

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
20041000119-01

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REGISTRATION & DISCLOSURE

TO: Department of Market Regulation
NASD

RE: Citigroup Global Markets, Inc., Respondent
CRD No. 7059

Pursuant to Rule 9216 of NASD Code of Procedure, Citigroup Global Markets, Inc. (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against the firm alleging violations based on the same factual findings.

The firm understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
3. If accepted:
 - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and

- d. the firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

The firm also understands that its experience in the securities industry and disciplinary history may be factors which will be considered in deciding whether to accept this AWC. That experience and relevant history are as follows:

The firm has been a member of NASD since October 16, 1936. On January 28, 2005, NASD accepted an AWC in which the firm was censured and, in relevant part, fined \$12,500 for inaccurate short interest reporting during the months of October 2002 and November 2002.

I.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in

discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

In Market Regulation Review No. 20041000119/MRD200448584, the Department of Market Regulation staff (the "staff") conducted a review of the firm's compliance with the rules and regulations applicable to short interest reporting for May 1998 through October 2005 (the "review period"), with specific samples of short interest reports in 49 securities within the review period. The staff also reviewed the firm's written supervisory procedures and supervisory system concerning short interest reporting that were in effect during the review period. The New York Stock Exchange ("NYSE") simultaneously conducted a review of the firm's short interest reporting to the NYSE.

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:
 - 1. In April 2005 while responding to a questionnaire sent by the NYSE regarding the firm's short interest reporting ("SIR") process the firm conducted an internal review of its short interest reporting. Through this review, the firm became aware of computer coding issues that affected the firm's SIR to NASD, the NYSE and the American Stock Exchange ("AMEX"), self-regulatory organizations ("SROs").
 - 2. Specifically, through this review, the firm discovered that it had misreported short interest positions to NASD for 35 securities for the month of April 2005 and 13 securities for the month of May 2005. The firm was able to report the corrected positions for the 13 securities in May 2005 before NASD publicly released the short interest reports for those securities however, the firm did not provide the corrected positions within the two business days after the reporting settlement date as required by NASD Conduct Rule 3360. The staff initially became aware of the inaccuracies through its monthly short interest reporting confirmation process. Based on this information, the staff initiated a review of the firm's compliance with its short interest reporting obligations. Ultimately, through the firm's internal review, the firm identified 48 securities for which it may have misreported short interest positions for an indeterminate period of time due to the computer coding issues.

3. The firm's SIR process used an automated system to identify the accounts for which short interest reporting was required and to compile short interest positions for such accounts. In addition, the firm utilized a Master Securities Database ("MSD") to identify and classify all securities in which it conducted business. One of the functions of the MSD was to assign a market class code (e.g., Nasdaq, listed, OTC, etc.) to each security. These market class codes were then used in the SIR process to determine the extent to which and to whom certain short interest positions should be reported. The firm's automated systems, among other things, relied upon the accuracy and completeness of the data in the firm's MSD, as well as the parameters set by the firm to identify the accounts to be included and, conversely, excluded from the short interest reporting requirement.
4. Based on the firm's review of its SIR process, the firm determined that its short interest calculations for certain securities were inaccurate due primarily to: (a) particular securities were coded with an incorrect market or exchange in the firm's MSD (e.g., Nasdaq securities coded as AMEX or OTC) which resulted in short positions reported to the wrong SRO; or (b) particular accounts were incorrectly hard coded for exclusion from the short interest reporting requirement which resulted in nonreporting of short positions held in these accounts. As a result of these issues, the monthly short interest positions reported by the firm to NASD and the other SROs were inaccurate in that the firm failed to report or misreported short interest positions.
5. While the firm was able to identify the source of the above-referenced inaccuracies, it was unable to identify the length of time that the firm inaccurately reported short interest positions to NASD or the number of short interest positions that it misreported. In an effort to identify the length of time and number of short interest positions impacted by the above-referenced coding issues and in light of the NASD's rules regarding document retention, the staff requested that the firm conduct a review of 48 securities during 16 sample months from May 1998 through October 2005.
6. Based upon a review of short interest positions reported by the firm for the 48 securities during the review period,¹ there were 88 short interest positions that the firm failed to report and 12 short interest positions that the firm misreported. In particular, the firm reported 12 short interest positions in Nasdaq securities totaling 2,126,070 shares when it should have reported 100 short interest positions in Nasdaq securities totaling 12,016,807 shares. These 100 instances of non-reporting or

¹ Salomon Brothers and Smith Barney merged operations under the firm in early 2002. The firm provided short interest positions for the Smith Barney accounts. However, the firm was unable to provide short interest positions for the accounts of Salomon Brothers, for the months in 1998 and 1999.

misreporting represent 13 percent of the 768 instances covered in the review.

7. In a separate matter, the staff reviewed the firm's short interest reporting to NASD for Vion Pharmaceuticals ("VION"). Due to a clerical error in May 2004, the firm submitted to NASD its short interest position of 1,188,248 shares of VION, when its actual short interest positions in VION was 788,157 shares.
8. The conduct described in paragraphs one through eight constitutes separate and distinct violations of NASD Conduct Rules 2110 and 3360.
9. During the review period, the firm failed to reasonably supervise its process for reporting short interest positions to NASD so as to detect and prevent violations of NASD Conduct Rule 3360. Among other deficiencies, the firm did not have in place a supervisory system or procedure to detect the extent to which improper coding of its automated short interest reporting system resulted in the reporting of inaccurate short interest reports to NASD. Additionally, the firm's supervisory systems or procedures were not reasonably designed to identify reportable short interest positions in the firm's stock (i.e., source) record that had not been collected, or had been inaccurately collected, by the firm's short interest reporting system.
10. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning short interest reporting. Specifically, the firm's supervisory system did not include adequate written supervisory procedures providing for: (1) identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and/or (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.
11. The conduct described in paragraphs nine and ten constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. The firm also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$300,000 to be paid jointly to NASD and the New York Stock Exchange.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. The firm understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD, or its staff.
- B. The firm agrees to pay any monetary sanctions imposed on the firm upon notice that this AWC has been accepted and that such payments are due and payable, and has attached the Election of Payment form showing the method by which the firm proposes to pay any fine imposed.
- C. The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Citigroup Global Markets, Inc. certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the firm to submit it.

Citigroup Global Markets, Inc.

6-27-07

Date

By: Elaine H. Mandelkern
Name: Elaine H. Mandelkern
Title: Managing Director & Deputy
General Counsel

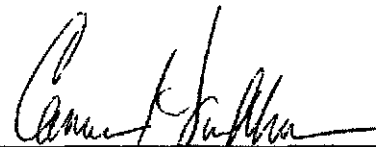
Reviewed by:


Counsel for Respondent

Accepted by NASD:

8/23/07

Date


Cameron K. Funkhouser
Senior Vice President
Department of Market Regulation

Signed on behalf of the Director of ODA,
by delegated authority