

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

OFFICE OF
FEDERAL
REGULATION
AND
SURVEILLANCE

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In the Matter of)
)
)
Citigroup Inc. and)
Citigroup Global Markets Ltd.,)
)
Respondents.)
_____)

CFTC Docket No. 12-34

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) AND 6(d) OF
THE COMMODITY EXCHANGE ACT, AS AMENDED, MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that on several days in December 2009, Citigroup Inc. (“Citigroup”) and Citigroup Global Markets Ltd. (“CGML”) (collectively “Respondents”) violated Section 4a(b)(2) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6a(b)(2) (Supp. III 2010) (current version at 7 U.S.C. § 6a(b)(2) (Supp. IV 2011)), and Commission Regulation (“Regulation”) 150.2, 17 C.F.R. § 150.2 (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

On several days in December 2009, Citigroup Inc., via its wholly owned subsidiaries, held aggregated net long positions in wheat contracts that exceeded the all months speculative position limits established by the Commission as a result of trading on the Chicago Board of Trade (“CBOT”), part of CME Group, Inc. (“CME Group”). In addition, CGML individually held net long positions in wheat contracts that exceeded the all months speculative position limits established by the Commission as a result of trading on the CBOT.

B. RESPONDENTS

Citigroup Inc. (“Citigroup”) is a financial services firm with its principal office located in New York, New York. Citigroup Inc. is not registered with the Commission in any capacity.

Citigroup Global Markets Limited (“CGML”) is a European investment banking arm of Citigroup, and its principal office is located in London, England. CGML is a Commission-approved exempt foreign firm pursuant to Regulation 30.10 and is not a member of any domestic exchange, including CBOT. CGML is a 100% wholly-owned subsidiary of Citigroup.

C. FACTS

Respondents Exceeded Wheat Position Limits

One aspect of Citigroup’s business is servicing customers who are commercial participants by acting as the counterparty in over-the-counter (“OTC”) swaps contracts. These customers hedge their commercial inventory through the use of OTC swaps. Citigroup and its wholly-owned subsidiaries offset their OTC swap risk by hedging with futures trading. In order to hold positions lawfully in excess of these limits, a trader must first be granted a hedge exemption from the Commission. See Section 4a(c), 7 USC § 6a(c); 17 C.F.R. 150.2. At least two wholly-owned subsidiaries, including CGML, had not obtained hedge exemptions.

On several occasions in December 2009, Citigroup, via its two wholly owned subsidiaries, including CGML, held aggregate² net long positions in the wheat contract traded on CBOT in excess of the Commission’s all-months position limits. Additionally, on one or more days in

² The positions of Citigroup’s wholly-owned subsidiaries, including CGML, in December 2009 are subject to aggregation pursuant to Commission Regulation § 150.4(a) – (b) which reads in part: “For the purpose of applying the position limits set forth in Sec. 150.2, ... any trader holding positions in more than one account, or holding accounts or positions in which the trader by power of attorney or otherwise directly or indirectly has a 10% or greater ownership or equity interest, must aggregate all such accounts or positions.” In December 2009, Citigroup did not qualify for exemption to the aggregation requirements set forth in Commission Regulation 150.4.

December 2009, CGML individually held net long positions in wheat contracts that exceeded the all months speculative position limits established by the Commission as a result of trading on the CBOT.

CBOT is a registered entity as defined in Section 1a(29) of the Act and a designated contract market pursuant to Section 5 of the Act. CBOT is a subsidiary of CME Group.

Regulation 150.2 provides: “No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of” certain limits set forth in Regulation 150.2, 17 C.F.R. § 150.2. On each of the relevant December trade dates, the position limit for CBOT wheat was 6,500 contracts for all months combined.

Subsequent to the December 2009 speculative position limit violations, Respondents took additional steps to improve their position limit monitoring system and prevent further breaches. Respondents have cooperated fully with the Commission’s investigation.

IV.

LEGAL DISCUSSION

A. **By Exceeding the Commission’s Position Limits, Respondents Violated Section 4a(b)(2) of the Act and Regulation 150.2**

Section 4a(b)(2) of the Act provides, in relevant part, that it is unlawful for any person:

directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility or electronic trading facility with respect to a significant price discovery contract in excess of any position limit fixed by the Commission for or with respect to such commodity: *Provided*, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such rule, regulation, or order.

Regulation 150.2 establishes speculative position limits in certain futures contracts, including wheat, and states, in relevant part, “no person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of,” the 6,500 all months speculative limit. 17 C.F.R. § 150.2.

By exceeding the limits fixed by Regulation 150.2, Respondents violated Section 4a(b)(2) of the Act, and Regulation 150.2. The Commission does not need to establish *scienter* – i.e., proof of intent to exceed the applicable speculative position limit – in order to prove a violation of the Commission’s speculative position limit provisions. *CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979); *Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007). The Act “unambiguously imposes liability” for violations of speculative position limits. *Saberi*, 488 F.3d at 1212 (rejecting trader’s contention that the Division was required to prove that he intended to violate the speculative

position limits in frozen pork bellies futures set forth in CME Rule 8032.E) (citing *Hunt*, 591 F.2d at 1218).

B. Citigroup, As Owner of Subsidiaries, Is Liable for the Violations of Such Wholly-Owned Subsidiaries Per Section 2(a)(1)(B)

The foregoing acts, omissions, and failures of Citigroup's wholly-owned subsidiaries occurred within the scope of their employment, office, or agency with respect to Citigroup; therefore, pursuant to Section 2(a)(1)(B) of the Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2012), Citigroup is liable for its wholly-owned subsidiaries' acts, omissions, and failures in violation of Section 4a(b)(2) and Regulation 150.2.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during December 2009, Respondents violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (Supp. III 2010), and Regulation 150.2, 17 C.F.R. § 150.2 (2012).

VI.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
 - 1. the filing and service of a Complaint and Notice of Hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

6. any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148 *et seq.* (2012), relating to, or arising from, this proceeding;
 7. any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondents violated Section 4a(b)(2) of the Act, and Regulation 150.2, 17 C.F.R. §150.2 (2012);
 2. orders Respondents to cease and desist from violating Section 4a(b)(2) of the Act, as amended, and Regulation 150.2, 17 C.F.R. §150.2 (2012);
 3. orders Respondents to pay a civil monetary penalty ("CMP Obligation") in the amount of five hundred twenty-five thousand dollars (\$525,000), plus post-judgment interest within ten days of the date of entry of this Order;
 4. orders Respondents and their successors and assigns to comply with the conditions consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (Supp. IV 2011), and Regulation 150.2, 17 C.F.R. §150.2 (2012).
- B. Respondents shall pay a civil monetary penalty in the amount of five hundred twenty-five thousand dollars (\$525,000) within ten (10) days of the date of entry of this Order. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry

of this Order pursuant to 28 U.S.C. § 1961 (2006). Respondents shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivable-AMZ-340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-5644

If payment is to be made by electronic funds transfer, Respondents shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondents and the name and docket number of this proceeding. The paying Respondents shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

C. Respondents and their successors and assigns shall comply with the following conditions and undertaking set forth in its Offer:

1. Public Statements: Respondents agree that neither they nor any of their successors, assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and employees under their authority and/or actual or constructive control understand and comply with this agreement.

The provisions of this Order shall be effective on this date.

By the Commission



On behalf of Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 21, 2012