**Effective November 4, 2022, This Letter is Withdrawn. Please consult the following web page for more information:
https://www.sec.gov/divisions/investment/im-modified-withdrawn-staff-statements**

October 22, 2010

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

IM Ref. No. 20107301535
Citigroup Inc. 001-09924

We would not recommend enforcement action to the United States Securities and Exchange Commission ("Commission") under Section 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-3 thereunder if any investment adviser that is required to be registered pursuant to Section 203 of the Advisers Act, including an affiliated adviser of Citigroup Inc. (the "Settling Firm"), pays the Settling Firm, as solicitor within the meaning of Rule 206(4)-3(d)(1), a cash solicitation fee, directly or indirectly, for the solicitation of advisory clients in accordance with Rule 206(4)-3,[1] notwithstanding an injunctive order issued by the United States District Court for the District of Columbia (the "Final Judgment") that otherwise would preclude such an investment adviser from paying such a fee, directly or indirectly, to the Settling Firm.[2]

Our position is based on the facts and representations in your letter dated October 21, 2010, particularly the representations of the Settling Firm that:

(1) it will conduct any cash solicitation arrangement entered into with any investment adviser registered or required to be registered under Section 203 of the Advisers Act in compliance with the terms of Rule 206(4)-3, except for the investment adviser's payment of cash solicitation fees, directly or indirectly, to the Settling Firm, which is subject to the Final Judgment;

(2) the Final Judgment does not bar or suspend the Settling Firm or any person currently associated with the Settling Firm from acting in any capacity under the federal securities laws;[3]

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[1] Rule 206(4)-3 prohibits any investment adviser that is required to be registered under the Advisers Act from paying a cash fee, directly or indirectly, to any solicitor with respect to solicitation activities if, among other things, the solicitor is subject to an order, judgment or decree described in Section 203(e)(4) of the Advisers Act.

[2] *Securities and Exchange Commission v. Citigroup Inc.*, No. 10-cv-1277-ESH (D.D.C.) (Oct. 19, 2010).

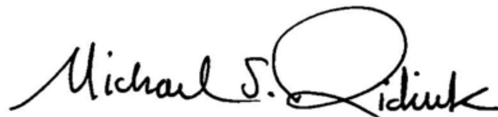
[3] Section 9(a) of the Investment Company Act of 1940 (the "Investment Company Act") provides, in pertinent part, that a person may not serve or act as, among other things, an investment adviser or depositor of any investment company registered under the Investment Company Act or a principal underwriter for any registered open-end investment company or registered unit investment trust if, among other things, that person, by reason of any misconduct, is permanently or temporarily enjoined from acting, among other things, as an underwriter, broker, dealer or investment adviser, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

The entry of the Final Judgment, absent the issuance of an order by the Commission pursuant to Section 9(c) of the Investment Company Act that exempts the Settling Firm from the provisions of Section 9(a) of the Investment Company Act, would effectively prohibit the Settling Firm and its affiliated persons from, among other things, acting as an investment adviser or depositor of any registered investment company or as principal underwriter for any registered open-end investment company or registered unit investment trust. You state that, pursuant to Section 9(c) of the Investment Company Act, certain affiliated persons of the Settling Firm, on behalf of themselves and future affiliated persons, submitted an application to the

(3) it will comply with the terms of the Final Judgment, including, but not limited to, the payment of the civil penalty; and

(4) for ten years from the date of the entry of the Final Judgment, the Settling Firm or any investment adviser with whom it has a solicitation arrangement subject to Rule 206(4)-3, will disclose the Final Judgment in a written document that is delivered to each person whom the Settling Firm solicits (a) not less than 48 hours before the person enters into a written or oral investment advisory contract with the investment adviser or (b) at the time the person enters into such a contract, if the person has the right to terminate such contract without penalty within five (5) business days after entering into the contract.

This position applies only to the Final Judgment and not to any other basis for disqualification under Rule 206(4)-3 that may exist or arise with respect to the Settling Firm.



Michael S. Didiuk
Attorney-Adviser

Commission requesting (i) an order of temporary exemption from Section 9(a) of the Investment Company Act and (ii) a permanent order exempting such persons from the provisions of Section 9(a) of the Investment Company Act.

On October 19, 2010, the Commission issued an order granting certain affiliated persons of the Settling Firm and the Settling Firm's future affiliated persons a temporary exemption from Section 9(a) of the Investment Company Act pursuant to Section 9(c) of the Investment Company Act, with respect to the Final Judgment, until the date the Commission takes final action on the application for a permanent order. *Citigroup Global Markets Inc., et al.*, SEC Rel. No. IC-29464 (Oct. 19, 2010). Therefore, such persons are not currently barred or suspended from acting in any capacity specified in section 9(a) of the Investment Company Act as a result of the Final Judgment.

Investment Advisers Act of 1940
Section 206(4) and Rule 206(4)-3

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October 21, 2010

BY E-MAIL AND U.S. MAIL

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

Re: SEC v. Citigroup Inc., 1:10-CV-01277 (ESH) (D.D.C. October 19, 2010).

Dear Mr. Scheidt:

This letter is submitted on behalf of our client Citigroup Inc., a Delaware corporation ("Citigroup"), in connection with a settlement agreement (the "Settlement") arising out of the above-captioned investigation by the Securities and Exchange Commission (the "Commission"). The complaint filed by the Commission (the "Complaint") concerned Citigroup's earnings disclosures that included statements about the investment bank's exposure to subprime mortgages.

Although Citigroup is not an investment adviser, registered under Section 203 of the Investment Advisers Act of 1940, as amended (the "Advisers Act"), nor does it currently engage in cash solicitation activities that are subject to Rule 206(4)-3 (the "Rule") under the Advisers Act, Citigroup may engage in such activities in the future. Citigroup seeks the assurance of the Staff of the Division of Investment Management ("Staff") that it would not recommend any enforcement action to the Commission under Section 206(4) of the Advisers Act, or the Rule, if an investment adviser, including an affiliated adviser of Citigroup, pays Citigroup, as a solicitor (as defined in Rule 206(4)-3(d)(1) under the Advisers Act), a cash payment, directly or indirectly, for the solicitation of advisory clients, notwithstanding the existence of the Final Judgment as to Defendant Citigroup (the "Final Judgment"),[1] which is described below.

While the Final Judgment does not operate to prohibit or suspend Citigroup from acting as, or being associated with, an investment adviser and does not relate to solicitation activities on behalf of any investment adviser, the Final Judgment may affect the ability of Citigroup to

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1 *Securities and Exchange Commission v. Citigroup Inc.*, 1:10-CV-01277 (ESH) (D.D.C. October 19, 2010).

receive such payments.[2] The Staff has granted no-action relief under the Rule in similar circumstances.

BACKGROUND

The staff of the Division of Enforcement engaged in settlement discussions with Citigroup in connection with an injunctive action arising out of the above-captioned investigation pursuant to Sections 20(b) and 22(a) of the Securities Act of 1933 (the "Securities Act") and Sections 21(d)(1) and 27 of the Securities Exchange Act of 1934 (the "Exchange Act"). As a result of these discussions, Citigroup submitted a Consent to Entry of Final Judgment (the "Consent") that was presented by the staff of the Commission to the United States District Court for the District of Columbia (the "Court") when the Commission filed its complaint (the "Complaint") against Citigroup in a civil action.

In the Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, Citigroup agreed to consent to the entry of the Final Judgment without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the Court over it and the subject matter of the action). Under the terms of the Final Judgment, the Court permanently enjoins Citigroup from future violations of Section 17(a) of the Securities Act, Section 13(a) of the Exchange Act, and Exchange Act Rules 12b-20 and 13a-11. The Final Judgment resolved the Commission staff's investigation into Citigroup disclosures in July and October 2007 about the investment bank's subprime exposure. The specific allegations are that Citigroup misled investors when it stated that it had reduced the investment bank's subprime exposure from $24 billion at the end of 2006 to $13 billion or slightly less than that amount, while, in fact, the investment bank's subprime exposure also included approximately $43 billion of "super senior" tranches of subprime collateralized debt

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2 Under Section 9(a) of the Investment Company Act of 1940 ("Investment Company Act"), Citigroup and its affiliated persons are, as a result of the Final Judgment, prohibited from serving or acting as, among other things, an investment adviser or depositor of any registered investment company or as principal underwriter for any registered open-end investment company or registered unit investment trust. As of the date of this letter, Citigroup does not serve in any of the listed capacities with respect to registered investment companies, but several affiliates do. Affiliated persons of Citigroup who act in the capacities set forth in Section 9(a) of the Investment Company Act filed an application under Section 9(c) of the Investment Company Act requesting the Commission to issue both temporary and permanent orders exempting them, and Citigroup's future affiliated persons, should any of them serve or act in any of the capacities set forth in Section 9(a), from the restrictions of Section 9(a). The applicants believe that they meet the standards for exemptive relieve under Section 9(c). On October 19, 2010, the Commission issued a temporary order simultaneous with the Final Judgment (*Citigroup Global Markets Inc., et al.*, SEC Rel. No. IC-29464 (October 19, 2010)), and the applicants expect the Commission will issue a permanent order in due course thereafter.

obligations and related instruments called "liquidity puts" that were believed to have very low risk. The Final Judgment also requires Citigroup to pay disgorgement in the amount of $1 and a civil monetary penalty of $75 million.

EFFECT OF RULE 206(4)-3

The Rule prohibits an investment adviser from paying a cash fee to any solicitor that has been temporarily or permanently enjoined by an order, judgment, or decree of a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Entry of the Final Judgment could cause Citigroup to be disqualified under the Rule, and accordingly, absent no-action relief, Citigroup may be unable to receive cash payments, directly or indirectly, from advisers registered or required to be registered for the solicitation of advisory clients.

DISCUSSION

In the release adopting the Rule, the Commission stated that it "would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor a person subject to a statutory bar."[3] We respectfully submit that the circumstances present in this case are precisely the sort that warrant a grant of no-action relief.

The Rule's proposing and adopting releases explain the Commission's purpose in including the disqualification provisions in the Rule. The purpose was to prevent an investment adviser from hiring as a solicitor a person whom the adviser was not permitted to hire as an employee, thus doing indirectly what the adviser could not do directly. In the proposing release, the Commission stated that:

> [b]ecause it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who . . . has engaged in any of the conduct set forth in Section 203(e) of the [Advisers] Act . . . and therefore could be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.[4]

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[3] *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295, at note 10.

[4] *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 615 (Feb. 2, 1978), 14 S.E.C. Docket (CCH) 89, 91.

The Final Judgment does not bar or suspend Citigroup or any person currently associated with it from acting in any capacity under the federal securities laws. Citigroup has not been sanctioned for activities relating to conduct as an investment adviser or relating to solicitation of advisory clients.[5] The Final Judgment does not pertain to advisory activities. Accordingly, consistent with the Commission's reasoning, there does not appear to be any reason to prohibit an adviser from paying Citigroup for engaging in solicitation activities under the Rule.

The Staff previously has granted numerous requests for no-action relief from the disqualification provisions of the Rule to individuals and entities found by the Commission to have violated a wide range of federal securities laws and rules thereunder or permanently enjoined by courts of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.[6]

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[5] Citigroup additionally notes that it has not been found to have violated, or found to have aided and abetted another person in violating, the cash solicitation rule.

[6] *See, e.g.*, *General Electric Company*, SEC No-Action Letter (pub. avail. Aug. 2, 2010); *Goldman, Sachs & Co.*, SEC No-Action Letter (pub. avail. July 22, 2010); *General Electric Company*, SEC No-Action Letter (pub. avail. Aug. 12, 2009); *Prudential Financial, Inc.*, SEC No-Action Letter (pub. avail. Sept. 5, 2008); *Barclays Bank PLC*, SEC No-Action Letter (pub. avail. June 6, 2007); *Emanuel J. Friedman and EJF Capital LLC)*, SEC No-Action Letter (pub. avail. Jan. 16, 2007); *Ameriprise Financial Services Inc.*, SEC No-Action Letter (pub. avail. Apr . 5, 2006); *Millenium Partners, L.P., et al.*, SEC No-Action Letter (pub. avail. Mar. 9, 2006) (no-action request and relief encompassed natural persons); *American International Group, Inc.*, SEC No-Action Letter (pub. avail. Feb. 21, 2006); *CIBC Mellon Trust Company*, SEC No-Action Letter (pub. avail. Feb. 24, 2005); *Goldman, Sachs & Co.*, SEC No-Action Letter (pub. avail. Feb. 23, 2005); *Morgan Stanley & Co. Incorporated*, SEC No-Action Letter (pub. avail. Feb. 4, 2005); *American International Group, Inc.*, SEC No-Action Letter (pub. avail. Dec. 8, 2004); *James DeYoung*, SEC No-Action Letter (pub. avail. Oct. 24, 2003) (relief given to natural person); *Stephens Inc.*, SEC No-Action Letter (pub. avail. Dec. 27, 2001); *Prime Advisors, Inc.*, SEC No-Action Letter (pub. avail. Nov. 8, 2001); *Legg Mason Wood Walker, Inc.*, SEC No-Action Letter (pub. avail. June 11, 2001); *Dreyfus Corp.*, SEC No-Action Letter (pub. avail. March 9, 2001); *Prudential Securities Inc.*, SEC No-Action Letter (pub. avail. Feb. 7, 2001); *Tucker Anthony Inc.*, SEC No-Action Letter (pub. avail. Dec. 21, 2000); *J.B. Hanauer & Co.*, SEC No-Action Letter (pub. avail. Dec. 12, 2000); *Founders Asset Management LLC*, SEC No-Action Letter (pub. avail. Nov. 8, 2000); *Credit Suisse First Boston Corp.*, SEC No-Action Letter (pub. avail. Aug. 24, 2000); *Janney Montgomery Scott LLC*, SEC No-Action Letter (pub. avail. July 18, 2000); *Aeltus Investment Management, Inc.*, SEC No-Action Letter (pub. avail. July 17, 2000); *Paul Laude, CFP*, SEC No-Action Letter (pub. avail. June 22, 2000) (relief given to natural person); *William R. Hough & Co.*, SEC No-Action Letter (pub. avail. Apr. 13, 2000); *In the Matter of Certain Municipal Bond Refundings*, SEC No-Action Letter (pub. avail. Apr. 13, 2000); *In the Matter of Certain Market Making Activities on Nasdaq*, SEC No-Action Letter (pub. avail. Jan. 11, 1999); *Paine Webber, Inc.*, SEC No-Action Letter (pub. avail. Dec. 22, 1998); *NationsBanc Investments, Inc.*, SEC No-Action Letter (pub. avail. May 6, 1998); *Morgan Keegan & Co., Inc.*, SEC No-Action

UNDERTAKINGS

In connection with this request, Citigroup undertakes:

1. to conduct any cash solicitation arrangement entered into with any investment adviser registered or required to be registered under Section 203 of the Advisers Act in compliance with the terms of Rule 206(4)-3, except for the investment adviser's payment of cash solicitation fees, directly or indirectly, to Citigroup, which is subject to the Final Judgment;

2. the Final Judgment does not bar or suspend Citigroup or any person currently associated with it from acting in any capacity under the federal securities laws;

3. to comply with the terms of the Final Judgment, including, but not limited to, paying the civil penalty; and

4. that, for ten years from the date of the entry of the Final Judgment, Citigroup or any investment adviser with whom it has a solicitation arrangement subject to Rule 206(4)-3, will disclose the Final Judgment in a written document that is delivered to each person whom Citigroup solicits (a) not less than 48 hours before the person enters into a written or oral investment advisory contract with the investment adviser or (b) at the time the person enters into such a contract, if the person has the right to terminate such contract without penalty within five (5) business days after entering into the contract.

CONCLUSION

We respectfully request the Staff advise us that it will not recommend enforcement action to the Commission if an investment adviser that is registered or is required to be registered with the Commission pays Citigroup, directly or indirectly, a cash payment for the solicitation of advisory clients, notwithstanding the Final Judgment.

Letter (pub. avail. Jan. 9, 1998); *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, SEC No-Action Letter (pub. avail. Aug. 7, 1997); *Gruntal & Co.*, SEC No-Action Letter (pub. avail. July 17, 1996); *Salomon Brothers Inc.*, SEC No-Action Letter (pub. avail. Jan. 26, 1994); *BT Securities Corporation*, SEC No-Action Letter (pub. avail. Mar. 30, 1992); *Kidder Peabody & Co. Inc.*, SEC No-Action Letter (Oct. 11, 1990); *First City Capital Corp.*, SEC No-Action Letter (pub. avail. Feb. 9, 1990); *RNC Capital Management Co.*, SEC No-Action Letter (pub. avail. Feb. 7, 1989); and *Stein Roe & Farnham, Inc.*, SEC No-Action Letter (pub. avail. Aug. 25, 1988).

Please do not hesitate to call me at (202) 663-6014 regarding this request.

Very truly yours,

Gail S. Ennis