

State of Missouri  
Office of Secretary of State

Case No. AP-10-22

IN THE MATTER OF:

CITIGROUP GLOBAL MARKETS INC,  
CRD No. 7059; and  
GORDON HAMILTON, CRD. No. 1685613;

Respondents.

Serve:

CITIGROUP GLOBAL MARKETS, INC.  
c/o Elaine H. Mandelbaum, Esq.  
388 Greenwich Street, 17<sup>th</sup> Floor  
New York, NY 10013

GORDON HAMILTON  
20<sup>th</sup> Century Tower II, Suite 800  
c/o John Allan  
4520 Main Street  
Kansas City, Missouri 64111

**CONSENT ORDER**

**SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS**

1. The Enforcement Section of the Missouri Securities Division (“Enforcement Section”) has alleged that Gordon Hamilton (“Hamilton”), while employed as an agent of Citigroup Global Markets, Inc. (“CGMI”) <sup>1</sup>, engaged in violative conduct, and that CGMI failed to reasonably supervise Hamilton; and that this constitutes grounds to discipline, revoke, suspend, condition or limit Hamilton’s registration pursuant to Section 409.4-412(d)(13), RSMo. (Cum. Supp. 2009) and CGMI’s registration pursuant to Section 409.4-412(d)(9), RSMo. (Cum. Supp. 2009).

<sup>[1]</sup> As of June 1, 2009, Morgan Stanley and Citigroup contributed the Global Wealth Management Group of Morgan Stanley & Co. Incorporated and the Smith Barney Division of Citigroup Global Markets, Inc., respectively, into Morgan Stanley Smith Barney Holdings, LLC, a new joint venture. The joint venture owns Morgan Stanley Smith Barney LLC (“MSSB”) which is a newly formed registered investment advisor and broker-dealer. The conduct at issue occurred prior to the formation of MSSB.

2. Respondents and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Sections relating to the alleged violations by Respondents.

### CONSENT TO JURISDICTION

3. Respondents and the Enforcement Section stipulate and agree that the Commissioner has jurisdiction over the Respondents and these matters pursuant to the Missouri Securities Act of 2003, Chapter 408, *et seq.*
4. Respondents and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2009), which provides:

“The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.”

### WAIVER AND EXCEPTION

5. Respondents waive their right to a hearing with respect to this matter.
6. Respondents waive any right that they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents stipulate and agree with the Enforcement Section that, should the facts contained herein prove to be false or incomplete, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

### CONSENT TO COMMISSIONER'S ORDER

8. Respondents and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondents' (a) testimonial obligations; (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual.
10. Respondents agree that Respondents are not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondents neither admit nor deny the allegations made by the Enforcement Section, but consent to the Commissioner's Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

### COMMISSIONER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

## I. FINDINGS OF FACT

12. Citigroup Global Markets, Inc. (“CGMI”) is a securities broker-dealer and is registered in Missouri through the Central Registration Depository (“CRD”) system and has CRD number 7059. CGMI’s principal offices are located in New York, New York. During the period at issue in this matter, CGMI used the Smith Barney trade name for its retail brokerage services. CGMI is a subsidiary of Citigroup Inc., which is a publicly held Delaware corporation headquartered in New York, New York.
13. Gordon Hamilton (“Hamilton”) is currently a Missouri registered securities agent with Morgan Stanley Smith Barney LLC (“MSSB”). Hamilton is registered in Missouri through the CRD system and has CRD number 1685613. Hamilton’s business address is 20th Century Tower II, Suite 800, 4520 Main Street, Kansas City, Missouri 64111. During the period at issue, Hamilton was a registered securities agent with CGMI.
14. In or about August 2000, a forty-seven (47) year-old Missouri resident from Faucett, Missouri (“MR”) was considering retirement. MR had worked at Southwestern Bell (“SBC”) for thirty (30) years.
15. MSSB claimed that MR had maximized MR’s pension benefits at SBC.
16. In or about November 2000, Hamilton met with MR and invited MR to attend a retirement seminar Hamilton was conducting for SBC employees in St. Joseph, Missouri.
17. At the seminar, Hamilton discussed various retirement strategies including utilizing Internal Revenue Code (“IRC”) Section 72(t)<sup>2</sup> to withdraw money penalty-free from an IRA.  
  

[2] IRC section 72(t) imposes a ten percent (10%) penalty on withdrawals from an IRA if the person making the withdrawal has not attained the age of 59 ½. However, IRC section 72(t)(2)(A)(iv) allows for early withdrawals without penalty if the payments made are “part of a series of substantially equal periodic payments...” These payments must be designed to last until the person making the withdrawal (a) attains the age of 59 ½, or (b) five years, whichever is longer.
18. After the seminar, MR and a co-worker met with Hamilton. At this meeting Hamilton stated, among other things, that:
  - a. MR would be able to retire and recommended that MR place his retirement assets in two (2) IRAs. (These two IRAs included a “72(t) IRA” and a “Growth IRA”);
  - b. he would recommend investments for MR’s accounts;
  - c. MR would receive regular distributions from his 72(t) IRA. The 72(t) IRA would continue to provide MR with distributions until MR became sixty-two and one-half (62½) years old and was eligible to receive social security payments;
  - d. during the period that MR was living off of the 72(t) IRA distributions, the

Growth IRA could be increasing in value at an annualized rate of up to ten percent (10%) per year, because that had been the average annual growth of the stock market over the last one hundred (100) years; and

- e. if MR withdrew more than seventeen thousand dollars (\$17,000) a year from the 72(t) IRA MR would have less money at age sixty-two (62) but MR's Social Security payments would begin and that these payments would make up the difference.
19. In 2001, MR retired from SBC at age forty-seven (47) and set up three (3) accounts with CGMI through Hamilton. The three (3) accounts consisted of a Growth IRA, a 72(t) IRA and a non-qualified account.
  20. Upon his retirement, MR rolled over approximately three hundred fifty thousand dollars (\$350,000) from his 401(k) plan at SBC to Hamilton and CGMI. Of this amount, approximately one hundred thousand dollars (\$100,000) was placed in MR's Growth IRA and the balance was placed in the 72(t) IRA.
  21. In addition to MR's qualified retirement assets, MR also had over twenty-three thousand dollars (\$23,000) in SBC shares. MR deposited these SBC shares in his non-qualified account at CGMI.
  22. From June 2001 to December 2006, MR withdrew two thousand two hundred dollars (\$2,200.00) a month from his 72(t) IRA.
  23. The income generated by MR's 72(t) IRA did not support the amount MR was withdrawing and MR's account value declined as a result.
  24. In 2005, Hamilton contacted MR and recommended that MR reduce the amount of MR's withdrawals from the 72(t) IRA because the account had decreased in value. MR reduced the withdrawals from his 72(t) IRA.
  25. In January 2007, MR moved his accounts from CGMI to another broker-dealer.
  26. As a result of the decline in value of MR's retirement accounts, MR has had to return to work. MR's current salary is substantially smaller than the salary he earned while at SBC.
  27. Hamilton is currently a registered representative of MSSB.
  28. MSSB has reported that it has enhanced or is in the process of enhancing various procedures with respect to Section 72(t) distribution requests. These enhancements to MSSB's procedures include or will include the following:
    - a. requiring that clients be provided with mandatory additional disclosures as included in the firm's 72(t) brochure;
    - b. offering clients a firm-approved 72(t) calculator to assist clients who may be interested in 72(t) distributions;
    - c. providing additional guidance for representatives and principals on issues related to retirement accounts;

- c. requiring field supervisory approval of client requests for 72(t) distributions; and
- e. requiring a reporting mechanism that tracks and accounts for all IRA accounts that are subject to a Section 72(t) distribution.

Should any of these procedures not be in place within one year, MSSB will contact the Enforcement Section and provide the expected date of implementation.

## II. CONCLUSIONS OF LAW

29. The Commissioner finds Respondent Hamilton engaged in violative conduct, and that this conduct constitutes grounds to discipline Respondent Hamilton under Section 409.4-412, (d)(13), RSMo. (Cum. Supp. 2009).
30. The Commissioner finds Respondent CGMI failed to supervise Hamilton and that this conduct constitutes grounds to discipline Respondent CGMI under Section 409.4-412, (d)(9), RSMo. (Cum. Supp. 2009).
31. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondents and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondents and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409, RSMo., (Cum. Supp. 2009).

## III. ORDER

**NOW, THEREFORE,** it is hereby Ordered that:

1. Respondent CGMI's registration is hereby CENSURED;
2. Respondent Hamilton's registration is hereby CENSURED;
3. Respondent CGMI is ordered to pay one hundred ninety-five thousand dollars (\$195,000) in restitution. This payment shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Restitution Fund. These payments will be distributed by that Fund to the investor;
4. Respondent Hamilton is ordered to pay five thousand dollars (\$5,000) in restitution. This payment shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Restitution Fund. This payment will be distributed by that Fund to the investor;
5. Respondent CGMI shall pay to the Missouri Secretary of State's Investor Education and Protection fund the sum of seventy-five thousand dollars (\$75,000). This payment shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Education and Protection

Fund. The Division will send the money to the Missouri Secretary of State’s Investor Education and Protection Fund;

- 6. Respondents are jointly and severally ordered to pay seven thousand five hundred dollars (\$7,500) as the cost of this investigation. This amount shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101 and shall be payable to the Missouri Secretary of State’s Investor Education and Protection Fund. The Division will send the money to the Missouri Secretary of State’s Investor Education and Protection Fund; and
- 7. Respondents shall pay their own costs and attorneys’ fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 20<sup>TH</sup> DAY OF OCTOBER, 2010.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:  
MISSOURI SECURITIES DIVISION

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Mary S. Hosmer  
Assistant Commissioner of Securities

CITIGROUP GLOBAL MARKETS, INC.

BY: \_\_\_\_\_

NAME: Elaine H. Mandelbaum

TITLE: Managing Director

## Gordon Hamilton

Approved as to Form:

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Karl Marquardt  
Attorney for Respondent Hamilton and MSSB