CGMI provide a weighted average price by aggregating the prices obtained in all executions across all orders in that security traded on their behalf during that day. At the end of the trading day the investment manager customers direct CGMI to allocate the securities or proceeds in specified quantities at the weighted average price to the accounts they manage, in accordance with the investment manager’s policies and procedures governing allocation among multiple accounts. Accordingly, at the request of its institutional customers, CGMI will issue confirmations (in the case of an investment manager customer, addressed separately to each client account holder managed by that investment manager) reflecting the weighted average price. These confirmations also include the total compensation received and capacities in which CGMI acted in executing the orders as well as the other information required by Rule 10b-10.

## **2. Order Aggregation and Average Price Allocation and Confirmation**

Investment managers placing orders in the same security for multiple client accounts will often allocate the results of trading activity done on behalf of those clients using an average execution price for all accounts. Investment managers use average price allocation to, among other things, avoid favoring, even inadvertently, one account over another in contravention of their fiduciary obligations. Average price allocations thus promote regulatory compliance in the context of managing multiple accounts.<sup>2</sup> Average pricing also reduces the

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<sup>2</sup> See, e.g., SEC Office of Compliance Inspections and Examinations, Examination Priorities for 2014 (January 9, 2014) (noting focus on examination of investment advisers’ practices in allocating investment

back office costs and fees associated with processing multiple confirmations for each investment manager.

Recognizing the benefits to investment managers of aggregating orders and allocating an average price to multiple managed accounts, Commission staff provided no-action relief in 1995 to SMC Capital, Inc. (the “SMC Capital Letter”) allowing for expanded average price allocation.<sup>3</sup> SMC Capital provided investment advice and managed account services to a variety of different types of investors, and requested no-action relief allowing for the aggregation of orders and allocation at average prices for all types of accounts that it managed, including those in which SMC Capital or its employees or affiliates were also investors. The basis for SMC Capital’s request was twofold: to reduce fees and to avoid favoring one account over another. To ensure that no one client would receive favorable treatment, the relief required, among other things, that clients receiving average price allocations would receive the average share price in a given security for all of SMC Capital’s transactions in that security on a given day and share in all transaction costs (such as broker-dealer remuneration) on a *pro rata* basis.

Investment managers that allocate to their client accounts cash and securities based on the average execution prices received in a given trading day in the manner described in the SMC Capital Letter must therefore calculate the end-of-day average price received and associated transaction costs and determine the appropriate *pro rata* allocation. For investment managers that transact in a large number of securities and/or that place a large number of intra-day orders in single securities the operational burden of calculating the average price and relevant transaction costs is correspondingly higher. Receiving a single confirmation therefore reduces this operational burden, while also reducing fees associated with multiple confirmations throughout the trading day.

Rule 10b-10 under the Exchange Act requires that brokers and dealers, including CGMI in executing orders for its institutional customers, at or before the completion of a transaction, provide customers with a confirmation containing certain prescribed information. Rule 10b-10 generally requires the transaction date and time; identity, price, and number of shares or units of the security purchased or sold; and the capacity in which the broker or dealer acted. The Rule also requires certain information specific to the type of security involved in the transaction; for example, for certain stocks, whether the broker or dealer received any payment for order flow or, for debt securities, information determined by whether the transaction was on the basis of a dollar price or yield.

As in the case of investment advisers’ average price allocation practices in the SMC Letter, Commission staff has previously provided relief to broker-dealers with respect to certain requirements of Rule 10b-10 in the context of multiple executions and aggregated orders,

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opportunities to ensure that advisers are properly mitigating potential conflicts of interest in managing multiple accounts).

<sup>3</sup> See SEC Staff No-Action Letter re: SMC Capital, Inc. (September 5, 1995).

allowing for average price and multiple capacity confirmations. In a letter to the New York Stock Exchange in 2005 (the “NYSE Letter”), the staff allowed for confirmations for single orders in national market system securities executed at multiple prices, in multiple capacities, and/or on multiple venues to include aggregated information rather than require a separate confirmation for each execution.<sup>4</sup> In granting relief, the staff noted the potential for multiple confirmations to confuse customers as well as the higher costs associated with issuing multiple confirmations. Confirmations issued in reliance on this relief are required to include the average price, capacities in which the broker-dealer acted, and the total remuneration earned by the broker-dealer (through commission, mark up, mark down, or otherwise); the remainder of Rule 10b-10’s requirements and other relevant securities laws and trade reporting rules continued to apply unmodified and relief was contingent on execution specific information being available upon request.

Similarly, the staff granted no-action relief to Goldman Sachs & Co. in 1996 (the “GS&Co. Letter”) allowing for average price and multiple capacity confirmations.<sup>5</sup> The GS&Co. Letter provided relief when a broker-dealer, acting on behalf of an investment manager customer that placed multiple orders for transactions in a single fixed income security, aggregated such orders for execution and provided a single confirmation.<sup>6</sup> The investment manager customer in turn allocated the order among its fiduciary accounts. This relief was also contingent on individual execution information being available upon request by the customer.

The exemptive relief requested by CGMI, which would extend to executions of multiple orders of a single security on a single trading day rather than solely to multiple executions of a single order, is similar to the no-action relief granted in both the NYSE and GS&Co. Letters, and would ease compliance with the terms of the SMC Capital Letter for its investment manager customers. Following receipt of an aggregated confirmation for a client, investment manager customers can use the average price and aggregated information reflected in the confirmation, all of which is consistent with the conditions of the SMC Letter, in allocating the day’s trading activities to client accounts. Moreover, CGMI believes, and understands from its institutional customers, that confirmations sent with the above information are sufficient to allow CGMI’s institutional customers to understand and verify the terms on which their orders were executed and ensure that they are complying with any fiduciary duties owed to their clients.

Allowing for confirmations to be issued in the form described below will thus further the goals of the no-action letters discussed above by increasing the operational efficiency of CGMI’s institutional customers, reducing fees, and mitigating any confusion that might result from a customer receiving multiple confirmations, covering orders in a single security executed over the course of a single trading day. Further, it is consistent with evolving market practices in

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<sup>4</sup> See SEC Staff No-Action Letter re: Rule 10b-10 / Average Price, Multiple Capacity Confirmations (March 3, 2005).

<sup>5</sup> See SEC Staff No-Action Letter re: Goldman Sachs & Co. (April 17, 1996).

<sup>6</sup> See Letter to Catherine McGuire, Esq. re: Confirmation of Average-Priced Trades (April 15, 1996).

which customers increasingly submit multiple orders electronically rather than a single large order telephonically or through other means.

### **3. Relief Requested**

CGMI seeks exemptive relief from Rule 10b-10 under the Exchange Act to provide the option of a single aggregated confirmation to institutional customers that place multiple orders in a particular security over the course of a single trading day, and to provide that information consistent with the relief granted in the no-action letters discussed above. Specifically, CGMI would obtain written documentation from its institutional customers evidencing consent to receive confirmations with information in the form described in (i) – (vii), below. For institutional customers that request a single confirmation, and that provide the necessary documentation, CGMI would send an end-of-day confirmation that will include information about one or more orders in a particular security entered by that customer on that trading day in a single security on the same side of the market, or, for customers that enter both purchase and sale orders in a single security, a separate confirmation for each type of order aggregating and averaging all sale prices and all purchase prices separately. In each end-of-day confirmation, CGMI would include, where required pursuant to Rule 10b-10:

- (i) the date and a notice that execution times are available upon request, consistent with Rule 10b-10(a)(1);
- (ii) whether the confirmation applied to purchase or sale orders;
- (iii) a weighted average price, which would be calculated by averaging the execution prices of each individual execution that filled the customer's orders and weighting that price by the size of the execution;
- (iv) the capacity or capacities in which CGMI acted in executing the customer's orders;
- (v) where required, the total remuneration received;
- (vi) all other information required by Rule 10b-10, as applicable; and
- (vii) notification that, at the customer's request, CGMI would provide the information required by Rule 10b-10 for each individual transaction, including the actual price and capacity in which CGMI acted.

In addition, CGMI would create and maintain records pursuant to Rules 17a-3 and 17a-4 under the Exchange Act and report each execution separately to the appropriate trade reporting facility. CGMI would also continue to be subject to its best execution obligations with respect to all orders.

Emily Westerberg Russell  
Securities and Exchange Commission  
August 26, 2019  
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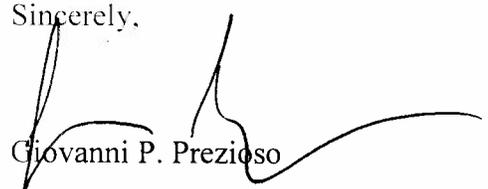
**4. Conclusion**

CGMI believes that the requested exemptive relief is consistent with the staff's previous no-action relief allowing for aggregating information in confirmations delivered pursuant to Rule 10b-10. Based on the foregoing, CGMI respectfully requests an exemption from Rule 10b-10 for confirmations sent in accordance with the terms set forth above.

\* \* \*

We appreciate your assistance in this matter. Please do not hesitate to contact me (202-974-1650) or my colleague Carl Emigholz (202-974-1876) if you have any questions regarding the exemptive relief requested herein.

Sincerely,

  
Giovanni P. Prezioso