

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 98399 / September 14, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17808**

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**In the Matter of**

**CITIGROUP GLOBAL MARKETS,**  
**INC.,**

**Respondent.**

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**NOTICE OF PROPOSED PLAN OF  
DISTRIBUTION AND  
OPPORTUNITY FOR COMMENT**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17809**

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**In the Matter of**

**MORGAN STANLEY SMITH**  
**BARNEY LLC,**

**Respondent.**

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Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's (the "Commission") Rules on Fair Fund and Disgorgement Plans (the "Commission's Rules"), 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan of distribution (the "Proposed Plan") for the distribution of monies paid in the above-captioned matters.

On January 24, 2017, the Commission issued separate, but related settled orders (collectively, the "Orders") against Citigroup Global Markets, Inc. ("CGMI")<sup>1</sup> and Morgan Stanley Smith Barney LLC ("MSSB").<sup>2</sup> The Commission found that, between August 2010 and

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<sup>1</sup> See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 10288 (Jan. 24, 2017), (Admin. Proc. File No. 3-17808) (the "Citigroup Order").

<sup>2</sup> See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 10290 (Jan. 24, 2017), (Admin. Proc. File No. 3-17809) (the "Morgan Stanley Order").

July 2011, CGMI, a registered broker-dealer and investment adviser, developed a foreign exchange trading program known as CitiFX Alpha, and that registered representatives of CGMI and MSSB (a registered broker-dealer and an investment adviser) presented CitiFX Alpha program to certain brokerage customers and advisory clients of MSSB. The presentations of the CitiFX Alpha program were rendered materially misleading because the marketing materials failed to adequately disclose that the investors could be placed into the program using substantially more leverage than was disclosed and that mark-ups would be charged on each trade. The undisclosed leverage and mark-ups caused certain investors to suffer losses.

As a result of the conduct described in the Citigroup and Morgan Stanley Orders, the Commission found, in their respective Orders, that CGMI and MSSB violated Section 17(a)(2) of the Securities Act of 1933. The Commission ordered, among other things, CGMI and MSSB to each pay a total of \$2,963,735.61 in disgorgement, prejudgment interest, and civil money penalty to the Commission. In each of the Orders, the Commission created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid, along with the disgorgement and interest paid, can be distributed to harmed investors.

On January 31, 2023, the Commission issued an order consolidating the assets of the Fair Funds created pursuant to the Orders into a single Fair Fund, the Morgan Stanley Smith Barney Fair Fund (referenced herein as the Fair Fund), for purposes of distribution to harmed investors.<sup>3</sup>

The Fair Fund includes the \$5,927,471.22 paid by the Respondents. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund and has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any interest accrued will be added to the Fair Fund.

## **OPPORTUNITY FOR COMMENT**

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission's public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Proposed Plan by submitting a written request to Jennifer Cardello, United States Securities and Exchange Commission, via email at [cardelloj@sec.gov](mailto:cardelloj@sec.gov). All persons who desire to comment on the Proposed Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Nos. 3-17808 and 3-17809" in the subject line. Comments received will be

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<sup>3</sup> See Order Consolidating Fair Fund, Exchange Act Rel. No. 96777 (Jan. 31, 2023).

publicly available. Persons should submit only information they wish to make publicly available.

## **THE PROPOSED PLAN**

The Net Available Fair Fund<sup>4</sup> is comprised of the \$5,927,471.22 in disgorgement, prejudgment interest, and civil money penalties paid by the Respondents, plus interest and income earned thereon, less taxes, fees, and expenses. The Proposed Plan provides for the distribution of the Net Available Fair Fund to certain investors who suffered a loss in the form of excessive fees paid as a result of investing in CitiFX Alpha, a foreign exchange trading program developed by CGMI and sold by one of three MSSB financial advisors between August 2010 and July 2011 as described in the Orders.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.<sup>5</sup>

Vanessa A. Countryman  
Secretary

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<sup>4</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

<sup>5</sup> 17 C.F.R. § 200.30-4(a)(21)(iii).