KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.

Washington, D.C. 20005

(202) 879-5000

www.kirkland.com

Robert W. Pommer
To Call Writer Directly:
[redacted]

[redacted]

Facsimile:
(202) 879-5200

October 9, 2017

By Federal Express and Email

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: *In the Matter of Citigroup Alternative Investments LLC and Citigroup Global Markets Inc.*, Administrative Proceeding File No. 3-16757

Dear Mr. Fields:

We are writing on behalf of our client, Ted Berghorst, to submit comments on the proposed plan of distribution in the above captioned case ("Proposed Plan"). Mr. Berghorst invested in three Potentially Eligible Funds, only one of which will receive a distribution under the Proposed Plan.[1]

Like all other Eligible Investors who will receive a Distribution Payment under the Proposed Plan, the Distribution Payment to Mr. Berghorst will cover only a fraction of his out-of-pocket losses. As noted in the Proposed Plan, the collapse of the ASTA/MAT and Falcon funds "result[ed] in billions of dollars in losses" while the Distribution Fund itself consists only of $179,562,328 and net accrued interest. Considering that injured investors will not get anywhere near a full recovery of the billions of dollars in losses, the Commission should utilize all reasonable means to distribute to Eligible Investors -- and not the Treasury -- any and all residual amounts remaining in the Distribution Fund.

Paragraph 63 of the Proposed Plan addresses the additional disbursement of the residual amounts remaining in the Distribution Fund after the Distribution Payments to Eligible Investors

[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Proposed Plan.

have been accepted and cashed. This residual disbursement, however, is not mandatory but instead left to the discretion of the Commission staff:

> In the event there is a residual of undistributed Distribution Fund funds that in the Commission staff's view would warrant consideration of an additional disbursement from the Distribution Fund, the Commission may exercise its discretion to enter an order for an additional distribution to investors who cashed their distribution checks or received an electronic payment in the initial disbursement of the Distribution Fund and, remain eligible to receive additional funds. Otherwise, the Residual will be transferred to the Treasury after the final accounting is approved by the Commission. [Proposed Plan, para. 63]

We respectfully submit that the Proposed Plan should ***require*** the Commission to enter an order for an additional disbursement to Eligible Investors unless the administration costs of such disbursement exceed the amount of the Residual.[2] Indeed, the additional disbursement should be the "default position" in the Proposed Plan and not something that is left to the full discretion of the Commission staff.

In this case, the costs associated with an additional disbursement should not be significant or otherwise present an incremental administrative burden. The Eligible Investors have already been identified. Following the initial Distribution Payments, it will be relatively easy to identify those who have cashed their distribution checks (or received an electronic payment) and remain eligible to receive additional funds. There is no good reason why the Residual should ever be transferred to the Treasury if an additional disbursement is so readily feasible.

Moreover, the Residual could be significant. The Distribution Fund was created in August 2015 with the Respondents' payment of $179,562,328. Since that time, the Distribution Fund has been accruing interest. While the Net Available Distribution Fund under the Proposed Plan apparently includes some amount of interest, the actual interest earned by the conclusion of the initial distribution could be much higher.

---

2 The Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R.§ 201.1102(b), require this type of cost-benefit analysis in the creation of a disgorgement plan and the circumstances under which payment to the Treasury may be appropriate. There is no reason why that same cost-benefit analysis should not be applied to the consideration of the disbursement of the Residual.

Given all of these facts and circumstances, the Proposed Plan should require that all residual funds be distributed to those Eligible Investors who received a Distribution Payment and remain eligible to receive additional funds.

Thank you for your consideration.

Sincerely,

Robert W. Pommer

Robert W. Pommer

CC: Ted Berghorst
Lenny Feller (Kirkland & Ellis LLP)