

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98940 / November 15, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-17808

In the Matter of :

CITIGROUP GLOBAL MARKETS, :
INC., :

Respondent. :

ORDER APPROVING
PLAN OF DISTRIBUTION

ADMINISTRATIVE PROCEEDING
File No. 3-17809

In the Matter of :

MORGAN STANLEY SMITH :
BARNEY LLC, :

Respondent. :

On January 24, 2017, the Commission issued separate, but related settled orders (collectively, the “Orders”) against Citigroup Global Markets, Inc. (“CGMI”) ¹ and Morgan Stanley Smith Barney LLC (“MSSB”).² 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 the marketing materials failed to adequately disclose that the investors 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 certain investors to suffer losses.

¹ 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).

² 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. 10290 (Jan. 24, 2017), (Admin. Proc. File No. 3-17809).

As a result of the conduct described in the Orders, the Commission found 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 a Fair Fund, 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.

On January 31, 2023, the Commission issued an order consolidating the assets of the Fair Funds created pursuant to the Orders into a single Fair Fund, the Morgan Stanley Smith Barney Fair Fund (the “Fair Fund”), for purposes of distribution to harmed investors.³

The Fair Fund includes the \$5,927,471.22 paid by the Respondents. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund and has been deposited in a Commission-designated account at the U.S. Department of the Treasury, and any interest accrued will be added to the Fair Fund.

On September 14, 2023, the Division of Enforcement, pursuant to delegated authority, published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),⁴ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”);⁵ and simultaneously posted the Proposed Plan of Distribution (the “Proposed Plan”). The Notice advised interested persons that they could obtain a copy of the Proposed Plan from the Commission’s public website or by submitting a written request to Jennifer Cardello, United States Securities and Exchange Commission, email at cardelloj@sec.gov. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received no comments on the Proposed Plan during the comment period.

The Proposed Plan provides for the distribution of the Net Available Fair Fund⁶ to certain investors who suffered a loss in the form of excessive fees paid as a result of investing 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.

The Division of Enforcement now requests that the Commission approve the Proposed Plan.

³ See Order Consolidating Fair Funds, Exchange Act Rel. No. 96777 (Jan. 31, 2023).

⁴ Exchange Act Rel. No. 98399 (Sept. 14, 2023).

⁵ 17 C.F.R. § 201.1103.

⁶ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Proposed Plan.

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission's Rules,⁷ that the Proposed Plan is approved, and the approved Plan of Distribution shall be posted simultaneously with this order on the Commission's website at www.sec.gov.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.⁸

Vanessa A. Countryman
Secretary

⁷ 17 C.F.R. § 201.1104.

⁸ 17 C.F.R. § 200.30-4(a)(21)(iv).