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SMITH BARNEY
citigroup

February 7, 2005

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: File No. S7-25-99
Release Nos. 34-50980; IA-2340
Certain Broker-Dealers Deemed
Not To Be Investment Advisors

Dear Mr. Katz:

Citigroup Global Markets Inc. ("CGMI") appreciates the opportunity to comment on reproposed Rule 202(a)(11)-1 (the "Rule") under the Investment Advisers Act of 1940, as amended (the "Advisers Act").[1] As an initial matter, CGMI re-endorses its prior comments[2] on Rule 202(a)(11)-1 as originally proposed in 1999 and expresses its support for the views advanced by the Securities Industry Association ("SIA") in both its prior and current comments on Rule 202(a)(11)-1.

We strongly support the Commission's position that a broker-dealer's offering of full-service brokerage services in a fee-based brokerage account should not result in the firm becoming subject to repetitive regulation under the Advisers Act. As the Commission recognizes, fee-based brokerage accounts not only offer clients a greater diversity of investment choices and fee arrangements, but also reduce conflicts of interest between brokers and clients and foster investor protection. Especially in light of these benefits, there is no basis to argue that application of the Advisers Act should turn on the irrelevant fact of whether a broker is compensated through commissions or fees.

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[1] Citigroup Global Markets Inc. is dually registered with the Securities and Exchange Commission (the "Commission") as a broker-dealer and investment advisor and was formerly known as Salomon Smith Barney Inc.

[2] See Letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated September 22, 2004 and Letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated January 14, 2000.

We briefly outline below our comments on four areas. First, a broker-dealer's general advertising of the services it offers, or titling of its registered representatives as "financial consultants," should not be the basis for determining whether the Advisers Act applies to a particular account. These general advertisements and titles are not new developments and do not create investor confusion, particularly in light of the specific information broker-dealers provide clients regarding the nature of accounts they offer or products and services they provide.

Second, we believe no meaningful distinction can be drawn between investment advice and suitability-based financial planning, on the one hand, and advisory financial planning services, on the other, and it is not in the best interest of investors to do so. A rule to that effect gives brokers an incentive to limit their suitability activities -- clear-cut investor benefits -- for fear that they may be deemed subject to the Advisers Act. Instead, the Commission can provide practical guidance by ruling that the Advisers Act applies to brokers when they provide discrete financial planning services for a separate fee, the traditional activity of investment advisers.

Third, the Commission should make clear that the Advisers Act does not apply to commission-based discretionary accounts if investment discretion is granted by a client to a broker on a temporary basis or the owner of the account is the broker's spouse or family member.

Fourth, it is in investors' interests to eliminate principal-trading restrictions on accounts subject to the Advisers Act.

General Advertising and Use of the Title "Financial Consultant"

We agree with the Commission that it is important that investors understand from the outset whether their financial consultant is acting as a broker or investment adviser with respect to their account. However, we disagree that brokerage firms' general or "brand" advertising, or titling of their brokers as "financial consultants," causes any confusion among investors.

General advertising by full-service brokerage firms, which is not descriptive of any particular account, has traditionally focused on the advice that these firms offer.[3] Such advertising, however, must be viewed in the context of the specific disclosures that firms such as CGMI provide investors with respect to various account programs. For example, as discussed in our September 22, 2004 comment letter, all marketing materials for CGMI's non-discretionary, fee-based *Asset One®* account currently include the unambiguous legend:

Asset One® is a brokerage account and not an investment advisory account.

[3] For example, E.F. Hutton's well-known slogan 25 years ago was: "When E.F. Hutton talks, people listen."

The Reference Guide for the *AssetOne*® Program also contains the following legend:

> *Asset One® is not an investment advisory account and should not be treated as a substitute for one.*

As shown by the following excerpts, the *AssetOne*® Program Agreement also specifically informs clients that the account is a brokerage account, neither the Firm nor any of its financial consultants is acting as an investment adviser, and that the account serves as a pricing alternative:

> ***2. Services.*** *SB agrees to provide its customary securities brokerage and execution services ("Transaction Services") to Client with respect to Eligible Assets....*
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> * * *
>
> ***6. Additional Undertakings.*** *Client understands and agrees to the following:*
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> *A. Neither SB nor any of its Financial Consultants, employees or representatives will act or is acting as an investment adviser or investment manager or in a discretionary capacity with respect to Client or the AssetOne Account Group for purposes of the Program nor will they provide specialized services or investment advice different from that which is solely incidental to SB's business as a broker-dealer and customarily provided or available where brokerage and other transaction-related charges are paid on a per trade basis. The AssetOne Program is a pricing alternative and not an investment advisory service.*

The "reverse churning" criticism of fee-based, non-discretionary accounts also fails to take into account the specific disclosures that firms such as CGMI provide their clients. For example, the current brochures for *AssetOne*® specifically advise clients:

> *Clients considering AssetOne should compare AssetOne's fees and benefits with the costs and benefits of a commission-based account, particularly if the client expects to engage in limited trading activity. After choosing AssetOne, clients should periodically compare the costs and features of alternative types of accounts.*

It is also important to note that all of CGMI's discretionary, fee-based advisory agreements make clear that the Firm is acting as a discretionary investment adviser with respect to those accounts and that the Firm is registered as an investment adviser under the Advisers Act:

> *CGMI "through the Portfolio Management group ("PMG") of its Smith Barney Division, shall under the Guided Portfolio Management program, act as (i) a discretionary investment adviser for your account or accounts, as may be applicable....*

* * *

11. Miscellaneous. *Client understands that SB will provide Client, prior to SB's delivery of this Agreement in executed form, with PMG's Descriptive Brochure (Schedule H of form ADV) Form ADV Part II or equivalent disclosure document. SB represents that it is registered as an investment adviser under the Investment Advisers Act of 1940, as amended.*

Most recently, as part of its December 2004 monthly statement mailing to all clients, CGMI's Smith Barney Division provided a separate informative piece entitled "*What Type of Account is Right for You?*, contrasting the differences between the non-discretionary and managed accounts that the Firm offers. This mailing once again explained "AssetOne is a brokerage account and not an investment advisory account" and "[o]n the other hand, if you would rather have an investment professional manage your account for you, we have several discretionary fee-based programs available."

As to our salespeople's titles, CGMI and its predecessors have used the phrase "financial consultant" for more than fifteen years without any evidence of investor confusion. This title accurately describes the role provided by registered representatives -- consulting with the Firm's clients in order to assist them with the investment of their finances. Financial consultants explain to clients the spectrum of account programs and services that are available, provide clients with informative literature, and help clients make informed account choices. There is no confusion. On the other hand, withdrawing the title "financial consultant" after over fifteen years of use from thousands of individual's business cards, national and local advertising, stationery, marketing materials, agreements, and the like would confuse investors, burden the firm, and demean our employees.

CGMI wants its clients at all times to understand the nature of the specific accounts available to them. The Firm's general advertising and use of the title "financial consultant" do not undercut this objective and do not create investor confusion.

Brokers Have Traditionally Provided Financial-Planning Services

As the Commission recognizes, full-service broker-dealers have "traditionally provided investment advice that is substantial in amount, variety, and importance to their customers" (Release at 16) and "must consider some aspects of financial planning when determining that their recommendations are suitable." (Release at 51). Such advice and financial planning already are subject to extensive regulation. Indeed, as the Commission has observed -- and critics have ignored -- "broker-dealer regulation is much more detailed and involves significantly more costs than investment adviser regulation." (Release at 26).

We agree with the Commission's desire to draw a bright line of guidance, but we do not believe that it can be drawn in some gray area between (i) the traditional suitability advice and planning that brokers have provided and (ii) investment advisor financial

planning.[4] Instead, we believe the Commission can provide practical guidance by drawing the line where a broker provides a discrete financial planning service for a separate fee. This is the traditional service that investment advisers provide for a fee, and is consistent with the role that investors believe investment advisers undertake.

Commission-Based Discretionary Accounts

Subsection (b) of the Rule, as proposed, subjects all commission-based discretionary accounts to the Advisers Act. The broad language of this provision would cause various types of discretionary accounts to be subject to the Advisers Act, resulting in adverse consequences to investors.

As the Commission recognized (Release at 38), a client who maintains a commission-based, non-discretionary account may provide his or her broker with discretion over the account for a temporary period of time as a matter of pure convenience. The provisions of Rule 408 of the New York Stock Exchange ("NYSE") regulate these types of accounts. In addition, CGMI and, to our knowledge, all well-run broker-dealers, have specific policies governing these types of discretionary accounts. For example, at CGMI a broker may not charge a separate fee for servicing an account on a discretionary basis, a broker is required to have been registered for a minimum of two years before he or she can accept such discretion; and, in addition to obtaining written authorization from the client, the broker must obtain written approval from both our Branch Managers and Regional Directors. Similarly, certain clients prefer on occasion that their broker exercise "time and price discretion" over the implementation of an investment decision. Such discretion is also regulated by NYSE Rule 408(d). Subjecting these short-term grants of discretion to the Advisers Act is unnecessary and will likely result in the elimination of these services to the detriment of investors.

This same rationale applies with equal force to accounts for family members. CGMI requires its brokers to obtain written discretionary authority over spousal accounts to eliminate potential problems concerning the exercise of oral discretion. An exception should be made for the exercise of discretion in such employee-related accounts.

Principal Trading Restrictions

Finally, if the Commission were to adopt a rule that would make all discretionary accounts subject to the Advisers Act (with the limited exceptions noted above), we believe that Commission should exempt broker-dealers from the principal trading requirements of the Act. Principal transactions may be in clients' best interest if they achieve best execution or complete a transaction in a timelier manner than an agency transaction.

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[4] For example, we do not believe a broker becomes an investment advisor by investigating all of the circumstances regarding a client's future retirement needs and then, for example, planning and recommending a conservative bond ladder strategy as one component of a plan to address those needs in a non-discretionary account. That is traditional full service broker-dealer suitability analysis.

Under the present regulatory framework governing discretionary advisory accounts, obtaining client consent before execution on every principal trade is impractical and, in some cases, impossible. CGMI is a marketmaker in over 1,800 equity securities and is a global leader in fixed-income underwriting and sales. The SIA noted in its prior comment letter that, at the end of 2003, nearly $750 billion in client assets were held in discretionary managed accounts at broker-dealers that are administered in accordance with the requirements of the Advisers Act. As these statistics demonstrate, the existing principal-trading restrictions deprive vast numbers of clients from access to superior execution. The Commission should allow clients the opportunity, when opening their accounts and after receiving appropriate written disclosure, to provide their discretionary manager with authority to execute principal trades on their behalf.

Conclusion

Fee-based brokerage services, developed in response to the Tully Committee's recommendations, continue to provide investors with greater investment choices while simultaneously enhancing investor protection under a highly developed regulatory regime. We trust the Commission's final rule will continue to support such investor benefits.

Please contact me if you need any additional information.

Sincerely,

Michael J. Sharp

Michael J. Sharp
General Counsel
Smith Barney