

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20070094327-02**

TO: Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

RE: Citigroup Global Markets, Inc., Respondent (BD No. 7059)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Citigroup Global Markets, Inc. ("CGMI" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

The Firm is a wholly-owned subsidiary of Citigroup Financial Products, Inc. and indirectly is a wholly-owned subsidiary of Citigroup, Inc. The Firm's principal place of business is New York, New York. The Firm is a member firm of FINRA, and provides services including investment banking, underwriting debt and equity securities and advising corporations and institutions. It is a full-service global broker-dealer, and trades securities for institutional and retail customers, as well as proprietary accounts.

From approximately September 2004 to February 2007, the Newtown, Pennsylvania branch of CGMI ("Newtown Branch") employed a registered representative Mark Andrew Singer ("Singer").<sup>1</sup> In April 2007, a state grand jury in Tennessee indicted Singer, along with Customer S, and the business partner of Customer S, for theft of property, conspiracy to commit theft, and money laundering in connection with a scheme to misappropriate cemetery trust funds described below. That matter is still pending.

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<sup>1</sup> On July 15, 2009, an AWC was approved imposing formal sanctions on Singer (Disc. Proceeding No. 20070094327-01).

## OVERVIEW

From approximately September 2004 through October 2006 (the "Relevant Period"), Singer and two Firm customers, who controlled and, at certain times, acted as trustees of cemeteries in Michigan, misappropriated an amount alleged to be over \$60 million in cemetery trust funds ("the Scheme"). One of these Firm customers also controlled cemeteries in Tennessee from which trust funds were stolen. CGMI accounts were used to facilitate the misappropriation of some of these funds. During the Relevant Period, the Firm failed to reasonably supervise Singer's handling of these accounts, by inadequately responding to a succession of "red flags".

Singer assisted Customer B and Customer S in opening numerous accounts at CGMI in their own names, as well as in the names of corporate entities they owned or controlled (the "Controlled Accounts"). Thereafter Singer assisted Customers B and S in depositing cemetery trust funds to these accounts, and effecting improper transfers to third parties. Over a period of more than two years, the Controlled Accounts were used as conduits for improper transfers of trust funds. Some of these fund transfers were disguised as fictitious investments made on behalf of the Michigan cemeteries.

## FACTS AND VIOLATIVE CONDUCT

### The Prior Firm Period

The origins of the Scheme began during Singer's employment with another FINRA member firm ("the Prior Firm"), where Singer worked as a registered representative from approximately April 2001 through August 2004. During this period, Singer handled various accounts for Customer B, then owner of a group of 28 cemeteries in Michigan ("the Michigan Cemeteries"). Singer, acting on behalf of Customer B, opened trust accounts at the Prior Firm for each of the Michigan Cemeteries, as well as accounts for corporate entities owned by Customer B, including one for Summerfield LLC (the "Summerfield Account"). The funds deposited into the Summerfield Account were Michigan Cemetery trust funds.

The Summerfield Account used Michigan Cemetery trust funds to invest heavily in hedge funds at the Prior Firm, including a \$12.5 million investment in a hedge fund called the Topiary Fund of Funds ("Topiary Fund"). The Prior Firm became suspicious of certain activities by Customer B and the Summerfield Account, including third-party fund transfers involving Summerfield. The Prior Firm later communicated some of its suspicions to CGMI.

Shortly thereafter, Singer left the Prior Firm to join CGMI, taking many of Customer B's accounts with him, including Summerfield.

### The Purchase of the Michigan Cemeteries

In August 2004, Customer S entered into a purchase agreement with Customer B to buy the Michigan Cemeteries ("the Purchase Agreement").

Michigan law in effect at that time permitted Customer B to be both owner and trustee for the Michigan Cemeteries. After the sale of the Michigan Cemeteries from Customer B to Customer S, Customer S assumed the dual role as owner/trustee of the Michigan Cemeteries until early 2005.

Because Customer S did not have his own assets to purchase the Michigan Cemeteries, he used trust funds belonging to the Michigan Cemeteries. Customer S, however, was not entitled or authorized to claim these trust funds as his personal assets.

Shortly after entering into the Purchase Agreement, but before Customer S had made any payment to Customer B, Customer B improperly transferred the Topiary Fund investments from Summerfield to a company owned by Customer S, even though these investments belonged to the Michigan Cemetery trusts. Customer S subsequently used the Topiary Fund as a portion of the collateral for a personal line of credit in the amount of \$24 million, obtained from Citigroup Private Bank.

#### The Citigroup Period

Just after Labor Day 2004, Singer began working in CGMI's Newtown Branch. He reported to the branch office manager Bradley Adams ("Adams"), who, in turn, reported to a Regional Manager. Customer B transferred the assets in his accounts from the Prior Firm to CGMI, including the individual Michigan Cemetery accounts and the Summerfield Account. Customer S opened the Michigan Cemetery accounts and the Summerfield Account with Singer at Citigroup. Customer S also opened additional accounts with Singer at CGMI, including a personal account, and one in the name of Quest Minerals and Exploration (the "Quest Account"), a company he controlled, although he did not disclose that control to CGMI.

During the Relevant Period, both Adams and more senior management were aware that, although the Summerfield Account was not opened as a trust account, it was funded with trust funds belonging to the Michigan Cemeteries.

#### Failure to Supervise

During the Relevant Period, the Firm failed to respond adequately to a series of red flags and thereby helped the Scheme to succeed: 1) immediately after Singer joined CGMI, the Prior Firm apprised CGMI that the Prior Firm had ceased doing business with Customer B due to serious concerns regarding the movement of funds involving Customer B's accounts, 2) beginning seven days after Singer joined CGMI, there was rapid movement of funds in the Controlled Accounts, 3) CGMI received information indicating that Customer S may have made misrepresentations about his acquisition of hedge fund interests used to obtain a line of credit, and 4) CGMI received a letter alleging misconduct by Singer relating to his handling of some of the Controlled Accounts. Although these events should have caused CGMI to implement enhanced supervision of the Controlled Accounts, Customer S, and ultimately Singer, CGMI's responses were inadequate and Firm supervision remained deficient.

*First Red Flag - Inadequate Response to Warnings from the Prior Firm*

In early September 2004, shortly after Singer joined CGMI, the Prior Firm warned CGMI that it had concerns about the movement of funds out of the accounts owned or controlled by Customer B. The Prior Firm informed CGMI that it had closed these accounts, and also provided information about negative news articles regarding Customer B and the Michigan Cemeteries. The Summerfield Account was identified as an account which gave rise to its concerns.

In response to this information, CGMI placed the names of Customer B, Summerfield, and the Michigan Cemeteries on its Broker Alert Data Information System ("BADI System"). The BADI System was an internal database of individuals and entities which the Firm had determined "could pose a potential problem for [the Firm]." Firm policy required that, before approval of fund transfers from customer accounts to third parties, both the names of the account holder and the recipient had to be checked against the BADI System.

CGMI's follow-up to the information provided by the Prior Firm was inadequate. The Firm reviewed only two journals from Customer S's account to Customer B's account, and accepted the explanation that these were payments for the Michigan Cemeteries without further inquiry. Two additional journals from Customer S's account to Customer B's account, however, were not reviewed in a timely manner. One of these journals, in the amount of \$2,429,430, was journaled to Customer S's account only five days earlier from the Quest Account, a sequence of events which should have prompted further inquiry. The Firm also placed a call to the Michigan Commissioner of Cemeteries, who stated that the news article regarding the Michigan Cemeteries was generally inaccurate. At that time, however, the Firm, did not examine the movement of funds at CGMI involving the Summerfield Account, or any of the other Controlled Accounts or even attempt to ascertain whether CGMI accounts were opened for Summerfield.

For instance, at that time, the Firm failed to detect and question a journal of \$11.4 million from the Quest Account to Customer B on September 14, 2004, which occurred the day after the Quest Account received a \$12 million journal from the Summerfield Account. This movement of funds called for an inquiry into whether this was an attempt to conceal the transfer of Michigan Cemetery trust funds from Customer S to Customer B.

In mid-October 2004, the Firm removed the names of Customer B and Summerfield from the BADI System, despite the fact that it had not attempted to review the movement of funds in the Summerfield Account or Customer B's personal account (except as stated above). Summerfield was not reentered to the BADI system until the summer of 2005.

Removal of Summerfield from the BADI System facilitated Customer S's disbursement of trust funds from the Summerfield Account to third parties, as such transfers were no longer subject to more than routine branch approval procedures.

*Second Red Flag – Inadequate Response to Rapid Movement of Funds*

Within weeks after the accounts of Customers B and S were opened at CGMI, there were numerous rapid transfers of trust funds. This led to the generation of a significant number of alerts by the Firm's automated surveillance system. These alerts prompted an investigation of Customer S and some of the Controlled Accounts, including the Summerfield Account ("the S Investigation").

During the S Investigation, the Firm's Anti-Money Laundering ("AML") unit created a detailed flow chart in November 2004 ("the Flow Chart"). The Flow Chart diagrammed the movement of funds between some of the Controlled Accounts, including the Michigan Cemetery trust accounts, the Summerfield Account, the Quest Account, and the separate personal accounts of Customers B and S.

The Flow Chart showed the journaling of funds: 1) from the individual Michigan Cemetery accounts to the Summerfield Account, 2) from the Summerfield account to the Quest Account, and 3) from the Quest Account to the personal accounts of Customers B and S, and to Indian Nation Energy, another company which the Firm knew was owned by Customer S.

By November 2004, copies of the Flow Chart were provided to at least five Firm managers. In response to this information, however, no action was taken to restrict activity in any of the Controlled Accounts, except as discussed below.

The movement of funds diagrammed in the Flow Chart should have been a red flag, since it showed the disbursement of trust funds to both the purchaser and seller of the Michigan Cemeteries. The Firm nonetheless accepted questionable explanations for this activity. For example, Summerfield-to-Quest fund transfers, immediately followed by Quest-to-Customer B transfers, were justified as payments from Customer S to Customer B for the Michigan Cemeteries. The manner in which this ostensible payment was effected should have triggered further inquiry, particularly since the Quest Account was not engaged in any trading activity. The Firm however conducted no further inquiry into these sequential transfers, thereby permitting continuation of the Scheme.

By at least November 2004, the Firm became aware that Customer S had purchased the Michigan Cemeteries using funds belonging to the Michigan Cemeteries. The Firm, however, never questioned the propriety of Customer S using Michigan Cemetery trust funds to purchase the Michigan Cemeteries themselves. Firm management relied on the questionable explanation advanced by Singer that this arrangement was a legitimate transaction, similar to a leveraged buyout between Customers B and S.

In addition, the Firm permitted the wiring of funds from the Summerfield Account to the personal bank account of Customer S, without further inquiry or enhanced supervision.

According to the Firm, in late February 2005, the Firm decided to terminate its relationship with Customer S (the "S Termination Decision"). This decision was solely based on the Firm's

conclusion that Customer S had engaged in possibly unethical “self-dealing,” when he directed Summerfield to invest Michigan Cemetery trust funds in a company he previously controlled.

The Regional Manager for the Newtown Branch informed Adams that the Firm “did not want to do business with [Customer S] any longer,” and additionally told him that “there were to be no new transactions”.

After the Regional Manager informed Adams of the S Termination Decision, Adams failed to take steps to close the accounts owned or controlled by Customer S as directed. The Firm did not attempt to ascertain whether Adams was complying with the S Termination Decision. Adams also permitted new accounts to be opened at the Newtown Branch in the names of third-party trustees appointed for the Michigan and Tennessee Cemeteries by Customer S (the “Third Party Trustee Accounts”), without asking anyone at the Firm whether this was permissible.

Third-party transfers of cemetery trust funds continued to be effected through some of the Third Party Trustee Accounts to outside accounts, owned or controlled by Customers B or S.

The Firm’s failure to close Customer S’s accounts, due to Adams’ disregard of the S Termination Decision, permitted the Scheme to continue undetected through at least October 2006.

Although the Firm made the S Termination Decision in February 2005, this decision was never memorialized in writing. Moreover, the Firm failed to take appropriate steps to ensure that this decision was implemented. This failure to document an important business decision as required by the Firm’s own procedures, and to monitor its implementation, constitutes a separate violation of NASD Rules 3010 and 2110.

*Third Red Flag – Inadequate Response to Evidence of Possible  
Misrepresentation by Customer S*

A key component of the Scheme was the transfer of the Topiary Fund shares to Customer S, prior to the acquisition of the Michigan Cemeteries by S and the opening of an account by S at the Firm. This premature transfer of control permitted Customer S to acquire a line of credit from Citigroup Private Bank. This acquisition also better situated Customer S to be approved as a purchaser of the Michigan Cemeteries.

In February 2005, the Firm received evidence that Customers B and S may have colluded to misrepresent the date on which Customer B transferred the Topiary Fund to Customer S. More specifically, the Prior Firm informed CGMI that Customer S acquired \$12.5 million of the Topiary Fund in June 2004, two months prior to the date of the Purchase Agreement for the Michigan Cemeteries.

This information contradicted the Topiary Fund monthly statements provided to the Firm by Singer and Adams, which appeared to show that the transfer occurred in late August 2004, after the date of the Purchase Agreement.

At least one AML manager recognized that, if the transfer occurred in June, which was prior to the Purchase Agreement, it was an indication of possible collusion between Customers B and S. After Singer was able to produce account statements purporting to show that Customer B (not Customer S) controlled the Topiary Fund in June and July 2004, the Firm considered the issue resolved. No further efforts were made to obtain further detail or verification, or to ascertain why the Prior Firm had otherwise concluded that the Topiary Fund transfer occurred on an earlier date.

The Firm's failure to investigate this further, for example by inquiring why the Prior Firm concluded that the Topiary Fund was transferred prior to the Purchase Agreement, was a contributing factor to the continued success of the Scheme. Had the Firm asked for more details, the Prior Firm could have provided information indicating collusion between Customer B and S.

#### *Fourth Red Flag – Inadequate Response to Whistleblower Letter*

Shortly after May 15, 2006, Firm management received a letter from the principal of a company acting as a third-party trustee for the Michigan and Tennessee cemeteries, advising the Firm of "serious concerns" regarding Singer's handling of cemetery trust funds (the "Whistleblower Letter").

Among other things, the Whistleblower Letter alleged Singer's requests for unauthorized transfers of Michigan cemetery trust funds without sufficient documentation, and Singer's use of his personal e-mail account to communicate with the whistleblower, which the whistleblower believed may have been designed to bypass the Firm's e-mail monitoring system. In addition, the Whistleblower Letter identified three Third Party Trustee Accounts opened in the Newtown Branch using cemetery trust funds belonging to cemeteries owned by Customer S, and disclosed information which raised the possibility that Singer was requesting third party transfers of cemetery trust funds without proper authorization.

Despite the serious allegations raised by the Whistleblower Letter, the Firm did not initiate an adequate investigation into Singer's handling of the cemetery-related accounts until September 2006.

The Firm did not take effective steps to restrict activity in the Summerfield Account, or place Singer on enhanced supervision.

The Whistleblower Letter alleged that Customer S had opened Third Party Trustee Accounts with cemetery trust funds. Despite receipt of this information, the Firm failed to take immediate action to investigate, restrict or close these Third Party Trustee Accounts. Neither did the Firm take immediate action to ascertain why the Newtown Branch approved the opening of these accounts.

NASD Rule 3010(a) provides, in relevant part, "[e]ach member shall establish and maintain a system to supervise the activities of each registered representative . . . that is reasonably designed to achieve compliance with applicable securities laws and regulations."

Based on the foregoing, from September 2004 through October 2006, Respondent violated NASD Rules 3010 and 2110 by:

1. Failing to respond adequately to certain events which constituted supervisory red flags, including:
  - a) Warnings from another broker-dealer regarding a previous history of suspicious movement of funds involving accounts handled by Singer which were transferred to CGMI;
  - b) Suspicious rapid movement of funds between certain customer accounts handled by Singer and third parties;
  - c) Misrepresentations made by one of Singer's customers in connection with collateral he used to obtain approval for a line of credit;
  - d) A whistleblower letter alleging specific acts of misconduct by Singer; and
2. Failing to document, monitor and implement the Firm's decision to terminate its customer relationship with one of Singer's customers.

B. Respondent also consents to the imposition of the following sanctions:

1. Censure
2. Fine in the amount of \$750,000
3. An order to disgorge commissions in partial restitution for the benefit of the applicable cemetery trusts, in the total amount of \$750,000.

The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude the court-appointed receivers, or any other person or entity, from pursuing their own actions to obtain restitution or other remedies.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.



In addition, disgorgement of commissions in partial restitution, is ordered to be paid in equal amounts to the court-appointed receivers for the states of Michigan and Tennessee, in the total amount of \$750,000, to be paid to the applicable cemetery trusts.

A registered principal on behalf of Respondent shall submit satisfactory proof of payment of restitution, or of reasonable and documented efforts undertaken to effect restitution. Such proof shall be submitted to Adeline Liu, FINRA Department of Enforcement, 14 Wall Street, 14 Floor, New York, New York 10005, either by letter that identifies Citigroup Global Markets, Inc. (Case No. 20070094327), or by e-mail from a work-related account of the registered principal of Respondent to [EnforcementNotice@FINRA.org](mailto:EnforcementNotice@FINRA.org). This proof shall be provided to the FINRA staff member listed above no later than 120 days after acceptance of the AWC.

## II.

### WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the *ex parte* prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### III.

#### OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
  1. this AWC will become part of Respondent’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
  2. this AWC will be made available through FINRA’s public disclosure program in response to public inquiries about Respondent’s disciplinary record;
  3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent’s right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

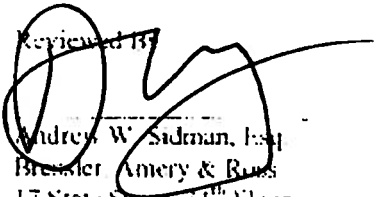
4-29-10  
Date

Citigroup Global Markets, Inc.  
Citigroup Global Markets, Inc.

By: E. H. Mandelbaum

Name: E. H. Mandelbaum


Title: Managing Director

Reviewed by  
  
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Accepted by FINRA

5/18/10  
Date

Signed on behalf of the  
Director of ODA, by delegated authority

  
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