BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

October 25, 2005

Carl V. Howard, Esq.
General Counsel – Bank Regulatory
Citigroup Inc.
425 Park Avenue
New York, NY 10043

Dear Mr. Howard:

This is in response to the request by Citigroup Inc. ("Citigroup"), New York, New York, for an exemption from section 23A of the Federal Reserve Act and the Board's Regulation W that would permit certain Australian Regulation W operating subsidiaries of Citibank, N.A. ("Citibank"), also in New York (the "Bank Chain Companies"), to enter into a tax-sharing agreement with certain Australian Regulation W affiliates of Citibank (the "Nonbank Chain Companies" and, together with the Bank Chain Companies, the "Group Companies").[1]

Background and Legal Framework

You have represented that, under Australian tax law, a group of affiliated Australian companies may choose to consolidate for Australian income tax purposes by electing a head company that is primarily liable for the Australian income tax for the entire group. Under such an arrangement, group companies other than the head company are not required to make separate payments of income tax to the Australian tax authority; rather, they pay income tax through the designated head company. If the head company does not pay the group's consolidated taxes, however, each group company is jointly and severally liable for the group's consolidated tax liability unless the group companies enter into a tax-sharing agreement. A tax-sharing agreement may limit the liability of each group company to its allocable share of the group's consolidated tax liability.

[1] 12 U.S.C. section 371c; 12 CFR part 223.

Citigroup has elected to consolidate the Group Companies for Australian income tax purposes, and the Bank Chain Companies have entered into a tax-sharing agreement with the Nonbank Chain Companies. Under the tax-sharing agreement, a particular Bank Chain Company (the "Head Company") would become liable to the Australian tax authority for the consolidated tax obligations of the Group Companies. Under the arrangement, each Group Company would be required to pay to the Head Company (several days in advance of the tax due date) an amount equal to its allocable share of the group's consolidated tax liability. These payments, in turn, would be promptly paid by the Head Company to the Australian tax authority. The Head Company would be liable to the Australian tax authority for the consolidated tax obligations of the group regardless of whether any or all of the Group Companies paid their allocable shares of taxes to the Head Company. The tax-sharing agreement could be terminated by the Head Company upon notice to the other parties to the agreement.

Section 23A and Regulation W limit the aggregate amount of "covered transactions" between a bank (including its operating subsidiaries) and any single affiliate to 10 percent of the bank's capital stock and surplus, and limit the aggregate amount of covered transactions with all affiliates to 20 percent of the bank's capital stock and surplus.[2] "Covered transactions" include, among other things, the extension of credit by a bank to an affiliate and the issuance by a bank of a guarantee on behalf of an affiliate.[3] In addition, the statute and rule require a bank to secure its extensions of credit to, and guarantees on behalf of, affiliates with prescribed amounts of collateral.[4]

The tax-sharing arrangement creates a guarantee by Citibank on behalf of an affiliate – a covered transaction that is subject to the quantitative limits and collateral requirements of section 23A and Regulation W – because a Bank Chain Company would become liable to the Australian tax authority for the consolidated tax obligations of the Group Companies (including Nonbank Chain Companies). Citibank's guarantee is unlimited in amount, and, accordingly, the covered transaction would exceed the Regulation W quantitative limits for the bank.

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[2] 12 U.S.C. section 371c(a)(1) and 12 CFR 223.11 and 223.12.

[3] 12 U.S.C. section 371c(b)(7) and 12 CFR 223.3(h).

[4] 12 U.S.C. section 371c(c) and 12 CFR 223.14.

Section 23A and Regulation W authorize the Board to exempt, at its discretion, a transaction or relationship from the requirements of the statute and the regulation if the Board finds the exemption to be in the public interest and consistent with the purposes of section 23A.[5] As noted above, Citigroup has requested an exemption for the tax-sharing arrangement.

The Exemption

After reviewing the matter, and in light of the circumstances and commitments described in this letter and in the Attachment, the Board believes that granting the exemption would be appropriate. Citigroup has structured the tax-sharing arrangement to minimize any potential losses that the Head Company (and hence Citibank) may suffer as a result of the failure of a Nonbank Chain Company to pay its allocable share of the Australian tax liabilities of the Group Companies. Under the arrangement, each Group Company must make any required Australian tax payment to the Head Company before the Head Company is required to pay the Group Companies' consolidated tax liability to the Australian tax authority. In addition, Citigroup has guaranteed the tax-payment obligations of the Nonbank Chain Companies to the Head Company.

Moreover, the tax-sharing arrangement is structured to provide more benefits to the Bank Chain Companies than the Nonbank Chain Companies. Importantly, Bank Chain Companies are able to use tax losses of the Nonbank Chain Companies without compensating the Nonbank Chain Companies, while the Nonbank Chain Companies are able to use tax losses of the Bank Chain Companies only if Citigroup makes prompt compensation to the Bank Chain Companies for the value of the tax losses. In addition, Citigroup has committed to consult with Federal Reserve staff if there are changes in the Australian tax code that materially affect the tax-sharing arrangement. The Board expects Citigroup to comply fully with Australian tax law; the Board, however, takes no position on whether Citigroup's tax-sharing arrangement complies with Australian tax law.

Citigroup has explained that making a Nonbank Chain Company the Head Company, which would eliminate the covered transaction created by the tax-sharing arrangement, would also eliminate several benefits of the arrangement for both Citigroup and Citibank. Among the reasons why Citigroup has selected a Bank Chain Company to be the Head Company are (i) Australian tax rules provide

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[5] 12 U.S.C. section 371c(f)(2) and 12 CFR 223.43.

substantive and procedural advantages to consolidated tax groups that have a depository institution as their head company; (ii) Citigroup's designated Head Company is its primary financial services platform in Australia, and Citigroup is therefore likely to avoid the burdensome process of replacing its Head Company with another Group Company; and (iii) selecting a Bank Chain Company to be the Head Company would allow the Bank Chain Companies to use some pre-existing positive tax attributes of the Nonbank Chain Companies for the benefit of Citigroup and Citibank.

Granting the requested exemption would have public benefits. The exemption would assist Citigroup in reducing its Australian income tax burden consistent with other financial services firms operating in Australia and thus would help Citigroup remain a competitive provider of financial services to Australian consumers and businesses. In addition, Citibank would continue to be subject to the market-terms requirement of section 23B of the Federal Reserve Act with respect to the tax-sharing arrangement. Section 23B requires that the arrangement be on terms that are substantially the same, or at least as favorable to the bank, as those that the bank would in good faith offer to nonaffiliates.[6]

Conclusion

In light of these considerations and all the facts presented, the tax-sharing arrangement appears to be consistent with safe and sound banking practices and the purposes of section 23A. Accordingly, the Board hereby grants the requested exemption, subject to the conditions and limits discussed above.

This determination is specifically conditioned on compliance by Citigroup and Citibank with all the commitments and representations made in connection with the exemption request, including the commitments set forth in the Attachment. These commitments and representations are deemed to be conditions imposed in writing by the Board in connection with granting the request and, as such, may be enforced in proceedings under applicable law. This determination is based on the specific facts and circumstances of the tax-sharing arrangement described in your correspondence and this letter. Any material change in those facts and circumstances or any failure by Citigroup or Citibank to observe any of

[6] See 12 U.S.C. section 371c-1(a)(1); 12 CFR 223.51.

its commitments or representations may result in a different determination or in revocation of the exemption.

Very truly yours,

[signed]

Robert deV. Frierson
Deputy Secretary of the Board

Attachment

cc: Federal Reserve Bank of New York
Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation

Attachment

In support of the proposed tax-sharing arrangement among its Australian subsidiaries (the "Arrangement"), Citigroup has made the following commitments:

1. With respect to the Arrangement, Citigroup commits that appropriate cash payments on behalf of the nonbank affiliates will be made to the designated Head Company prior to the Head Company making any estimated or final tax payments to the Australian tax authorities. These cash payments may be made by the nonbank affiliates themselves or by other affiliate that is not a U.S. depository institution or a Regulation W operating subsidiary of a U.S. depository institution (a "corporate chain affiliate"), including Citigroup. In addition, Citigroup commits to guarantee the payment by a nonbank affiliate of any tax-related obligation to a subsidiary in Australia that is a Regulation W operating subsidiary of Citibank, N.A. (a "bank chain entity").

2. With respect to these financial transactions, Citigroup commits that any bank chain entity that permits an existing tax benefit to be used by a nonbank affiliate in order to reduce Citigroup's consolidated tax exposure in Australia shall promptly be compensated in cash by Citigroup, a corporate chain affiliate, the nonbank affiliate, or another nonbank affiliate for the amount of reduced tax liability realized by the nonbank affiliate from the bank chain entity's tax benefit. Citigroup recognizes that prompt compensation means reimbursement within 30 days of the relevant consolidated tax return being filed in Australia. The reimbursement would be made to the affected bank chain entity or to Citibank, N.A.

3. Citigroup commits to consult with Federal Reserve staff regarding possible changes to the Arrangement, in the event that bank chain entities participating in the Arrangement generate less than 50 percent of the consolidated Australian tax liability for two consecutive years, or in the event that there are changes in the Australian Tax Code that materially affect the Arrangement.

4. Citigroup agrees that these commitments are deemed to be conditions imposed in writing in connection with the Federal Reserve System's findings and decision on Citigroup's request for an exemption from section 23A of the Federal Reserve Act with respect to the Arrangement and, as such, may be enforced in proceedings under applicable law.