

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51713 / May 19, 2005

INVESTMENT ADVISERS ACT OF 1940
Release No. 2386 / May 19, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11930

In the Matter of

JOHN B. HOFFMANN and
KEVIN J. McCaffrey,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against John B. Hoffmann (“Hoffmann”) and Kevin J. McCaffrey (“McCaffrey”) (collectively referred to as “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and

Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (the “Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

FACTS

Respondents

John B. Hoffmann, age 64, entered the securities industry in 1964 as a research analyst with Smith Barney. He became director of U.S. equity research at Smith Barney in approximately 1988 and director of Global Research in 1995. After Smith Barney merged with Salomon Brothers in 1997 to form Salomon Smith Barney, Inc. (“SSB”), Hoffmann was director of Global Equity Research at SSB until February 2003. He retired from Citigroup Global Markets, Inc. (“CGM”), formerly known as SSB, in May 2003.

Kevin J. McCaffrey, age 41, is a registered representative. He entered the securities industry in 1988 as a general securities representative. He joined Smith Barney as head of New York institutional equity sales in 1994 and became deputy director of equity research in 1995. McCaffrey became director of U.S. Equity Research at SSB after Smith Barney merged with Salomon Brothers. He continued in that position until October 2002. Since January 2003, McCaffrey has been employed by Citigroup Alternative Investments LLC (“CAI”), which is registered with the Commission as an investment adviser. Until January 2005, McCaffrey served as the Head of Global Sales for CAI. He presently is engaged in developing CAI’s business outside the United States.

Other Relevant Entity

Citigroup Global Markets, Inc. (“CGM”), formerly known as Salomon Smith Barney, Inc. (“SSB”), is a New York corporation with its headquarters and principal executive offices in New York, New York. It is a wholly-owned subsidiary of Citigroup Inc. CGM engages in a full service securities business, including retail and institutional sales, investment banking services, trading, and research. CGM is, and during the relevant period was, registered with the Commission as a broker-dealer and investment adviser.²

Summary

In 2000 and 2001 (the “relevant period”), John Hoffmann, as the director of Global Equity Research, and Kevin McCaffrey, as director of U.S. Equity Research at SSB, were

¹ The findings contained herein are made pursuant to the Respondents’ respective Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

² Because it was known as Salomon Smith Barney during the period when the conduct described herein occurred, this Order refers to the firm hereafter as “SSB.”

supervisors of Jack B. Grubman (“Grubman”), once one of the most prominent research analysts at SSB and on Wall Street.

Hoffmann and McCaffrey failed to supervise Grubman adequately with a view to preventing him from publishing fraudulent research on Focal Communications Corp. (“Focal”) and Metromedia Fiber Networks, Inc. (“Metromedia Fiber”). During the same period, Grubman also published research on RCN Communications, Williams Communications Group, Level 3 Communications, Adelphia Business Solutions, and XO Communications that violated NASD Inc. and New York Stock Exchange Inc. (“NYSE”) advertising rules.³ Each of these firms was an SSB investment banking client. In particular, with respect to these companies, Hoffmann and McCaffrey failed to respond adequately to red flags that Grubman made unreasonable research assumptions that led him to publish unrealistically bullish ratings and price targets.

During the relevant period, Hoffmann and McCaffrey were aware of potential conflicts of interest posed by Grubman’s involvement in the firm’s telecommunications (“telecom”) investment banking activities and were aware of Grubman’s importance to the firm’s telecom investment banking franchise. Hoffmann and McCaffrey failed to respond adequately to red flags concerning investment banking pressure on Grubman not to downgrade the firm’s banking clients.

Hoffmann and McCaffrey Were Supervisors of Grubman

During the relevant period, Respondents were supervisors of Grubman. All U.S. equity research analysts, including Grubman, reported directly to McCaffrey, as director of U.S. Equity Research, and McCaffrey reported to Hoffmann, as director of Global Equity Research. Hoffmann was a member of the management committee at SSB.

Hoffmann and McCaffrey both participated in the process of Grubman’s annual performance review and in determining Grubman’s salary and bonus. Investment banking revenue generated from companies in an analyst’s sector was a significant factor in determining an analyst’s compensation at SSB. Respondents understood that Grubman was among the most prominent research analysts at SSB and that he played a significant role in attracting investment banking business for SSB from telecom companies he covered. During 2000, SSB earned approximately \$331 million and in 2001 it earned approximately \$101 million in investment

³ NASD Rule 2210 and NYSE Rule 472 (the “advertising rules”), require members’ communications with the public to have a reasonable basis and not contain exaggerated or unwarranted claims. In addition, NASD Rule 2110 and NYSE Rules 401 and 476 require member firms to observe high standards of commercial honor and just and equitable principles of trade in their business dealings. As described in *SEC v. Jack Benjamin Grubman*, No. 03 Civ. 2938 (WHP) (S.D.N.Y.) (Complaint, filed April 28, 2003), during the relevant period, Grubman issued certain research reports on RCN Communications, Williams Communications Group, Focal, Level 3 Communications, Adelphia Business Solutions, and XO Communications that were not based on principles of fair dealing and good faith, did not provide a sound basis for evaluating facts regarding these companies’ business prospects, contained exaggerated or unwarranted claims about these companies, and/or contained opinions for which there was no reasonable basis. As a result of this conduct, Grubman violated NASD Rules 2110 and 2210 and NYSE Rules 401, 472, and 476.

banking fees from telecom companies Grubman covered. Grubman earned approximately \$20.2 million in salary, bonus, and deferred compensation in 2000⁴ (approximately \$14 million in salary and bonus and \$6.2 million in deferred compensation) making him the highest paid analyst at SSB. In 2001, Grubman's compensation was reduced to approximately \$6.5 million (approximately \$3.5 million in salary and bonus, and \$3 million in deferred compensation).

Grubman Issued Fraudulent and Misleading Research on Certain Telecommunications Companies

As described in *SEC v. Jack Benjamin Grubman*, No. 03 Civ. 2938 (WHP) (S.D.N.Y.) (Complaint, filed April 28, 2003), Grubman and SSB issued fraudulent research reports on two companies, Metromedia Fiber Networks, Inc., and Focal Communications Corp., that, among other things, presented an unrealistically optimistic picture that overlooked and minimized the risk of investing in these companies, predicted substantial growth in the companies' revenues and earnings without a reasonable basis, did not disclose certain material facts about these companies, and contained material misstatements about the companies. As a result of this conduct, Grubman aided and abetted SSB's violations of Section 15(c) of the Exchange Act and Rule 15c1-2 thereunder. Grubman also published research on RCN Communications, Williams Communications Group, Focal, Level 3 Communications, Adelphia Business Solutions, and XO Communications that violated NASD and NYSE advertising rules. Each of these seven companies was an investment banking client of SSB.

As described below, Respondents were aware of red flags concerning Grubman's research with respect to these companies, but did not respond adequately to such warning signs.

Respondents Failed to Respond Adequately to Red Flags Concerning Grubman's Investment Ratings

Each research report SSB issued included an investment rating that reflected the analyst's opinion of the relative attractiveness of the company to investors. During the relevant period, SSB advised its customers that it utilized the following five-point investment rating system:

- 1 - Buy
- 2 - Outperform
- 3 - Neutral
- 4 - Underperform
- 5 - Sell

In practice during the relevant period, however, SSB's research analysts rarely rated companies a 4 (Underperform) and never a 5 (Sell).

At an SSB equities management meeting in early 2001, Hoffmann recognized this imbalance, noting that out of a total of 1,179 stock ratings maintained by SSB research analysts as of January 29, 2001, there were no Sell ratings and only one Underperform rating. He

⁴ Pursuant to a 1998 contract with SSB, Grubman was awarded deferred compensation in 2000 and 2001 and received a loan of \$15 million to be forgiven over five years. Neither Hoffmann nor McCaffrey signed or negotiated the 1998 contract.

observed that there was a “rising issue of research integrity” and an inherent conflict with investment banking at SSB.

Respondents failed to respond adequately to red flags that certain of Grubman’s ratings were unreasonably positive. For example, Hoffmann and McCaffrey knew that certain stocks Grubman covered, particularly the seven companies noted above, lost over ninety percent of their value during the relevant period. Respondents were also aware that, even as the share price of these stocks dropped precipitously, Grubman maintained SSB’s highest rating – a “Buy” (1) – on those companies. Respondents also were aware that Grubman never rated a company a “Sell” during the relevant period.

In October 2000, an analyst who reported to Grubman e-mailed McCaffrey and told him,

The sentiment on the buy side is that the sell side [telecommunications] analysts are tools for the bank . . . Therefore going forward, we are going to have to be far more selective on deals and tougher on ratings or we risk losing all credibility.

Further, an analysis of Grubman’s Buy-rated stocks done in the spring of 2001 by a person who reported to McCaffrey concluded that there was “not a single rating change that I can see from 1/1/01 [to] 5/31/01” and that Grubman’s stocks significantly underperformed other SSB Buy rated stocks. For the first six months of 2001, according to this analysis, the price of Grubman’s Buy-rated stocks fell 16.83 percent while all other SSB Buy-rated stocks rose 6.9 percent.

Because Grubman did not downgrade the ratings of certain of his stocks in 2000 and 2001 as the prices of those stocks fell, SSB’s retail brokers criticized him harshly. At year end, retail brokers were provided the opportunity to rate analysts and comment in writing as part of the analyst’s annual performance evaluation. Respondents received and reviewed the numerical ratings and comments for both years as part of their review of Grubman. For both 2000 and 2001, the retail sales force rated Grubman last among all SSB analysts. The retail force also gave scathing written evaluations of Grubman’s performance for both years.

Neither Hoffmann nor McCaffrey responded adequately to these red flags regarding certain of Grubman’s ratings. Hoffmann left it to McCaffrey to discuss ratings with Grubman. McCaffrey did not meet personally with Grubman to discuss lowering his ratings until July 2001 as part of meetings with all U.S. equity analysts to discuss ratings and price targets.

Respondents Failed to Respond Adequately to Red Flags Concerning Grubman’s Price Targets

During the relevant period, each report Grubman published on the companies he covered contained a price target – Grubman’s prediction of where he believed the price of the company’s stock would be in twelve to eighteen months.

As noted, the share price of many of the emerging telecommunications stocks Grubman covered plummeted in 2000 and 2001. Respondents were aware that Grubman did not

adequately adjust his target prices to reflect the reduced prospects of certain of the companies he covered, but did not take adequate steps to assure that certain of Grubman's target prices were realistic.

In October 2000, the deputy director of U.S. Equity Research, who reported to McCaffrey, sent an e-mail to all SSB U.S. equity research analysts requesting that analysts bring price targets in line with ratings and current stock prices. Among the situations he identified as "most obvious" were "buy rated stocks that have come down a lot and are now unrealistically far below their targets," describing stocks that had target prices two or three times the current market price as "stale."

Hoffmann sent a similar memorandum to all SSB equity research analysts later in October 2000, in which he urged them to review their price targets, growth assumptions, and valuations for every stock they covered, noting that there was often a dramatic disparity between current share prices and target prices.

In December 2000, a person who reported to McCaffrey sent an e-mail to McCaffrey stating:

Our target prices are contributing to the confusion of our skewed ratings mix, implying as they do tons of upside potential for most of our coverage. The average appreciation potential implied by our targets on Buy-rated stocks was 94% on 12/26/00, compared with 63% in March 2000. . . . These outlandish percentages scream for careful reexamination.

Also, in the fall of 2000, McCaffrey received an analysis prepared by the same person that identified which analysts had the most unrealistic price targets, and in particular which analysts had price targets that were too optimistic even for Buy-rated stocks. These stocks, according to the analysis, had "too much upside."

The analysis specifically identified problems with Grubman's research. From this analysis, McCaffrey was made aware that Grubman had more unrealistic price targets than any other analyst generally, and specifically had more Buy-rated stocks with "too much upside" than any other analyst. Twenty-seven of Grubman's thirty-four price targets were identified as "problematic," with all but one having price targets that, according to the analysis, were too high for a Buy-rated stock. No other analyst had more than eighteen.

The analysis stated that Grubman had five of the top ten Buy-rated stocks that had price targets with "too much upside" and that Grubman was responsible for thirteen of the top fifty Buy-rated stocks whose price targets were unrealistically high.

Among the Buy-rated stocks covered by Grubman that had unrealistic price targets were certain of the companies noted above: Williams Communications Group, Inc. (stock price \$16, target price \$70, 340 percent upside), Level 3 Communications Inc. (stock price \$34, target price \$130, 288 percent upside), RCN Communications (stock price \$16, target price \$50, 211 percent

upside), Adelphia Business Solutions (stock price of \$5, target price of \$15, 192 percent upside), XO Communications (stock price of \$21, target price of \$60, 186 percent upside), and Metromedia Fiber Network (stock price \$19, target price \$53, 180 percent upside). Around the time of this price target analysis, Hoffmann opined that a price target for one of Grubman's stocks, which was 181 percent above the stock's market price, appeared "unrealistic."

Respondents failed to respond adequately to these red flags regarding Grubman's price targets and Grubman maintained unrealistically high price targets on the companies noted above. As noted, McCaffrey did not meet personally with Grubman to discuss price targets until he did so as part of his meetings with all U.S. equity research analysts in July 2001. And it was not until August 22, 2001 that McCaffrey sent a memorandum to all analysts, copied to Hoffmann, establishing a new procedure whereby the supervisory analyst reviewing a research report would not allow the report to be published if, among other things, the stock was rated a Buy and the target price exceeded the market price by seventy-five percent or more.

Respondents Failed to Respond Adequately to Red Flags Concerning Investment Banking Pressure on Grubman

During the relevant period, Hoffmann and McCaffrey were aware of evidence that investment banking applied pressure on Grubman with respect to his research.

In a May 22, 2000 e-mail, Hoffmann stated, in response to a complaint from a broker about Grubman's research:

[T]he degree of conflict between research and banking appears heightened when the stocks are not working as is the case in [telecommunications] right now. . . . I do think Jack is a very good analyst with very good industry knowledge. He must be much more discriminating on the stocks he recommends with the market working against him. I hope to be able to manage this process to prevent further damage to our investor client base.

Similarly, in a November 2000 e-mail responding to another complaint about Grubman's research, Hoffmann said:

I am not sure it is entirely banking. I think Jack just missed the big call on the group and hence missed the stocks as well. Am trying to arrange a 'what do we do no[w]' conference call with him to try to get at a balanced picture of where we stand with the major stocks. More salesmanship from Jack won't help. (Emphasis added.)

Hoffmann, however, did not participate in any such call with Grubman.

In April 2001, one of Grubman's stocks, Winstar Communications, Inc. ("Winstar"), declared bankruptcy. Grubman had maintained a Buy rating and a high price target on Winstar until shortly before the company declared bankruptcy. Thereafter, Grubman expressed to an

investment banker and others, not including Respondents, his desire to downgrade six of the firm's investment banking clients noted above.

Grubman subsequently informed McCaffrey about investment banking pressure not to downgrade certain companies. McCaffrey testified that he conveyed this information to Hoffmann. Neither Hoffmann nor McCaffrey took appropriate action to ensure that such pressure was not affecting Grubman's research.

In June 2001, McCaffrey and Grubman were slated to have dinner with investment bankers and anticipated hearing about bankers' displeasure with certain aspects of Grubman's research. Before the dinner, Grubman sent an e-mail to McCaffrey that should have alerted McCaffrey that Grubman's private views on certain of his stocks did not match his public recommendation that investors buy these stocks and that Grubman had been pressured by investment banking to maintain his positive ratings on certain stocks:

See you at dinner. If [a senior investment banker] starts up I will lace into him. . . . [M]ost of our banking clients are going to zero and you know I wanted to downgrade them months ago but got huge pushback from banking.

Neither Hoffmann nor McCaffrey responded adequately to ensure that investment banking pressure was not affecting Grubman's research.

Respondents' Failure to Supervise

Section 15(b)(6) of the Exchange Act, incorporating by reference Section 15(b)(4)(E) of the Exchange Act, authorizes the Commission to sanction a person who is associated, or at the time of the alleged misconduct was associated, with a broker or dealer if it finds that the sanction is in the public interest and the person "has failed reasonably to supervise, with a view to preventing violations of the [federal securities laws], another person who commits such a violation, if such person is subject to his supervision." Exchange Act § 15(b)(6); Exchange Act § 15(b)(4)(E). Section 203(f) of the Advisers Act, incorporating by reference Section 203(e)(6) of the Advisers Act, is a similar provision giving the Commission the authority to sanction an individual who, at the time of the alleged misconduct, was associated with an investment adviser and who failed to supervise another person with a view to preventing that person from violating the federal securities laws.

A failure to supervise can arise when an individual acting in a supervisory capacity fails to take adequate steps to prevent a person under their supervision from aiding and abetting violations of the federal securities laws. *See, e.g., In the Matter of Edwin Kantor*, 51 S.E.C. 440, Exchange Act Release No. 32341 (May 20, 1993) (settled proceeding based on, among other things, respondent's failure to supervise with a view to preventing firm employee from aiding and abetting firm's violations of Section 206 of the Advisers Act); *In the Matter of James J. Pasztor*, 54 S.E.C. 398, Exchange Act Release No. 42008 (Oct. 14, 1999) (litigated proceeding in which the Commission held that branch manager failed to supervise with a view to preventing

registered representative from aiding and abetting customer's violations of federal securities laws).

“[D]etermining if a particular person is a ‘supervisor’ depends on whether, under the facts and circumstances of a particular case, that person has a requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.” *In the Matter of John H. Gutfreund, et al.*, 51 S.E.C. 93, 113, Exchange Act Release No. 31554 (Dec. 3, 1992). “The supervisory obligations imposed by the federal securities laws require a vigorous response even to indications of wrongdoing.” *Id.* at 108. “In large organizations it is especially imperative that those in authority exercise particular vigilance when indications of irregularity reach their attention. . . . Red flags and suggestions of irregularities demand inquiry as well as adequate follow-up and review. When indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of the federal securities laws.” *Kantor*, 51 S.E.C. at 447 (internal quotations omitted).

As a result of the conduct described above, Hoffmann and McCaffrey failed reasonably to supervise Grubman, a person subject to their supervision within the meaning of Section 15(b)(4)(E) of the Exchange Act and Section 203(e)(6) of the Advisers Act, with a view to preventing him from aiding and abetting SSB's violations of Section 15(c) of the Exchange Act and Rule 15c1-2 thereunder by issuing fraudulent research on Focal and Metromedia Fiber.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Respondents' Offers.

Accordingly, pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Hoffmann be, and hereby is, barred from association in a supervisory capacity with any broker, dealer, or investment adviser, with the right to reapply for association in a supervisory capacity after fifteen (15) months to the appropriate self-regulatory organization, or if there is none, to the Commission.

B. Respondent McCaffrey be, and hereby is, barred from association in a supervisory capacity with any broker, dealer, or investment adviser, with the right to reapply for association in a supervisory capacity after fifteen (15) months to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondents will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (1) any disgorgement ordered against the Respondents, whether or not the Commission has fully or partially waived payment of such disgorgement; (2) any arbitration award related to the

conduct that served as the basis for the Commission order; (3) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (4) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. It is further ordered that Hoffmann shall, within thirty days of the entry of this Order, pay disgorgement in the amount of \$1.00 and a civil money penalty in the amount of \$120,000.00 to the United States Treasury. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter that identifies Hoffmann as a Respondent in these proceedings and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549-0801. Respondent agrees that if the full amount of any payment described above is not made within ten (10) days following the date the payment is required by this Order, the entire amount of disgorgement and civil penalties, \$120,001, plus post judgment interest minus payments made, if any, is due and payable immediately without further application. Such civil money penalty shall be added to and become part of the Distribution Fund account established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for payments from Citigroup Global Markets, Inc., formerly known as Salomon Smith Barney, Inc., in connection with the civil action styled *SEC v. Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc.*, No. 03 Civ. 2945 (WHP) (S.D.N.Y.) (the "CGM Action"). Upon receipt of such payment, the Office of Financial Management shall transmit the entire amount of disgorgement and civil penalties to the interest bearing Distribution Fund account - styled "*SDNY Distribution – Citigroup*" - established with the Federal Reserve Bank of New York ("FRB-NY") in connection with the CGM Action. The Office of Financial Management shall transmit the entire amount of disgorgement and civil penalties in accordance with instructions to be provided by the FRB-NY and authorized or ordered by the Court in the CGM Action. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that he shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within thirty (30) days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. It is further ordered that McCaffrey shall, within thirty days of the entry of this Order, pay disgorgement in the amount of \$1.00 and a civil money penalty in the amount of \$120,000.00 to the United States Treasury. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter that identifies McCaffrey as a Respondent in these proceedings and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 450 5th Street N.W., Washington, D.C. 20549-0801. Respondent agrees that if the full amount of any payment described above is not made within ten (10) days following the date the payment is required by this Order, the entire amount of disgorgement and civil penalties, \$120,001, plus post judgment interest minus payments made, if any, is due and payable immediately without further application. Such civil money penalty shall be added to and become part of the Distribution Fund account established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for payments from Citigroup Global Markets, Inc., formerly known as Salomon Smith Barney, Inc., in connection with the civil action styled *SEC v. Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc.*, No. 03 Civ. 2945 (WHP) (S.D.N.Y.) (the "CGM Action"). Upon receipt of such payment, the Office of Financial Management shall transmit the entire amount of disgorgement and civil penalties to the interest bearing Distribution Fund account - styled "*SDNY Distribution – Citigroup*" - established with the Federal Reserve Bank of New York ("FRB-NY") in connection with the CGM Action. The Office of Financial Management shall transmit the entire amount of disgorgement and civil penalties in accordance with instructions to be provided by the FRB-NY and authorized or ordered by the Court in the CGM Action. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that he shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within thirty (30) days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private

damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Jonathan G. Katz
Secretary