



Securities Markets Act (Citigroup) Exemption Notice 2003

Pursuant to section 48(1)(b) of the Securities Markets Act 1988, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

1 Title

This notice is the Securities Markets Act (Citigroup) Exemption Notice 2003.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 31 October 2008.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Securities Markets Act 1988

Citigroup entity means—

- (a) Citigroup, Inc., a bank holding company incorporated in Delaware, United States of America; or
- (b) Citigroup Global Markets Australia Pty Limited, a company incorporated in New South Wales; or

(c) any other subsidiary of Citigroup, Inc.

client means the client referred to in paragraph (a) of the definition of **equity swap financing transaction**

counterparty means the counterparty referred to in paragraph (b) of the definition of **equity swap financing transaction**

equity swap financing transaction means a transaction, consisting of 2 or more interlinked agreements, that complies with the following requirements:

- (a) one of the interlinked agreements is an equity financing agreement between a Citigroup entity and a client who is not an associated person of a Citigroup entity, the terms of which are—
 - (i) contained in documents that are based on a standard Master Agreement published by either International Swaps and Derivatives Association, Inc., Australian Securities Lending Association Limited, or International Securities Market Association; or
 - (ii) substantially to the same effect as the terms contained in those documents; and
- (b) another of the interlinked agreements is entered into between a Citigroup entity (which need not be the same Citigroup entity as that referred to in paragraph (a)) and a counterparty who is not an associated person of a Citigroup entity, the terms of which are either—
 - (i) a physically-settled equity swap agreement documented under a standard Master Agreement published by International Swaps and Derivatives Association, Inc.; or
 - (ii) an agreement substantially to the same effect as a physically-settled equity swap agreement; and
- (c) at the beginning of the transaction,—
 - (i) the client arranges for the transfer to a Citigroup entity of voting securities of a public issuer (**swapped securities**); and
 - (ii) a Citigroup entity pays to the client an amount by way of consideration for that transfer; and
- (d) within 48 hours of the swapped securities being transferred to a Citigroup entity,—

- (i) a Citigroup entity transfers those securities or securities equivalent to the swapped securities (**equivalent securities**) to the counterparty; and
- (ii) the counterparty pays to a Citigroup entity an amount by way of consideration for that transfer; and
- (e) at the end of the transaction, the counterparty may, or may be required to, transfer the swapped securities or equivalent securities to a Citigroup entity; and
- (f) within 48 hours of swapped securities or equivalent securities being transferred to a Citigroup entity, a Citigroup entity must transfer the swapped securities or equivalent securities to the client

exempt person means—

- (a) a Citigroup entity; and
- (b) a related body corporate of a Citigroup entity; and
- (c) a body corporate in respect of which an exempt person under paragraph (a) or paragraph (b) has the power—
 - (i) to exercise, or control the exercise of, the right to vote attached to 20% or more of the voting securities of the body corporate;
 - (ii) to acquire or dispose of, or control the acquisition or disposition of, 20% or more of the voting securities of the body corporate.
- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.
- (3) Any term or expression that is defined in the Securities Act 1978 and used, but not defined, in this notice or the Act has the same meaning as in the Securities Act 1978.

5 Exemption from sections 20 to 22 of Act

Every exempt person is exempted from sections 20 to 22 of the Act in respect of any relevant interest in the swapped securities or equivalent securities of a public issuer that the exempt person may have as a result of a Citigroup entity entering into an equity swap financing transaction.

6 Conditions

The exemption in clause 5 is subject to the conditions that—

- (a) an exempt person must not exercise, or control the exercise of, a right to vote attached to any swapped securities or equivalent securities other than by giving to the chairperson of the public issuer a proxy to exercise the vote attached to the securities as the chairperson thinks fit; and
- (b) the client must have a relevant interest, throughout the term of the equity swap financing transaction, in the swapped securities or equivalent securities; and
- (c) a Citigroup entity must notify the Commission of the name of every person who, as a result only of entering into an equity swap financing transaction with a Citigroup entity, that Citigroup entity believes is required to file a notice under any of sections 20 to 22 of the Act, and of the name of the public issuer of the securities in which that person has the relevant interest.

Dated at Wellington this 9th day of December 2003.

The Common Seal of the Securities Commission was affixed in the presence of:

[L.S.]

J. Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 31 October 2008, exempts exempt persons (mainly Citigroup entities) from sections 20 to 22 of the Securities Markets Act 1988 (which contain substantial security holder rules) in respect of any relevant interest in the swapped securities or equivalent securities of a public issuer that an exempt person may have under a physically-settled equity swap financing transaction.

The Securities Commission considers that it is appropriate to grant the exemption because—

- as an intermediary in the equity swap financing transactions, a Citigroup entity is in a position analogous to that of a person to whom the exclusions available under section 6(1)(a) and (b) of the Securities Markets Act 1988 would apply:
- the exemption applies only to a physically-settled equity swap, where the client retains a relevant interest in the securities. This means that the client must comply with substantial security holder law:
- the exemption does not apply if the client or the counterparty under the equity swap financing agreement is an associated person of a Citigroup entity. (This requirement does not prevent back-to-back agreements between different Citigroup entities that are designed to facilitate the equity swap financing agreement, but does mean that the interlinked agreements must include agreements with an ultimate client, and an ultimate counterparty, who is not an associated person of a Citigroup entity):
- the conditions of the exemption mean that the Citigroup entity may exercise any right to vote attaching to the securities that are the subject of the equity swap financing agreement only by giving a proxy to the chairperson of the public issuer to exercise the vote as the chairperson thinks fit:
- the exemption includes an obligation on a Citigroup entity to inform the Commission if it believes that another party to a transaction should make disclosure under the Securities Markets Act 1988 as a result of the entering into of an equity swap financing agreement with the Citigroup entity.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 11 December 2003.

This notice is administered in the Securities Commission.
