

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940

Release No. 2501 / March 23, 2006

ADMINISTRATIVE PROCEEDING

File no. 3-12246

In the Matter of

Michael Yellin,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS ACT
OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (the “Commission”) deems it appropriate and in the public interest that administrative proceedings be, and hereby are, instituted pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Michael Yellin (“Yellin”).

II.

In anticipation of the institution of these proceedings, Yellin has submitted an Offer of Settlement (the “Offer”) that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, Yellin consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist order (“Order”) as set forth below.

III.

On the basis of this Order and Yellin's Offer, the Commission finds¹ that:

PRELIMINARY STATEMENT

1. This matter involves fraud and self-dealing by Smith Barney Fund Management LLC (the "Adviser") and Citigroup Global Markets, Inc. ("Global Markets") relating to the creation and operation of an affiliated transfer agent to serve the Smith Barney family of mutual funds (the "Funds"). In the Commission's Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Section 15(b)(4) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order against the Adviser and Global Markets, dated May 31, 2005 (the "May 31 Order"), the Commission previously found, among other things, that the Adviser and Global Markets violated Sections 206(1) and 206(2) of the Advisers Act. This Order addresses the conduct of Yellin, formerly an executive vice president of Global Markets and chief administrative officer of Citigroup Asset Management ("CAM"), the Global Markets business unit that provides investment management and advisory services to Citigroup Global Markets-sponsored funds, including the Funds.

2. In 1997, CAM began a formal review of the transfer agent ("TA") function in anticipation of the expiration of the existing contract between the Funds and their existing full-service transfer agent, First Data Investor Services Group ("First Data"). Yellin, who reported to CAM's chief executive officer, Thomas W. Jones ("Jones"), supervised the TA review project and personally handled negotiations with First Data. Yellin briefed Jones on the status of the TA review project on a regular basis. CAM representatives, including Jones and Yellin, knew that First Data had been making high profit margins on the TA contract. Instead of using CAM's strong bargaining position to benefit the Funds in the negotiation of a new TA contract, Yellin negotiated a deal that permitted CAM to keep for itself much of the profit First Data had been making.

3. The deal that Yellin negotiated and that CAM ultimately recommended to the Funds' boards called for the Funds to replace First Data with what is now Citicorp Trust Bank, fsb ("CTB"), a newly created affiliate of the Adviser. The recommended structure called for the affiliated TA to contract directly with the Funds as named TA, perform limited functions and sub-contract with First Data for the bulk of the transfer agent services. (CAM referred to First Data as "sub-TA.") Except for a small customer service function that the affiliated TA would undertake, First Data would continue to perform the same work it had performed under the expiring contract, but at a significant discount from the fees it had been charging the Funds – a discount that would start at 33.5% and increase to as much as 60% over the five-year term of the contract. CAM kept the majority of the savings it had negotiated with First Data for itself, and offered the Funds a limited fee reduction through the institution of fee caps.

¹ The findings herein are made pursuant to Yellin's Offer and are not binding on any other person or entity in this or any other proceeding.

4. As a fiduciary, CAM should have first offered these substantial negotiated savings offered by First Data to the Funds, as an opportunity belonging to the Funds. At the very least, CAM should have disclosed this opportunity for significant savings to the Funds. CAM did neither. Instead, CAM took this opportunity then presented a recommendation to the Funds' boards in a memo -- prepared after Yellin left CAM -- that gave them the impression that the affiliated TA proposal was the best deal that the Funds could have achieved, which was not true. In presenting its recommendation to the Funds' boards, CAM did not disclose that First Data was to perform almost all of the same work as before, with the affiliated TA taking most of the profit for doing limited work. CAM's recommendation also contained numerous material misrepresentations about the particulars of the arrangement, including the extent of the benefits CAM would realize. Among other things, CAM failed to disclose that it had entered into a side letter agreement (the "Side Letter") with First Data, pursuant to which First Data committed to providing millions of dollars of investment banking and asset management revenue to Citigroup entities (the "Revenue Guarantee").

5. Yellin aided and abetted the Adviser's and Global Markets' violations of Section 206(2) of the Advisers Act by, among other things, negotiating the self-interested transaction that provided tremendous benefit to CAM at the Funds' expense.

RESPONDENT

6. **Yellin**, age 47, is a resident of Manalapan, New Jersey. Yellin was an executive vice president and a managing director of Global Markets. Yellin served as chief administrative officer of CAM from March 1997 through early 1999, when he became chief operating officer of the private portfolio group within CAM. Yellin did not act as a broker or dealer at CAM and although he was licensed, those licenses had no bearing on his position at CAM. In his capacity as chief administrative officer of CAM, Yellin reported to Jones, CAM's chairman and chief executive officer.

OTHER RELEVANT ENTITIES

7. **The Adviser** is a limited liability company organized under the laws of Delaware and a subsidiary of Citigroup Global Market Holdings, Inc. The Adviser is registered with the Commission as an investment adviser pursuant to Section 203(c) of the Advisers Act, and serves as investment adviser to the Funds. The Adviser is controlled by CAM, the Citigroup business unit that provides investment advisory and management services to Citigroup-sponsored funds, including the Funds.

8. **Global Markets** is a New York corporation and a direct subsidiary of Citigroup Global Markets Holdings, Inc., and an indirect subsidiary of Citigroup. Formerly known as Salomon Smith Barney Inc., Global Markets is a registered investment adviser and broker-dealer. The asset management segment of Global Markets falls within the CAM business unit.

9. **Citigroup** is a global financial services company that was organized under the laws of Delaware and maintains its headquarters in New York, New York. Citigroup was formed in October 1998, by the merger of Citicorp and Travelers Group Inc. ("Travelers"). Prior

to the merger, the Adviser, Global Markets and CAM (which was formerly known as Salomon Smith Barney Asset Management) were divisions or subsidiaries of Travelers.

10. CAM is the Citigroup business unit that oversees the registered investment adviser entities that provide investment advisory and management services to Citigroup-sponsored funds, including the Funds. Various Citigroup entities fall within and comprise CAM, including the Adviser, the asset management operations of Global Markets, and the other registered investment advisers for the Citigroup-sponsored funds. Although the investment advisers, including the Adviser, are separate legal entities, with their own officers and employees, they are limited in size and function. The bulk of the administrative services that the advisers provide to their respective fund families are performed by Global Markets employees who fall within the CAM unit.

FACTS

The TA Function and First Data Contract

11. From 1994 through September 30, 1999, First Data served as full-service TA for the Funds. The Fund business was very profitable to First Data as a result of a very favorable fee schedule and the low cost of servicing the Funds. Pursuant to a non-compete agreement between the predecessors of First Data and CAM, CAM was prevented from offering TA services until the expiration of that non-compete agreement in 1999.

12. With the First Data contract and the non-compete provision due to expire in June 1999, CAM retained Deloitte & Touche Consulting (“Deloitte”) in July 1997 to assist it in reviewing the TA function and options going forward. The Deloitte team worked with representatives of CAM, including Yellin and Lewis E. Daidone (“Daidone”), a Global Markets managing director who served as head of fund administration for CAM and reported to Yellin.

13. Deloitte and CAM established several objectives, but CAM’s primary objective was to capture for itself the profit that First Data was making on the TA contract. CAM determined that it would enter the TA business and directed Deloitte to develop a variety of options to accomplish this.

14. Deloitte and CAM concluded that CAM should create an internal transfer agent and subcontract with a technology provider for technology services. Deloitte and CAM then solicited bids from First Data and two of its competitors, DST and SunGard, to serve as remote technology vendors. DST and SunGard responded with remote vendor proposals. First Data declined to submit a remote vendor bid, and instead proposed to renew as full-service TA with a modest fee discount of its rate under the existing contract of approximately ten percent.

Deloitte and CAM’s Recommendation to Contract with DST

15. In February 1998, after reviewing the proposals it had received, Deloitte recommended that CAM contract with DST as remote service provider. The DST proposal called for CAM to create an affiliated TA unit of approximately 100 employees to handle

customer service and operations, and to contract with DST for technology. The CAM affiliate would be the named TA, receive fees from the Funds and pay DST a per account fee for technology. Deloitte projected that the CAM affiliate would receive more than \$40 million per year in profit under the proposal. Deloitte concluded that DST's proposal was superior to other options, including options utilizing First Data, in terms of both pricing and technology.

16. After learning that it was at risk of losing the business, First Data offered significant fee discounts. By letter to Yellin dated March 12, 1998, First Data offered a \$25 million annual "fee concession" to CAM if the Funds renewed with First Data as full-service TA.

17. Yellin, however, did not pursue the option of renewing with First Data as full-service TA and passing along the proposed discount directly to the Funds. Nor did he or anyone else within CAM inform the Funds' boards that First Data had made the offer to renew as full-service TA at deeply discounted rates. Instead, Yellin pursued a deal that would allow CAM to benefit from the discounts First Data was offering.

18. Later in March, First Data improved its bid and offered a deeper discount, measured as a percentage of the total annual TA fees that First Data would receive from the Funds. The discounts would start at 32% in 1999 and increase by two percentage points each year, reaching 40% of total TA fees in 2003. Deloitte and CAM projected that the percentage discounts would translate into \$21 million the first year and grow to \$39 million in the final year of the contract.

19. Deloitte questioned whether the discount offered by First Data should be passed along to the Funds or kept by an internal affiliated TA, which would perform only limited duties. In a presentation dated March 24, 1998, which Yellin received, Deloitte wrote:

Clarify the "Discount" proposed

A true discount would go to the funds, not SSB TA.

This relationship will be extremely difficult to sell to the fund boards.

(Emphasis in original.)

20. After considering First Data's improved offer, CAM representatives, including Yellin and Daidone, concluded, along with Deloitte, that contracting with DST as remote service provider was the best option and made a formal recommendation to Jones by memorandum dated April 2, 1998. The April 2 memo stated that the DST proposal was superior to the First Data proposal in terms of technology and pricing. The memo reiterated Deloitte's findings regarding technology, and indicated that the DST proposal offered \$139 million more in profit to CAM over the projected five-year contract period than the First Data proposal offered. The April 2 memo noted that there was conversion risk with switching to DST, but concluded that the conversion risk was minimal.

21. The April 2 memo noted that switching to DST could cost affiliates of Citigroup – then Travelers – \$8 to \$10 million annually in lost investment banking, asset management, insurance and other revenues from First Data Corporation (which had such existing relationships with Citigroup), but recommended switching to DST notwithstanding the business risk.

CAM Continues Negotiating With First Data

22. Jones agreed with the recommendation, but sometime after April 2, 1998, the chairman of Travelers asked Jones to negotiate further with First Data. Accordingly, Jones instructed Yellin to resume negotiating with First Data, which Yellin did.

23. In a letter dated June 5, 1998, First Data set forth an improved offer, which increased the discount First Data was willing to offer.

Deloitte's Renewed Warnings Regarding First Data Proposal

24. Deloitte again questioned the structure of First Data's proposal. In a presentation dated June 10, 1998, entitled "Transfer Agency Project: Lunch and Learn – Financial Model Review," Deloitte questioned the structure in two respects. First, Deloitte questioned whether CAM could justify receiving TA fees for operating a fourteen-person affiliated TA unit.

We Anticipate a Larger Organization Would be Needed to Satisfy the Fund Boards in the First Data Scenario.

* * *

We believe at a minimum, the SSB TA would have to assume responsibility for Customer Service and Transaction Processing to justify receiving TA fees. This would require at least 65 [full-time employees] (rather than 14)

25. Second, Deloitte questioned the legality of the discount taking the form of a rebate to be paid to CAM, not the Funds.

First Data's proposal requires that First Data remains the TA; First Data receives full revenues of TA fees, providing a "rebate" to SSB (proposed as a "discount" by First Data)

This legal structure is questionable at best. Our advisers indicate that this arrangement would in no way be acceptable to the fund boards and may not be legally viable.

26. Deloitte's team leader personally presented the Lunch and Learn presentation to address the issues raised by the structure of the First Data proposal. Deloitte considered the issues to be very significant and had raised them with CAM representatives prior to the Lunch and Learn meeting. CAM's failure to address the issues prompted Deloitte to schedule the June 10 meeting. Yellin did not attend the meeting at which the presentation was made.

27. Sometime after the June 10 presentation, CAM informed Deloitte that instead of receiving a rebate, the CAM affiliate would serve as named TA and sub-contract with First Data. Under this structure, all TA fees would pass through the CAM affiliate, so First Data would not be collecting fees and "rebating" them to CAM. In addition, CAM decided that the affiliated TA would assume some minimal operational responsibility. Specifically, the affiliated TA would assume from First Data responsibility for operating a small telephone call center to handle customer service calls.

28. The affiliated TA unit would still be extremely limited in size, however, and would not perform sufficient functions to justify receiving TA fees. In addition, even though there would be no "rebate" in a strict sense of the word, because the affiliate would be the initial recipient of the full fee (rather than the recipient of a "rebate"), the affiliated unit would still be taking the fee discount offered by First Data for itself, instead of passing it along to the Funds.

CAM's Decision to Recommend First Data Proposal

29. In July 1998, First Data improved its offer in three respects. First, it increased the fee discount. Second, it agreed to migrate the Funds from its old technology to its more modern Full Service Retail ("FSR") platform. Third, by letter to Yellin dated July 14, 1998, First Data offered the Revenue Guarantee. The July 14 letter stated:

First Data Corporation and Travelers will agree on a "basket of services" from which First Data Corporation will generate \$8 million of revenue to Travelers annually. A "make-whole" provision will be included which commits First Data Corporation to a fee credit on transfer agent services for any shortfall to the \$8 million. The credit will be 50 cents on each dollar of revenue shortfall.

30. By memorandum to Jones dated July 24, 1998, Yellin recommended that CAM establish an affiliated TA unit of approximately fifteen people to assume responsibility for the customer service call center and contract with First Data for the bulk of the transfer agency services. The memo estimated the cost of the fifteen call center employees would be \$1 million per year.

31. Although the structure of the proposal had changed so that First Data would not pay a "rebate" to CAM, in substance the fee arrangement remained largely the same as in the prior proposals – First Data would be sharing its profits with CAM. The July 24 memo set forth

the following fee arrangement, which was referred to in the memo as a “revenue sharing arrangement”:

	Percentage that is earned by [CAM] on:	
	First \$80MM	Over \$80 MM [in total TA fees]
Year 1	33.5%	33.5%
Year 2	40	60
Year 3	55	60
Year 4	55	60
Year 5	58	60

32. Yellin’s memo to Jones projected that CAM would earn the following profit under the revenue sharing arrangement (taking into account the \$1 million in salaries projected for new staff):

Year 1	\$29 million
Year 2	\$40 million
Year 3	\$57 million
Year 4	\$62 million
Year 5	\$70 million

33. The July 24 memo indicated that Citigroup’s projected profit under the First Data proposal was \$16 million less over the five-year contract period than its projected profit under the DST proposal. Yellin recommended accepting the differential because contracting with First Data eliminated risks associated with converting to a new system and technology vendor, and permitted CAM personnel to focus on issues relating to Y2K, the integration of the Salomon Brothers funds, and the Travelers-Citicorp merger, which had been announced in April of that year.

34. The July 24 memo also stated that, because of CAM’s fiduciary obligations to the Funds, it was obligated to implement a fee reduction. The recommended reduction called for the Funds to continue to pay the same asset-based fees that were being charged by First Data, subject to caps that limited TA fees to the lesser of the asset-based fee or a set amount (which ranged from \$13 to \$14.50 per account). The July 24 memo projected an annual fee reduction of \$6-\$8 million. Thus, the proposal was that CAM would reap \$258 million in profit over the five-year contract period and the Funds would get approximately \$35 million in projected fee savings.

35. The July 24 memo noted that because of the different structures of the DST and First Data proposals, implementing the fee reduction would virtually eliminate the \$16 million differential between the DST and First Data proposals. This was because the reduced revenue stream that would result from the fee reduction would have a greater impact on CAM’s profit under the DST proposal than under the First Data proposal.

36. With respect to the Revenue Guarantee, Yellin’s July 24 memo indicated that First Data had committed to:

- Providing CAM with additional assets to manage sufficient to generate \$1.5 million per year in asset management fees.
- Making Salomon Smith Barney First Data's investment banker of choice and generating at least \$3 million per year in investment banking fees.
- Paying 50 cents for every dollar of shortfall of investment banking fees and 90 cents for every dollar of shortfall of asset management fees, by way of credit on TA fees paid by CAM to First Data.

Yellin's memo stated that the Revenue Guarantee would generate at least \$22.5 million in revenue or \$14 million of "pre-tax bottom line" over the five years of the agreement.

37. Finally, in a section entitled "Mutual Fund Board Issues," Yellin's memo stated that the chairman of the Funds' boards, who was an officer of CAM, was "comfortable that the new First Data arrangement is supportable to the Fund boards." The memo noted that service levels, "while good, will improve," and the Funds would receive a fee reduction.

38. Jones approved the recommendation.

The Sub-TA Agreement and Side Letter

39. On August 4, 1998, First Data sent the first draft of the Side Letter to Yellin. The draft addressed the Revenue Guarantee and other significant commitments between the parties, including First Data's commitment to migrate the Funds to FSR.

40. Representatives of CAM and First Data negotiated the terms of the Side Letter and simultaneously prepared a formal sub-TA agreement (the "Sub-TA Agreement") between First Data and Mutual Management Corp., the Citigroup entity initially chosen by CAM to serve as the affiliated TA. Both agreements were finalized on November 20, 1998. Yellin executed the Side Agreement on behalf of Salomon Smith Barney, Inc. The Sub-TA Agreement included an integration clause, which provided that the Agreement, "including Schedules, Addenda and Exhibits" thereto, constituted the parties' entire agreement about the subject matter of the Sub-TA Agreement and superseded all prior and contemporaneous agreements regarding the subject matter. Notwithstanding the obvious significance to the Funds of the benefits to CAM affiliates contained in the Side Letter, the Side Letter (or its substance) was not provided to the Funds' boards or filed with the Commission as part of the Funds' registration statements.

The Materially Misleading Board Materials

41. In late February-early March 1999, after Yellin had left the mutual fund business, Daidone took the lead in preparing a memorandum (the "Board Memo") and a Power Point presentation (the "Power Point") to present to the Funds' boards concerning CAM's recommendation for a new TA contract.

42. Daidone prepared the Board Memo and Power Point in a way that would make the affiliated TA proposal appear as if it was in the Funds' best interest, which was not true. The Board Memo did not candidly present the proposal in terms that would have made clear to the

boards that First Data would continue to perform almost all of the TA functions, leaving CTB with a tremendous profit for manning a fifteen-person call center and performing limited additional oversight and quality control functions. The Board Memo did not explain in a meaningful way how duties were to be divided between CTB and First Data. To the contrary, the Board Memo gave the misleading impression that First Data was providing “technology” only, which was not true, and that CTB would be a much more substantial operation than it actually would be. The Board Memo also contained several other materially misleading representations and omitted other material facts, including, but not limited to, the fact that CAM had entered into the Side Letter with First Data.

CTB’s Fees and Expenses as TA

43. At regularly scheduled meetings during the first half of 1999, Daidone presented the TA proposal to the Funds’ boards, which approved the proposal. On October 1, 1999, a CAM affiliate, now CTB, became the named TA for the Funds, and assumed responsibility for the customer service function; First Data – now PFPC, Inc. – continued to perform the bulk of the TA services as sub-TA.

44. From the inception of the TA contract through September 30, 2004, approximately fifteen CTB employees performed work for the Funds. Of those fifteen, only seven spent 100% of their time doing Fund-related work.

45. As intended, CTB has realized high profits for performing limited work. The one function that CTB assumed from First Data/PFPC was the customer service function, which consists primarily of a call center. From the inception of the CTB TA contract through September 30, 2004, the call center was staffed by approximately seven full-time employees who were dedicated to Fund business. Five of those employees answered calls; two were supervisors. The seven call center staff members were the only CTB employees who spent all of their time on Fund-related work.

46. For the period October 1, 1999 through September 30, 2004, CTB earned net pre-tax revenues of approximately \$104 million from Fund business. The profit is lower than the originally projected profit due to, among other things the downturn in the market that began in 2001. Over the same period, CTB had total operating expenses (excluding sub-TA payments) of approximately \$11.5 million, justly slightly more than \$2 million per year. In addition, CAM and its affiliates received approximately \$17 million under the Revenue Guarantee.

VIOLATIONS

47. As a result of the conduct described above, Yellin willfully aided and abetted and caused the Adviser’s and Global Markets’ violations of Section 206(2) of the Advisers Act.² Yellin substantially assisted the Adviser’s and Global Markets’ violations by, among other

² Section 206(2) of the Advisers Act makes it unlawful for any investment adviser to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. A violation of Section 206(2) of the Advisers Act does not require a finding of *scienter*. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963).

things, negotiating this self-dealing transaction to the tremendous benefit of CAM, while failing to pursue or disclose to the Funds' boards First Data's offer to renew as full-service TA at deeply discounted rates. Yellin knew or was reckless in not knowing that CAM had a fiduciary duty to negotiate in the best interest of the Funds, not in CAM's best interests, and that the affiliated TA proposal that he negotiated was not in the best interests of the Funds.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Yellin's Offer. Accordingly, it is hereby ORDERED that:

A Pursuant to Section 203(k) of the Advisers Act, Yellin shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.

B. Pursuant to Section 203(i) of the Advisers Act, Yellin shall pay civil monetary penalties in the amount of \$50,000. Such payment shall be made to the United States Treasury within 10 days of the entry of this Order. Such payment shall be made to the United States Treasury within 10 days of the entry of this Order and shall be: (1) made by United States postal money order, certified check, bank cashier's check, or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312; and (4) submitted under cover letter that identifies Yellin as a Respondent in these proceedings, and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to James McGovern, Senior Trial Counsel, Securities and Exchange Commission, Division of Enforcement, Northeast Regional Office, 3 World Financial Center, Room 4300, New York, NY 10281.

By the Commission.

Nancy M. Morris
Secretary