

UNITED STATES OF AMERICA
 Before the
 COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)
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CITIGROUP PRIVATE BANK GP,)
INC.)
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Respondent.)
 _____)

CFTC Docket No. 10-01

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

Office of
 Proceedings
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I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Citigroup Private Bank GP, Inc. (“CPBG” or “Respondent”) has violated Commission Regulation (“Regulation”) 4.22(c), 17 C.F.R. § 4.22(c) (2008). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether CPBG has 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 this administrative proceeding, CPBG has submitted an *Offer of Settlement* (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings herein, CPBG acknowledges service of this *Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions* (“Order”).¹

¹ CPBG consents 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 CPBG does not consent to the use of the *Offer*, or the findings 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 does CPBG consent to the use of the *Offer* or this *Order*, or the findings consented to in the *Offer* or this *Order*, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

Since 2003, CPBG has been a registered commodity pool operator (“CPO”) for commodity pools. Pursuant to Regulation 4.22(c), CPBG was required to file with the National Futures Association (“NFA”) and distribute to each pool participant an annual report for each of the pools within 90 days after the end of the pools’ fiscal year. Regulation 4.22(f)(1) provides CPOs with extensions of this annual report deadline under certain circumstances and conditions.

Despite receiving grants of extension from the NFA, CPBG failed to distribute to the pool participants and file with the NFA one or more of its commodity pools’ annual reports in a timely manner, in violation of Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2008).

B. RESPONDENT

Citigroup Private Bank GP, Inc., a Delaware corporation, is located at 485 Lexington Avenue, 9th floor, New York, NY 10017. CPBG has been registered with the Commission as a CPO since April 2003.

C. FACTS

CPBG is a registered CPO for pools that operate as funds-of-funds (i.e., pools that invest in one or more other collective investment vehicles). All pools operated by CPBG were employee benefit pools. As such, investment in the pools was restricted to present and former senior employee of Citigroup’s private bank. None of the pools were ever offered to the public.

For the years 2004 through 2007, CPBG’s commodity pools’ fiscal years ended on December 31st. Pursuant to Regulation 4.22(c), CPBG was required to file with the NFA and distribute to each pool participant an annual report for the pools within 90 days of the close of the respective pool’s fiscal year.

CPBG, upon application, could receive from the NFA a grant of extension of time to file the annual reports under Regulation 4.22(f)(1), of not more than 90 calendar days after the date as of which the annual report was to have been distributed. For fiscal years 2004 through 2007, CPBG applied for and received from the NFA for each of its commodity pools 90-day extensions of time, claiming that it could not distribute its pools’ annual reports in a timely manner without substantial undue hardship.

For fiscal years 2004 through 2007, CPBG failed to distribute to pool participants and file with the NFA one or more of its commodity pools’ annual reports in a timely manner. CPBG cooperated with the Division of Enforcement’s review of the matter and, in 2008, CPBG took measures to ensure against future violations of Regulation 4.22(c).

D. LEGAL DISCUSSION

Sections 4n(3) and (4) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6n(3) and (4) (2006), provide, in relevant part, that every CPO registered with the Commission file such reports, and regularly furnish statements of account to each pool participant, and that such reports and statements shall be in such form and manner as may be prescribed by the Commission. Regulation 4.22(c) requires a CPO to distribute to pool participants and file with the NFA an annual report for a commodity pool under its operation within 90 days of the end of the pool’s fiscal year that contains the information required by and in accordance with Regulations 4.22(c) and (d).

Under Regulation 4.22(f)(1), a CPO may file with the NFA an application for extension of time to a specific calendar date not more than 90 calendar days after the date its annual report was to be distributed and filed, if it cannot distribute the annual report in a timely manner without “substantial undue hardship.” For fiscal years 2004 through 2007, CPBG requested and received from the NFA extensions of time pursuant to Regulation 4.22(f)(1).

As described above, for fiscal years 2004 through 2007, CPBG failed to distribute to pool participants and file with the NFA one or more of its commodity pools’ annual reports in a timely manner. CPBG, therefore, violated Regulation 4.22(c), 17 C.F.R. § 4.22(c)(2008).

The furnishing of the annual report was designed to “provide [pool] participants with the information necessary to assess the overall trading performance and financial condition of the pool.” Commodity Pool Operators and Commodity Trading Advisors; Final Rules, 44 Fed. Reg. 1918 (Jan. 8, 1979) (announcing the adoption of Regulation 4.22). Without timely reporting, the Commission’s goal of providing pool participants with complete and necessary data is hampered.

IV.

FINDING OF VIOLATIONS

Based on the foregoing, the Commission finds that CPBG violated Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2008).

V.

OFFER OF SETTLEMENT

CPBG has submitted the *Offer* in which it, without admitting or denying the findings herein:

- A. Acknowledges receipt of service of this *Order*;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this *Order*;

- C. Waives: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the *Offer*; any and all claims that it may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2008), relating to, or arising from, this proceeding; any and all claims that it may possess under the Small Business Regulatory Enforcement Act, Pub. L. 104-121, §§ 231-232, 110 Stat. 862 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to, or arising from, this proceeding; and any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record upon which this *Order* is entered shall consist solely of the findings contained in this *Order* to which the Respondent has consented; and
- E. Consents, solely on the basis of the *Offer*, to entry of this *Order* that:
1. makes findings by the Commission that CPBG violated Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2008);
 2. orders CPBG and its successors and assigns to cease and desist from violating Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2008);
 3. orders CPBG to pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000.00) within ten (10) days of the date of the entry of this *Order*; and
 4. orders CPBG and its successors and assigns to each comply with the undertaking consented to in its *Offer* and set forth below in Part VI of this *Order*.

Upon consideration, the Commission has determined to accept the Respondent's *Offer*.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. CPBG and its successors and assigns shall cease and desist from violating Regulation 4.22(c), 17 C.F.R. § 4.22(c) (2008);
- B. CPBG shall pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000.00) within ten (10) days of the date of the entry of this *Order*. CPBG shall pay its civil monetary penalty 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: Marie Bateman – AMZ-300

DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone 405-954-6569

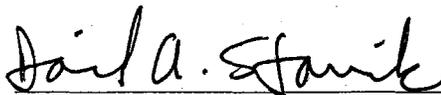
If payment by electronic transfer is chosen, CPBG shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. CPBG shall accompany payment of the penalty with a cover letter that identifies CPBG, and the name and docket number of this proceeding. CPBG shall simultaneously submit a copy of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, D.C. 20581 and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (2006), if this amount is not paid in full within fifteen (15) days of the due date, CPBG shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made; and

C. CPBG and its successors and assigns shall comply with the following undertaking set forth in the *Offer*:

Public Statements: Neither CPBG nor any of its successors, assigns, employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any finding in the *Order*, or creating, or tending to create, the impression that the *Order* is without a factual basis; provided, however, that nothing in this provision affects CPBG's (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party. CPBG and its successors and assigns shall undertake all steps necessary to assure that all of their agents and employees under their authority and/or actual or constructive control understand and comply with this undertaking.

The provisions of the Order shall be effective as of this date.

By the Commission.



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: October 1, 2009