

**NYSE ARCA, INC.  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2020066141103**

TO: NYSE Arca, Inc.

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

**During the period November 2017 through August 2022 (the “Relevant Period”), Citigroup Global Markets Inc. (“CGMI” or the “Firm”) violated Securities Exchange Act of 1934 Rule 14e-4 by over-tendering shares in 13 partial tender offers. From November 2017 through December 2020, CGMI also violated NYSE Arca Rule 11.18(b) and (c) by failing to have a supervisory system and written supervisory procedures reasonably designed to achieve compliance with Exchange Act Rule 14e-4. Consent to a censure, a \$833,333 fine (resolved simultaneously with similar matters for a total fine of \$2.5 million) and disgorgement of \$1,923,829 (resolved simultaneously with similar matters for total disgorgement of \$5,771,489).<sup>1</sup>**

\* \* \*

Pursuant to Rule 10.9216 of the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) Code of Procedure, 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, NYSE Arca will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

**I. ACCEPTANCE AND CONSENT**

- A. CGMI 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 NYSE Arca, or to which NYSE Arca 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 NYSE Arca:

**BACKGROUND AND JURISDICTION**

1. CGMI has been registered as an Equities Trading Permit (“ETP”) Holder and as an Options Trading Permit Holder (“OTP”) with NYSE Arca since January 2010. 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. The Firm has no relevant disciplinary history.

---

<sup>1</sup> Those matters were brought by NYSE American LLC (“NYSE American”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”).

## VIOLATIONS

### *Exchange Act Rule 14e-4 Violations*

2. Exchange Act Rule 14e-4(b)(1)(i) provides in relevant part that “it shall be unlawful for any person<sup>2</sup> 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.”
3. A partial tender offer (“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.”
4. Under Exchange Act Rule 14e-4, a person’s “net long position” in a subject security or an equivalent security<sup>3</sup> 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.
5. 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.
6. 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 a total of 13 PTOs (set forth in Schedule A attached), ranging from 5,798 shares to 4.4 million shares per offering.
7. CGMI over-tendered the shares because it calculated the number of shares available for tender on an account-by-account basis instead of on a firm-wide basis, as Exchange Act Rule 14e-4 requires.
8. 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

---

<sup>2</sup> 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).

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

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.

9. 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.
10. In nine of the thirteen PTOs, the proration factors ranged from approximately 4.7% to 96.2%. Four of the PTOs were not prorated.
11. As a result of the foregoing conduct, CGMI violated Exchange Act Rule 14e-4.

*NYSE Arca Rule 11.18(b) and (c) Violation*

12. NYSE Arca Rule 11.18(b) requires each OTP Holder to “establish and maintain a system to supervise the activities of its associated persons and operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Rules.”
13. NYSE Arca Rule 11.18(c) requires each OTP Holder to “establish, maintain, and enforce written procedures to supervise the 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 the NYSE Arca Rules.”
14. From November 2017 through December 2020, CGMI did not have a supervisory system or written supervisory procedures 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.<sup>4</sup>
15. As a result of the foregoing conduct, CGMI violated NYSE Arca Rule 11.18(b) and 11.18(c).

**SANCTIONS**

B. The Firm also consents to the imposition of the following sanctions:

1. **Censure and a \$833,333 fine (resolved simultaneously with similar matters for a total fine of \$2.5 million), and disgorgement of \$1,923,829 (resolved simultaneously with similar matters for total disgorgement of \$5,771,489).**<sup>5</sup>

---

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

<sup>5</sup> Those other matters were brought by NYSE American and FINRA.

Acceptance of this AWC is conditioned upon acceptance of parallel settlement agreements in the related matters between the Firm and FINRA and the Firm and NYSE American.

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

## **II. WAIVER OF PROCEDURAL RIGHTS**

The Firm specifically and voluntarily waives the following rights granted under the NYSE Arca 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 Exchange's Board of Directors 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 prejudice of the Chief Regulatory Officer of NYSE Arca; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE Arca employee; or any Regulatory Staff as defined in Rule 10.9120 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 communication prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE Arca pursuant to NYSE Arca Rule 10.9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
  - 1. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Arca Rule 10.9310(a)(1)(B);
  - 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
  - 3. NYSE Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;
  - 4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; and
  - 5. 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. The Firm may not take any position in any proceeding brought by or on behalf of the Exchange, or to which the Exchange is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Exchange is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. The Firm 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. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

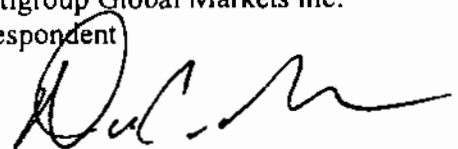
The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its 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 it 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 herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

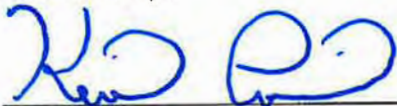
September 12, 2023  
Date

Citigroup Global Markets Inc.  
Respondent

By:

  
Name: DIANA MILLER  
Title: Managing Director

Reviewed by:

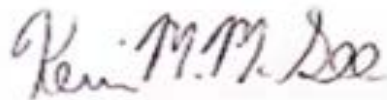


Kevin Campion, Esq.  
Counsel for Respondent  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, DC 20005

Accepted by FINRA

September 13, 2023

Date



Kevin M. McGee  
Senior Counsel  
FINRA, Department of Enforcement

Signed on behalf of NYSE Arca, Inc., by  
delegated authority from its Chief  
Regulatory Officer

**Schedule A**

<b>PTO</b>	<b>YEAR</b>	<b>Shares Over-Tendered by CGMI</b>	<b>Disgorgement Amount</b>
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
		<b>11,126,844</b>	<b>\$5,771,489</b>