

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020066141101**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Citigroup Global Markets Inc. (Respondent)
Member Firm
CRD No. 7059

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

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

CGMI has been a member of FINRA since October 1936. CGMI is headquartered in New York, New York and has approximately 700 branches with approximately 8,000 registered representatives. CGMI's business includes retail brokerage, underwriting, trading, and market-making.¹

OVERVIEW

Between November 2017 and August 2022, CGMI violated Securities Exchange Act of 1934 Rule 14e-4, commonly referred to as the "Short Tender Rule," and FINRA Rule 2010, by over-tendering shares in 13 partial tender offers (PTOs), and received ill-gotten gains of approximately \$5.7 million. Also, from November 2017 through December 2020, CGMI violated FINRA Rules 3110 and 2010 by failing to have a supervisory system reasonably designed to achieve compliance with Exchange Act Rule 14e-4.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

Exchange Act Rule 14e-4

Exchange Act Rule 14e-4(b)(1)(i) provides in relevant part that “it shall be unlawful for any person² acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer ... [f]or his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in ... [t]he subject security.”

A PTO is defined in Exchange Act Rule 14e-4(a)(5) as “a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a *pro rata* basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a *pro rata* basis for a specified period.”

Under Exchange Act Rule 14e-4, a person’s “net long position” in a subject security or an equivalent security³ equals the excess, if any, of such person’s “long position” over a person’s “short position.” The calculation of the net long position must be done both at the time of tender and at the end of the proration period, or the period during which securities are accepted by lot, including any extension thereof.

A PTO involves “proration risk,” that is, a risk to shareholders of the subject security that less than all of the securities tendered will be accepted. Accordingly, short tendering is proscribed by Exchange Act Rule 14e-4 because the practice unfairly decreases the short tendering person’s proration risk at the expense of other tenderers, who will have proportionately fewer shares accepted.

A violation of the federal securities laws or FINRA’s rules also constitutes a violation of FINRA Rule 2010, which requires member firms in the conduct of their business to “observe high standards of commercial honor and just and equitable principles of trade.”

CGMI Violated Exchange Act Rule 14e-4

Between November 2017 and August 2022, CGMI tendered approximately 11.1 million more shares than it was entitled to tender (i.e., over-tendered) in 13 PTOs (set forth in Schedule A attached), ranging from 5,798 shares to 4.4 million shares per offering. CGMI over-tendered the shares because it calculated the number of shares available for

² Under the Exchange Act, the term “person” means a natural person, company, government, or political subdivision, agency, or instrumentality of a government. Exchange Act §3(a)(9).

³ Exchange Act Rule 14e-4 defines an equivalent security as including certain options, warrants, or other rights to purchase the subject security.

tender on an account-by-account basis instead of on a firm-wide basis, as Exchange Act Rule 14e-4 requires.

For example, with respect to the PTO in which CGMI over-tendered the largest number of shares, CGMI over-tendered approximately 4.4 million shares for certain firm accounts. CGMI, however, had an overall net short position due to additional firm accounts that were short more than 4.9 million shares, resulting in CGMI over-tendering and receiving approximately \$3.4 million in ill-gotten gains.

In addition, in two PTOs, CGMI over-tendered shares because it did not account for relevant short call positions, as required under Exchange Act Rule 14e-4.

In nine of the thirteen PTOs, the proration factors ranged from approximately 4.7% to 96.2%. Four of the PTOs were not prorated.

By tendering more shares than it was entitled to tender in the 13 PTOs discussed above, CGMI violated Exchange Act Rule 14e-4 and FINRA Rule 2010.

CGMI did not have a supervisory system reasonably designed for achieving compliance with Exchange Act Rule 14e-4

FINRA Rule 3110(a) requires each member to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA and NASD rules. FINRA Rule 3110(b) requires each member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

From November 2017 through December 2020, CGMI did not have a supervisory system or WSPs reasonably designed to achieve compliance with Exchange Act Rule 14e-4. Instead, CGMI had only operational procedures that instructed Asset Services to check the individual accounts from which the shares were tendered to make sure that the shares were held in the account. If the tendering account was long the shares, it was permitted to tender the shares. The procedures did not require the firm to determine whether it held any short positions in the security in other accounts, nor did they provide any other means to ensure that the firm would not tender more securities than it was net long. Therefore, CGMI violated FINRA Rules 3110(a) and (b) and 2010.⁴

B. Respondent also consents to the imposition of the following sanctions:

- a censure;

⁴ In January 2021, CGMI reviewed and updated its procedures to include supervisory procedures to achieve compliance with Exchange Act Rule 14e-4.

- a \$2.5 million fine, of which \$833,334 is payable to FINRA; and
- disgorgement of \$5,771,489, of which \$1,923,829 is payable to FINRA, as described below.⁵

Acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in the same matter between the firm and NYSE American and the firm and NYSE Arca.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed. Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter. The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against it;
- B. To be notified of the 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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 its acceptance or rejection.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of

⁵ The remainder of the fine and disgorgement shall be allocated evenly between the NYSE American LLC ("NYSE American") and NYSE Arca, Inc. ("NYSE Arca"). FINRA determined not to impose prejudgment interest on the disgorgement because the fine and disgorgement taken together achieves the appropriate deterrence value of equitable disgorgement.

FINRA 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.

III.

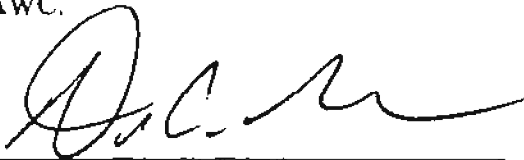
OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and
 - 4. Respondent 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. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

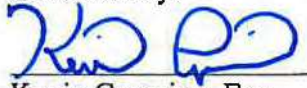
September 12, 2023
Date


Citigroup Global Markets Inc.
Respondent

Print Name: DIANA MILLER

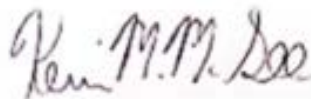
Title: Managing Director

Reviewed by:


Kevin Campion, Esq.
Counsel for Respondent
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Accepted by FINRA:

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


Kevin M. McGee
Senior Counsel
FINRA
Department of Enforcement
15200 Omega Drive, Suite 300
Rockville, MD 20850

September 26, 2023
Date

Schedule A

PTO	YEAR	Shares Over-Tendered by CGMI	Disgorgement Amount
PTO 1	2017	4,407,500	\$3,426,570
PTO 2	2018	412,500	\$157,407
PTO 3	2018	400,000	\$1,389,626
PTO 4	2018	142,398	\$119,378
PTO 5	2018	5,798	\$1,034
PTO 6	2019	205,111	\$0
PTO 7	2019	18,621	\$1,268
PTO 8	2019	3,633,497	\$600,900
PTO 9	2020	275,616	\$30,000
PTO 10	2020	828,150	\$28,056
PTO 11	2020	490,400	\$0
PTO 12	2020	25,000	\$17,250
PTO 13	2022	282,253	\$0
		11,126,844	\$5,771,489