

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

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

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<b>In the Matter of</b>	:	
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<b>CITIGROUP GLOBAL MARKETS, Inc.,</b>	:	<b>PLAN OF DISTRIBUTION</b>
	:	
<b>Respondent.</b>	:	
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**ADMINISTRATIVE PROCEEDING  
File No. 3-17809**

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<b>In the Matter of</b>	:	
	:	
<b>MORGAN STANLEY SMITH BARNEY LLC,</b>	:	
	:	
<b>Respondent.</b>	:	
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**I. OVERVIEW**

1. The Division of Enforcement has prepared this Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”) comprised of disgorgement, prejudgment interest, and civil money penalties paid by Citigroup Global Markets, Inc. (“CGMI”) and Morgan Stanley Smith Barney LLC (“MSSB”) (collectively, the “Respondents”) in the above-captioned matters.<sup>1</sup>

2. As described more specifically below, the Plan seeks to compensate certain investors harmed by the Respondents’ misconduct described in the Orders, in connection with

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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”); 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” and collectively with the Citigroup Order, the “Orders”).

the Respondents making false and misleading statements about the foreign exchange trading program known as “CitiFX Alpha” developed by CGMI and sold by one of three MSSB financial advisors. Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, the Commission staff has reasonably concluded that it has all records necessary to calculate each investor’s harm. As a result, the Fair Fund is not being distributed according to a claims-made process, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), certain investors will be compensated based on their losses suffered in the form of excessive fees paid as a result of being invested in CitiFX Alpha sold by one of three MSSB financial advisors between August 2010 and July 2011 as described in the Orders.

4. In the view of the Commission staff, this methodology constitutes a fair and reasonable allocation of the Fair Fund.

5. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan has been approved by the Commission, and the Commission retains jurisdiction over its implementation.

## **II. BACKGROUND**

6. On January 24, 2017, the Commission issued separate, but related settled Orders against CGMI and MSSB. In the Orders, the Commission found that, between August 2010 and 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 they failed to adequately disclose to the relevant investors that they 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 the relevant investors to suffer significant 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 Fair Funds, 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.

7. On January 31, 2023, the Commission ordered the consolidation of 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. *See* Order Consolidating Fair Fund, Exchange Act Rel. No. 96777 (Jan. 31, 2023).

8. The Respondents have paid in full. The Fair Fund has been deposited in a Commission-designated account at the United States Department of the Treasury, and any accrued interest will be added to the Fair Fund. The Fair Fund currently holds approximately \$6,436,810.73.

### III. DEFINITIONS

As used in this Plan, the following definitions will apply:

9. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator, and investment and banking costs.

10. **“Certification Form”** means the form that will be mailed to each Preliminary Claimant with the Plan Notice in order to confirm his, her, or its calculated Recognized Loss, the name and mailing address of the payee to which a Distribution Payment should be issued. The Certification Form may be accompanied by tax forms, as required, relating to the tax treatment of any distribution.

11. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

12. **“Eligible Claimant”** means a Preliminary Claimant, who is determined to have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

13. **“Excluded Party”** shall mean: (a) the Respondents, and Respondents’ advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; and (b) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

14. **“Fair Fund”** means the fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Respondents’ violations described in the Orders.

15. **“Final Determination Notice”** means the written notice sent by the Fund Administrator to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not returned, as described in paragraphs 37-39, the Certification Form and any tax forms requested in the Plan Notice notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Fund Administrator’s final ruling regarding the status of the claim. A Final Determination Notice will not be sent to any Preliminary Claimant whose Plan Notice was returned as “undeliverable.”

16. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

17. **“Payee”** means an Eligible Claimant whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

18. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

19. **“Plan Notice”** means a written notice from the Fund Administrator to each Preliminary Claimant regarding the Commission’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the Commission’s website, a copy of the Plan; the Certification Form and specification of any other information needed, such as tax forms, to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its calculated Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Fund Administrator as a resource for additional information or to contact with questions regarding the distribution.

20. **“Plan of Allocation”** means the methodology used by the Fund Administrator to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

21. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Fund Administrator based on her review and analysis of applicable records obtained by the Commission staff during its investigation, who may have suffered a loss due to the Respondents’ misconduct as described in the Orders in the form of excessive fees paid as a result of investing in CitiFX Alpha during the Relevant Period.

22. **“Recognized Loss”** means the amount of loss calculated in accordance with the Plan of Allocation.

23. **“Relevant Period”** is between August 2010 and July 2011.

24. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Fund Administrator has not been able to verify or who does not timely respond to the Fund Administrator’s attempts to obtain information, including the Certification Form or any other information sought in the Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

#### **IV. TAX COMPLIANCE**

25. On September 14, 2017, the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund to handle the tax obligations of

the Fair Fund.<sup>2</sup> The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its Revised 2017-2018 Engagement Letter Agreement with the Commission.<sup>3</sup>

26. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund.

27. All tax obligations will be paid from the Fair Fund, subject to the review and approval of Commission staff.

## **V. FUND ADMINISTRATOR**

28. Jennifer Cardello is the fund administrator for the Fair Fund (“Fund Administrator”). As a Commission employee, the Fund Administrator shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Fair Fund. In accordance with Rule 1105(c) of the Commission’s Rules,<sup>4</sup> no bond is required since the Fund Administrator is a Commission employee.

29. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; disseminating the Plan Notice; preparing accountings; cooperating with the Tax Administrator appointed by the Commission to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the Commission; and researching and reconciling errors and reissuing payments, when possible.

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<sup>2</sup> See Corrected Order Appointing Tax Administrator, Exchange Act Rel. No. 81634 (Sept. 14, 2017), (Admin. Proc. File No. 3-17808); Corrected Order Appointing Tax Administrator, Exchange Act Rel. No. 81633 (Sept. 14, 2017), (Admin. Proc. File No. 3-17809).

<sup>3</sup> See Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 81057 (June 30, 2017).

<sup>4</sup> 17 C.F.R. § 201.1105(c).

30. To carry out the purposes of this Plan, the Fund Administrator is authorized to make and implement immaterial changes to the Plan. If a change is deemed to be material by the Fund Administrator, Commission approval is required prior to implementation by amending the Plan.

31. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

## **VI. PLAN PROCEDURES**

### Specification of Preliminary Claimants

32. Using information obtained during its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to certain investors who may have suffered a loss due to the Respondents' misconduct in the form of excessive fees paid as a result of being invested in CitiFX Alpha sold by one of three MSSB financial advisors during the Relevant Period as described in the Orders.

### Procedures for Locating and Notifying Preliminary Claimants

33. Within thirty (30) days of Commission approval of the Plan, the Fund Administrator will send the Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

### Undeliverable Mail

34. If any mailing is returned as undeliverable, the Fund Administrator will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Fund Administrator will then resend it to the Preliminary Claimant's new address within twenty-one (21) days of receipt of the returned mail. If the mailing is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Fund Administrator, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

35. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Fund Administrator.

### Procedures to Request Plan Notice

36. Any Person who does not receive a Plan Notice, as described in paragraph 33, but who is aware of this Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant should contact the Fund Administrator within sixty (60) days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. The Fund Administrator will send the Person a Plan

Notice within fifteen (15) days of receiving the Person's documentation, if the Fund Administrator determines that the Person should have received a Plan Notice.

#### Certification Requirement by Preliminary Claimants and Failure to Respond to Plan Notice

37. In order to maintain classification as a Preliminary Claimant, the Certification Form must be signed by the Preliminary Claimant under penalty of perjury under the laws of the United States and returned to the Fund Administrator by the deadline stated in the Plan Notice. The Certification Form must be executed by the Preliminary Claimant, unless the Fund Administrator accepts such Certification Form from a successor, heir, administrator, or other Person authorized to act on the Preliminary Claimant's behalf. Those authorized to act on behalf of Preliminary Claimants will be eligible to participate in the distribution to the same extent the original investor would have been eligible under the terms of the Plan.

38. The Fund Administrator will review all Certification Forms. Each Preliminary Claimant will have the burden of proof to establish their identity as a Preliminary Claimant. The Fund Administrator will have the right to request, and the Preliminary Claimant will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

39. If a Preliminary Claimant fails to return the Certification Form and any other information needed, such as tax forms, within forty-five (45) days from the initial mailing of the Plan Notice, the Fund Administrator will make no fewer than two (2) attempts to contact the Preliminary Claimant by telephone or email, if known to the Fund Administrator. If a Preliminary Claimant fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

#### Dispute Process

40. Disputes will be limited to the amount of the Preliminary Claimant's calculated Recognized Loss. Within sixty (60) days of the initial mailing Plan Notice, the Fund Administrator must receive a written communication detailing any dispute along with any supporting documentation. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

#### Final Determination Notices

41. Within one hundred fifty (150) days of Commission approval of the Plan, the Fund Administrator will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute, as described in paragraph 40 above, notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not returned, as described in paragraphs 37-39 above, the Certification Form and any tax forms requested in the Plan Notice, notifying the Preliminary Claimant that he, she, or it has been

deemed an Unresponsive Preliminary Claimant. A Final Determination Notice will not be sent to any Preliminary Claimant whose Plan Notice was returned as “undeliverable.” The Final Determination Notice will constitute the Fund Administrator’s final ruling regarding the status of the claim.

#### Distribution Methodology

42. The Fund Administrator will calculate each Preliminary Claimant’s Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

43. No Distribution Payments will be made for less than \$10.00. If an Eligible Claimant’s Recognized Loss, in accordance with the Plan of Allocation, calculates to a distribution amount less than \$10.00, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to \$10.00. All Eligible Claimants whose Recognized Loss calculates to a distribution amount equal to or greater than \$10.00 will be deemed a Payee and receive a Distribution Payment.

#### Establishment of a Reserve

44. Before determining the amount of funds available for distribution and calculating each Payee’s Distribution Payment, the Fund Administrator, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the “Reserve”).

45. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 58 below.

#### Preparation of the Payment File

46. Within one hundred eighty (180) days of Commission approval of the Plan, the Fund Administrator will compile the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the “Payee List”) to make disbursements through the U.S. Treasury.

#### Distribution of the Fair Fund

47. Pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(6), the Commission staff will obtain an order from the Commission authorizing the disbursement of funds from the Net Available Fair Fund for distribution to Payees in accordance with the Payee List. The U.S. Treasury will mail checks or electronically transfer funds to each Payee as instructed by the Fund Administrator in accordance with the Payee List.



48. All checks will bear a stale date of one (1) year from the date of issuance. Checks that are not negotiated by the stale date will be voided. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except if a check reissue has been requested before the stale date, such request is governed by paragraph 52.

49. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after one (1) year from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be prepared by the Tax Administrator for review and approval by the Commission staff.

50. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Commission to compensate investors for harm as a result of securities law violations.

#### Post Distribution; Handing of Returned or Uncashed Checks; and Reissues

51. The Fund Administrator shall use her best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as "undeliverable." If new address information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than one (1) year after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Fund Administrator shall instruct the issuing financial institution to stop payment on such check. If the Fund Administrator is unable to find a Payee's correct address, the Fund Administrator, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

52. The Fund Administrator will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (e.g., name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn Distribution Payment to the requesting party. In no event will a check be reissued after one (1) year from the date of the original issuance without the approval of Commission staff.

53. The Fund Administrator will work with the U.S. Treasury and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

54. The Fund Administrator will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks. The Fund Administrator may reissue such checks, subject to the time limits detailed herein.

55. At the discretion of the Fund Administrator, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee’s Distribution Payment. In such situations, the Fund Administrator will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

#### Receipt of Additional Funds

56. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Commission’s termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan, pursuant to the Commission’s Rules.

#### Disposition of Undistributed Funds

57. If funds remain following the initial distribution, the Fund Administrator may seek subsequent distribution(s) of any remaining funds, pursuant to the Commission’s Rules. All subsequent distributions shall be made in a manner that is consistent with this Plan.

58. A residual will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds received due to the Fair Fund’s overpayment of taxes or for waiver of IRS penalties.

59. Once the Fund Administrator deems further distribution of the Fair Fund to investors infeasible, the Fund Administrator will direct any uncashed Distribution Payments to be voided, and such funds will be added to the Residual.

60. All funds remaining in the Residual that are infeasible to distribute to investors will be transferred to the U.S. Treasury after the final accounting is approved by the Commission. Returning such money to the Respondents would be inconsistent with the equitable principle that no Person should profit from his wrongdoing. Therefore, in these circumstances distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

### Administrative Costs

61. All Administrative Costs will be paid from the Fair Fund in accordance with the Commission's Rules.

### Accountings

62. When the final distribution is completed, the Fund Administrator will prepare a final accounting pursuant to Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), for the Commission's approval prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the funds are being held in a Commission-designated account at the U.S. Treasury and the Fund Administrator is a Commission employee, no interim accountings will be made.

### Termination of the Fair Fund

63. The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the Commission staff, has been submitted to and approved by the Commission; and (b) all Administrative Costs have been paid. Once the Commission has approved the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) the transfer of the Residual that is infeasible to return to investors, and any amounts returned to the Fair Fund in the future that is infeasible to return to investors, to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934; (b) discharge of the Fund Administrator; and (c) termination of the Fair Fund.

## Exhibit A

### PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate certain investors based on their losses suffered in the form of excessive fees paid as a result of being invested 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.<sup>1</sup> Based upon records obtained by the Commission during its investigation, the Fund Administrator has identified those investors, or their lawful successors, who may have suffered losses due to Respondents' misconduct described in the Orders during the Relevant Period. Commission staff economists performed the calculations described below using account-level information obtained by the Commission in the course of its investigation.

The Fund Administrator will calculate each Preliminary Claimant's loss ("Recognized Loss") as the total amount of undisclosed per-trade fee markups the Preliminary Claimant paid in connection with the CitiFX Alpha trading program.

To avoid payment of a windfall, the Recognized Loss will be reduced by the amount of any compensation for the loss that resulted from the conduct described in the Order that was received from another source (e.g., class action settlement), to the extent known by the Fund Administrator.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, as defined in the Plan, will be deemed an Eligible Claimant.

### **Additional Provisions**

Allocation of Funds: Since the Net Available Fair Fund exceeds the sum of Recognized Losses of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its Recognized Loss, plus "Reasonable Interest." The distribution amount will be subject to the "Minimum Distribution Amount."

Reasonable Interest: Since the Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants their Recognized Losses in full, the Fund Administrator will include interest in the distribution amount to compensate Eligible Claimants for the time value of their Recognized Losses. Reasonable Interest will be calculated using the short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the date of each Eligible Claimants' last at-issue transaction through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, Reasonable Interest will be awarded on a *pro-rata* basis from the excess funds.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00 (inclusive of Reasonable Interest). If an Eligible Claimant's distribution amount is less than the

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<sup>1</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

Minimum Distribution Amount, he, she, or it will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee.

Distribution Payment: Each Payee will receive a Distribution Payment for his, her, or its distribution amount. In no event will a Payee receive from the Fair Fund more than his, her, or its Recognized Loss plus Reasonable Interest.