

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

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In the Matter of	:	
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Smith Barney Fund Management LLC and	:	Administrative Proceeding
Citigroup Global Markets Inc.	:	File No. 3-11935
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Respondents.	:	
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**PROPOSED PLAN OF DISTRIBUTION**

Pursuant to Rule 1101 of the Securities and Exchange Commission’s (“Commission”) Rules on Fair Fund and Disgorgement Plans, the Respondents<sup>1</sup> in the above-captioned matter hereby submit their Proposed Plan of Distribution (“Plan”), for the administration and distribution of funds in the Fair Fund created in this matter.

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<sup>1</sup> On December 1, 2005, Citigroup Inc. completed the sale of substantially all of its asset management business to Legg Mason & Co. (“Legg Mason”). On that date, Smith Barney Fund Management LLC (“SBFM”) became a wholly owned subsidiary of Legg Mason. On August 1, 2006, SBFM was replaced as investment manager or investment adviser with respect to the Funds for which it served in those capacities by Legg Mason Partners Fund Advisor, LLC (“LMPFA”), a newly formed entity. SBFM continued to serve as administrator to three Funds until October 19, 2006, whereupon it was replaced by LMPFA as investment manager of those Funds. SBFM no longer serves as investment manager, investment adviser or administrator to any Fund. SBFM continued to manage assets for clients until September 30, 2008 and is no longer registered as an investment adviser. References in this Plan to various actions by the Respondents in submitting and implementing this Plan include actions by LMPFA on behalf of SBFM or by Citigroup Inc. on behalf of Citigroup Global Markets Inc.

## **I. Background**

1. On May 31, 2005, the Commission instituted and simultaneously settled administrative proceedings against Smith Barney Fund Management LLC and Citigroup Global Markets Inc. (collectively, “Respondents”) relating to the appointment and operation of an affiliated transfer agent that served the Smith Barney Family of Funds (the “Funds”). In its Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against Smith Barney Fund Management LLC and Citigroup Global Markets, Inc., dated May 31, 2005 (the “Order”), the Commission found that the Respondents misrepresented and omitted material facts when recommending to the boards of the Funds that the Funds change from the third-party transfer agent they previously used to a transfer agent that was a Citigroup affiliate, Citicorp Trust Bank fsb or a predecessor entity (collectively, “CTB”). The Commission ordered the Respondents to pay disgorgement of \$109,004,551, prejudgment interest of \$19,055,630, and a penalty of \$80,000,000. The Respondents were deemed to have already paid disgorgement of \$17,004,551 and prejudgment interest of \$7,351,599, which the Respondents had previously returned to the Funds. The Commission ordered the Respondents to pay the remaining disgorgement of \$92,000,000, the remaining prejudgment interest of \$11,704,031, and the penalty of \$80,000,000 within ten days of the entry of the Order, i.e., within ten days of May 31, 2005. As described in the Order, the amount of \$92,000,000 in disgorgement represented CTB’s net pre-tax revenues (net of sub-transfer-agent fees), minus its total operating expenses, for the period from October 1, 1999 through September 30, 2004. The Commission also ordered that a Fair Fund be established pursuant to Section 308(a) of

the Sarbanes-Oxley Act of 2002 for the disgorgement, prejudgment interest and penalty amounts to be paid by the Respondents.<sup>2</sup>

2. On June 8, 2005, the Respondents satisfied their disgorgement, prejudgment interest and penalty obligations under the Order by wiring to the Commission \$183,704,031, in accordance with wire transfer instructions provided by the Commission staff on June 7, 2005. The wired amount is the sum of the \$92,000,000 of remaining disgorgement, the \$11,704,031 of remaining prejudgment interest, and the \$80,000,000 penalty that the Respondents were required to pay under the Order. The funds have since been transferred to the U.S. Department of Treasury's Bureau of Public Debt ("BPD") and, pending distribution, have been invested in short-term Treasury securities. Other than interest from these investments, it is not anticipated that the Fair Fund will receive additional funds.

3. Pursuant to Section IV.H of the Order, the Respondents now submit this Plan to the Commission for its approval.<sup>3</sup> As described in detail below, the Plan, in substance, proposes the distribution of disgorgement-related portions of the Citigroup Fair Fund, defined in paragraph 4 below, to Funds that engaged CTB as their transfer agent and paid transfer agent fees to CTB between October 1, 1999, and November 30, 2004 or to successors to such Funds, in proportion to the total transfer agent fees paid to CTB by each Fund or class of a Fund (subject to certain adjustments). The Respondents, in consultation with the Commission staff, conclude that allocating the disgorgement-

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<sup>2</sup> See Sections IV.E-IV.G of the Order.

<sup>3</sup> The Respondents initially submitted a proposed plan to the Commission staff on August 26, 2005, as required in Section IV.H of the Order.

related portions of the Citigroup Fair Fund based upon the percentage of overall transfer agent fees (including sub-transfer agent fees) paid by each Fund is fair and reasonable. In reaching this conclusion the Respondents considered an allocation based upon the percentage of transfer agent fees paid by each Fund net of sub-transfer agent fees and CTB's operating expenses. The Respondents have informed the Commission staff that it would not be feasible to allocate operating expenses among Funds. Additionally, according to the Respondents, these two allocation methods would result in similar distributions because each of the Funds paid the same percentage of its overall transfer agent fees to the sub-transfer agent and CTB's total operating expenses were small relative to the overall transfer agent fees. As described in paragraph 14, Funds that were liquidated prior to the initial submission of this Plan will not participate in the proposed distribution. Further, as described in paragraph 15, the Respondents have been advancing the estimated distribution amounts under the Plan to Funds that were liquidated after the initial submission of the Plan but before the proposed distribution. Under the Plan, the Respondents will recover the amounts advanced to those liquidated Funds, plus interest. The Plan is subject to approval by the Commission, and, if the Commission approves the Plan, the Commission shall retain jurisdiction over its implementation.

## **II. Definitions**

As used herein, the following definitions shall apply:

4. "Citigroup Fair Fund" shall mean the \$183,704,031 that the Respondents have paid to the Commission in satisfaction of their disgorgement, prejudgment interest, and penalty obligations, plus the interest and income generated while the funds were held

by the Commission or by BPD (“earnings”), less any fees, expenses, reserves, or taxes, if any, incurred by the Citigroup Fair Fund.

5. “Distributable Amount” shall mean the \$92,000,000.00 in remaining disgorgement and \$8,825,606.68 in interest, plus any earnings thereon, less the pro rata share of any fees, expenses, reserves, or taxes, if any, incurred by the Citigroup Fair Fund.<sup>4</sup>

6. “Period” shall mean the period from October 1, 1999, through November 30, 2004.

7. “Entitled Class” shall mean a class of shares issued by an Entitled Fund that had more than one class of shares outstanding during the Period or has more than one class of shares outstanding at the time of distribution of the Citigroup Fair Fund.

8. “Entitled Fund” shall mean each Fund, other than a previously liquidated fund described in paragraph 14 of this Plan and other than a Fund that previously received reimbursement of all transfer agent fees paid to CTB during the Period, (a) that engaged CTB as its transfer agent and paid transfer agent fees to CTB during the Period, or (b) that is the successor by merger to a Fund that engaged CTB as its transfer agent and paid transfer agent fees to CTB during the Period (a “Successor Fund”).<sup>5</sup> For

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<sup>4</sup> The amount of \$8,825,606.68 in interest was determined using the Federal short-term rate determined and applied in accordance with a methodology not unacceptable to the staff of the Commission.

<sup>5</sup> The Entitled Funds and Entitled Classes are listed on Exhibit A. Funds that engaged CTB as their transfer agent but did not make payments to CTB for services are excluded from the distribution under the Plan unless they qualify as a Successor Fund for purposes of paragraph 13. The funds that previously received reimbursement of all transfer agent fees are listed on Exhibit A.

purposes of paragraph 12 of this Plan, an “Entitled Fund” means an Entitled Fund that had only one class of shares outstanding during the Period and has only one class of shares outstanding at the time of the distribution of the Citigroup Fair Fund. In the case of a Successor Fund, references in this Plan to transfer agent fees paid by an Entitled Fund shall include payments by the merged Fund.

### **III. Allocation and Distribution of the Citigroup Fair Fund**

9. Qualified Settlement Fund Status. The Citigroup Fair Fund constitutes a Qualified Settlement Fund under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

10. Jurisdiction of the Commission. The assets in the Citigroup Fair Fund are subject to the continuing jurisdiction and control of the Commission.

11. Claims-Made Process Procedures Not Applicable. The Citigroup Fair Fund is not being distributed according to a claims-made process. Accordingly, the procedures for providing notice and for making and approving claims are not applicable.

12. Calculation of Distributable Shares and Amounts. Each Entitled Fund or Entitled Class is assigned a percentage share of the Distributable Amount (the “Distributable Share”). Each Entitled Fund’s or Entitled Class’s Distributable Share is equal to the ratio of (a) each Entitled Fund’s or Entitled Class’s transfer agent fees, not including out-of-pocket expenses, paid to CTB during the Period to (b) the total transfer agent fees, not including out-of-pocket expenses, paid to CTB by all Entitled Funds and Entitled Classes during the Period (“Total TA Fees”).<sup>6</sup> Each Entitled Fund’s or Entitled

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<sup>6</sup> For purposes of these calculations, the transfer agent fees paid by Entitled Funds or Entitled Classes include the amounts paid by the Entitled Funds or Entitled Classes with respect to accounts for which First Data Investors Services Group (and PFPC, Inc.,

Class's Distributable Share is multiplied by the Distributable Amount to arrive at a distributable amount for each Entitled Fund or Entitled Class (the "Specific Distributable Amount").

13. Merged Funds or Classes. For the purpose of calculating the Distributable Shares and Specific Distributable Amounts, in the case of a Fund that paid transfer agent fees to CTB during the Period and was merged into a Successor Fund before the distribution of the Citigroup Fair Fund under this Plan, (1) the transfer agent fees paid by each class of a merged Fund to CTB during the Period are added to the transfer agent fees, if any, paid to CTB during the Period by the class of shares in the Successor Fund into which such merged Fund shares were converted in the transaction, and (2) if the merged Fund and the Successor Fund each had only a single class of shares at the time of the merger, the transfer agent fees paid by the merged Fund to CTB during the Period are added to those, if any, paid by the Successor Fund during the Period. If a class of shares of a Fund paid transfer agent fees to CTB during the Period and was merged or combined with, or otherwise converted in its entirety into, another class of shares of the same Fund, the transfer agent fees paid by the merged, combined or otherwise converted class are added to those, if any, paid to CTB by the successor class during the Period for purposes of calculating the successor class's Distributable Shares and Specific Distributable Amounts.

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as its successor) served as sub-transfer agent but do not include the amounts paid by such Funds or Classes with respect to accounts for which another entity served as sub-transfer agent. Out-of-pocket expenses are certain separately itemized costs, including but not limited to printing and mailing charges, that are incurred by and reimbursed to the transfer agent or sub-transfer agent.

14. Previously Liquidated Funds. Funds that paid transfer agent fees to CTB during the Period but were liquidated or matured before the original submission of this Plan by Respondents and for which Fund assets were previously distributed to shareholders are excluded from receiving any distribution under this Plan. The transfer agent fees paid by these liquidated Funds during the Period are excluded from the calculation of Total TA fees for the purpose of calculating the Entitled Funds' and Entitled Classes' Distributable Shares. Such previously liquidated Funds are listed in Exhibit B.

15. Subsequently Liquidated Funds. In addition to the Funds described in paragraph 14, certain other Funds have been liquidated after the initial submission of this Plan pursuant to Section IV.H of the Order. Such subsequently liquidated funds are listed in Exhibit A. Respondents have advanced to each of these Funds or to each class of shares thereof an estimated distributable amount calculated using a methodology reviewed by the Commission staff. These amounts total approximately \$2,039,996.60. Because the Respondents advanced to each such Fund or class its estimated distributable amount, the plan will reimburse Respondents at the time of the final distribution of the Citigroup Fair Fund for these amounts plus the estimated pro rata earnings attributable to the Fund or class from the date of such advance through the date of distribution of the Citigroup Fair Fund.

16. Verification and Notice to the Funds. Respondents and the independent public accountants of the Funds have each taken such steps as they deemed reasonable to verify the accuracy of the data and calculations, including the Distributable Shares and Specific Distributable Amounts, and that such calculations and amounts conform in all

material respects to this Plan and the Order. After Respondents initially submitted the Plan to the Commission staff on August 26, 2005, the independent directors of each Entitled Fund then in existence and the counsel to those directors received notice of the plan and an opportunity to submit comments or objections. No objections were made concerning the initial plan.

17. Publication and Comment. Notice of this Plan shall be published in the SEC Docket and on the Commission website [<http://www.sec.gov>]. Any person or entity wishing to comment on this Plan must do so in writing by submitting comments within thirty (30) days of the date of the notice (i) by sending a letter to the Office of the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090; or (ii) by using the Commission's Internet comment form ([www.sec.gov/litigation/admin.shtml](http://www.sec.gov/litigation/admin.shtml)); or (iii) by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Copies of all comments must be served, by first-class mail, upon the Division of Enforcement to the attention of Alison Conn, Assistant Regional Director, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Room 400, New York, New York 10281. Comments submitted by e-mail or via the Commission's website should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-11935) in the subject line. Comments received will be available to the public. Commenters should submit only information that they wish to make publicly available.

18. Fund Administrator. Due to the small number of claimants, and to insure the maximum payout to these claimants, the Respondents propose that an Assistant Regional Director in the Commission's New York Regional Office be appointed as Fund

Administrator of the Citigroup Fair Fund. The Fund Administrator shall carry out the duties specified by this Plan, including, among other things, overseeing compliance with the terms of the Plan; cooperating with the Respondents and the Tax Administrator in providing the information necessary to accomplish income tax compliance; review and, if appropriate, approve payment of bills submitted by the Tax Administrator for services rendered to and taxes paid on behalf of the Citigroup Fair Fund; and submit the Final Accounting specified in paragraph 30 below.

19. In carrying out his or her duties, the Fund Administrator may be assisted by other Commission staff acting under his or her supervision.

20. Pursuant to Rule 1105(d) of the Commission's Rules of Practice, 17 C.F.R. § 201.1105(d), the Fund Administrator shall receive no compensation, other than his or her regular salary as an employee of the Commission, for his or her services in administering the Citigroup Fair Fund.

21. The Fund Administrator shall be entitled to rely on any orders issued in this proceeding by the Commission, the Secretary by delegated authority, or an Administrative Law Judge, and may not be held liable to any person for any act or omission in the course of administering the Citigroup Fair Fund, except upon a finding in this proceeding of willful failure to comply with the terms of the Plan or any orders issued in this proceeding. The Fund Administrator will be deemed to be acting within the scope of his or her employment with the Commission in administering this Plan.

22. Tax Administrator. The Commission has appointed Damasco & Associates as the Tax Administrator ("Tax Administrator") of the Fund.<sup>7</sup> The Fund

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<sup>7</sup> Exchange Act Release No. 53453 (Mar. 8, 2006).

Administrator and the Respondents will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling and advice work assigned to the Tax Administrator by the Commission. Before the distribution of the Citigroup Fair Fund to the Entitled Funds, the Respondents will coordinate with the Tax Administrator to determine whether it is necessary to solicit an IRS Form W-9 (resident entities) or W-8 (non-resident entities) from each Entitled Fund.

23. Fees and Expenses of Administration. Unless otherwise expressly provided in this Plan, the Respondents will pay all reasonable fees and costs associated with the administration of this Plan, including the fees of the Tax Administrator.

24. Tax Payments. The Tax Administrator shall bill the Citigroup Fair Fund for the tax payments made on its behalf. Each tax bill shall be reviewed by the Fund Administrator. After the Fund Administrator has approved the bill for payment, the Commission staff will pay the bill using funds from the Citigroup Fair Fund. Payment shall come first from any earnings, and second, if necessary, from the principal. Prior to the distribution and eventual termination of the Citigroup Fair Fund, the Respondents will coordinate with the Tax Administrator to make adequate reserves for final payment of tax liabilities.

25. Disbursement of Funds Through U.S. Treasury's Financial Management Service. The Citigroup Fair Fund will be disbursed to Entitled Funds and Entitled Classes through the United States Department of the Treasury's Financial Management Service ("FMS"), which will electronically transfer funds through the Automated Clearing House ("ACH"). Commission staff will provide the Respondents with appropriate proprietary software for compiling the information necessary to be submitted

to FMS. Approximately 30 days prior to the distribution date, the Respondents will compile the information available into an electronic file in the Agency Input format and submit it to the SEC Office of Financial Management to ensure the file passes all system edits. Any errors or omissions of data will be communicated back to the Respondents promptly. The Respondents will submit the final electronic file to the assigned Commission staff. Upon receipt of the file, the Commission staff will obtain authorization from the Commission to disburse pursuant to SEC Rule 1101(b)(6). When the order to disburse is entered, the Commission will transmit the electronic file to FMS for the transfer of funds. Within 24 to 48 hours of receipt by FMS, funds will be transferred by the ACH. FMS will notify the Commission, which, in turn, will notify the Fund Administrator and the Respondents of any returned items due to non-delivery and/or other deficiencies. The Respondents are responsible for researching and reconciling all errors that result in non-delivery and shall submit a supplemental electronic file for payment of the returned items. The Respondents are also responsible for accounting for all payments.

26. Approved Payment File. The disbursements described in paragraph 25 will be effected through disbursements to each entity that serves as custodian for one or more of the Entitled Funds or Entitled Classes (“Custodian”). The electronic file described in paragraph 25 will list the aggregate amounts that will be disbursed to each Custodian and will be supplemented by a confidential paper document that specifies the Distributable Share and Specific Distributable Amount for each Entitled Fund or Entitled Class at each identified Custodian (“Payment File”). The Commission staff will obtain

Commission approval of the Payment File as part of obtaining Commission authorization to disburse funds as described in paragraph 25.

27. Reimbursement of Advances to Subsequently Liquidated Funds. The electronic file submitted to the Staff pursuant to paragraph 25 of this Plan will specify the instructions and aggregate amounts to be wired to Respondents to reimburse Respondents for advances previously made by Respondents to subsequently liquidated funds, as described in paragraph 15 of this Plan. The Payment File will detail the amounts advanced by Respondents to any such subsequently liquidated fund and the date such amounts were advanced and will be accompanied by supporting documentation confirming the advances and receipt thereof by the relevant Funds. Upon authorization of disbursement by the Commission, Respondents will be reimbursed for these amounts through the FMS system at the same time as, and together with, the payments to the Funds' custodians described in paragraph 26 of this Plan.

28. Third-Party Validation and Custodian Confirmation. Respondents shall retain, at their expense, a third party not unacceptable to the staff of the Commission to validate: (a) Respondents' computations of the Distributable Shares in the Payment File; (b) the amounts advanced by Respondents to subsequently liquidated funds as described in paragraph 15 of this Plan; and (c) Respondents' computations of the Specific Distributable Amount of each Entitled Fund or Entitled Class in the Payment File. Such validation shall be performed by a method and to standards not unacceptable to the staff of the Commission. The third party shall report to, and provide a copy of the validation results to, the staff of the Commission together with Respondents' submission of the Payment File as described in paragraph 26 of this Plan. Respondents shall arrange for

each Custodian to provide written confirmation to the staff of the Commission, within 10 calendar days after receipt of the disbursements described in paragraph 25 of this Plan, of the amounts received and credited to each Entitled Fund or Entitled Class.

29. Undistributed Funds. A residual account within the Citigroup Fair Fund is established for any amounts remaining after all Specific Distributable Amounts have been distributed and after all advances to Subsequently Liquidated Funds have been reimbursed. The residual account may include, without limitation, funds reserved for future taxes and related expenses; distributions that were not delivered or not accepted; funds returned by the Entitled Funds; or tax refunds for overpayment or for waiver of penalties. All funds in the residual account will be transferred by the Commission staff to the U.S. Treasury after the final accounting is approved by the Commission.

30. Final Accounting. Once all funds are disbursed through FMS, the Fund Administrator will submit, on a standardized accounting form provided by Commission staff, a Final Accounting for approval by the Commission prior to the termination of the Citigroup Fair Fund and the discharge of the Fund Administrator. The Fund Administrator will consult with Respondents about the preparation of the Final Accounting.

31. Termination of the Citigroup Fair Fund. Upon distribution of the Citigroup Fair Fund, the Fund Administrator and the Respondents shall make arrangement for the final payment of taxes and Tax Administrator's fees. The Citigroup Fair Fund shall be eligible for termination after all of the following events have occurred: (1) the Final Accounting in an SEC standard accounting format by the Fund Administrator has been submitted and approved by the Commission; (2) all taxes and

fees have been paid; and (3) any remaining residual has been transferred to the Commission for transfer to the U.S. Treasury. When the Commission has approved the final accounting, the staff shall seek an order from the Commission to approve sending the remaining residual amount to the United States Treasury and shall seek an order for the termination of the Citigroup Fair Fund and the discharge of the Fund Administrator.

32. Amendments and Procedural Deadline Extensions. The Respondents will inform the Commission staff of any changes in the Plan. If the Fund Administrator determines a change to be material, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of the Respondents or the Fund Administrator, or upon the Commission's own motion. For good cause shown, the Commission staff may extend any of the procedural dates set forth in this Plan.