

3) What was the total loss to the victims as a result of Citigroup's actions? How was this determined? If, as the S.E.C.'s submission states, the loss was "at least" \$160 million, see Plaintiff's Memorandum in Support of Proposed Settlement ("Pl. Mem.") at 3, what was it at most?

4) How was the amount of the proposed judgment determined? In particular, what calculations went into the determination of the \$95 million penalty? Why, for example, is the penalty in this case less than one-fifth of the \$535 million penalty assessed in SEC v. Goldman Sachs & Co., No. 10 Civ. 3229, at *1 (S.D.N.Y. July 20, 2010) (BSJ)? What reason is there to believe this proposed penalty will have a meaningful deterrent effect?

5) The S.E.C.'s submission states that the S.E.C. has "identified . . . nine factors relevant to the assessment of whether to impose penalties against a corporation and, if so, in what amount." Pl. Mem. at 5-6 (citing Statement of the Securities and Exchange Commission Concerning Financial Penalties, SEC Rel. No. 2006-04 (Jan. 4, 2006)). But the submission fails to particularize how the factors were applied in this case. Did the S.E.C. employ these factors in this case? If so, how should this case be analyzed under each of those nine factors?

6) The proposed judgment imposes injunctive relief against future violations. What does the S.E.C. do to maintain compliance? How many contempt proceedings against large financial entities has the S.E.C. brought in the past decade as a result of violations of prior consent judgments?

7) Why is the penalty in this case to be paid in large part by Citigroup and its shareholders rather than by the "culpable individual offenders acting for the corporation?" See Statement of the Securities and Exchange Commission Concerning Financial Penalties, SEC Rel. No. 2006-04 (Jan. 4, 2006). If the S.E.C. was for the most part unable to identify such alleged offenders, why was this?

8) What specific "control weaknesses" led to the acts alleged in the Complaint? See Pl. Mem. at 7. How will the proposed "remedial undertakings" ensure that those acts do not occur again?

9) How can a securities fraud of this nature and magnitude be the result simply of negligence?

The parties should be prepared to answer these questions in detail at the November 9 hearing. In addition, the parties are permitted, but not required, to file with the Court written answers to these questions in advance of the hearing, provided such submissions are filed no later than noon on November 7, 2011.

SO ORDERED.

Dated: New York, NY
October 27, 2011



JED S. RAKOFF, U.S.D.J.