

1 Kelly M. Dermody (State Bar No. 171716)
Heather H. Wong (State Bar No. 238546)
2 LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
3 275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
4 Telephone: (415) 956-1000
Facsimile: (415) 956-1008

5 Elizabeth A. Alexander (*pro hac vice*)
6 LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
7 150 Fourth Avenue, N., Suite 1650
Nashville, TN 37219-2423
8 Telephone: (615) 313-9000
Facsimile: (615) 313-9965

9 Cyrus Mehri (*pro hac vice*)
10 Anna M. Pohl (*pro hac vice*)
MEHRI & SKALET, PLLC
11 1250 Connecticut Avenue, NW. Suite 300
Washington, DC 20036
12 Telephone: (202) 822-5100
Facsimile: (202) 822-4997

13 *Attorneys for the Plaintiffs*

Adam T. Klein (*pro hac vice*)
Piper Hoffman (*pro hac vice*)
Justin M. Swartz (*pro hac vice*)
OUTTEN & GOLDEN LLP
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Facsimile: (212) 977-4005

James M. Finberg (State Bar No. 114850)
ALTSHULER BERZON LLP
177 Post Street, Ste. 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 SAN FRANCISCO/OAKLAND DIVISION

17 RENE FASSBENDER AMOCHAEV,
18 DEBORAH ORLANDO, KATHRYN N.
19 VARNER and IVY SO on behalf of
20 themselves and all others similarly situated,

21 Plaintiff,

22 v.

23 CITIGROUP GLOBAL MARKETS, INC.,
24 d/b/a SMITH BARNEY,
25 Defendant.

Case No. C-05-1298 PJH

CLASS ACTION

**AMENDED [~~PROPOSED~~] ORDER (1)
CONFIRMING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT; (2)
CERTIFYING SETTLEMENT CLASS
AND (3) APPROVING DISTRIBUTION OF
SETTLEMENT FUND**

Date: August 13, 2008
Time: 9:00 am
Place: Courtroom 3
Hon. Phyllis J. Hamilton

1 The parties to this action having entered into a Settlement Agreement and having
2 applied to this Court for preliminary and final approval of the Settlement Agreement and the
3 terms thereof; this Court on May 1, 2008 having granted preliminary approval to the Settlement
4 Agreement, which is attached as Exhibit 1 to this Court’s May 1, 2008 Order, and having directed
5 notice of the settlement, its terms, and the applicable procedures and schedules to be provided to
6 Class members; this Court having set a final Fairness Hearing to determine whether the
7 Settlement Agreement should be granted final approval, pursuant to Federal Rule of Civil
8 Procedure 23(e), as “fair, adequate and reasonable;” and all proposed Class members having been
9 given an opportunity to comment on the settlement;

10 NOW, THEREFORE, IT IS HEREBY ORDERED, upon consideration of the
11 Settlement Agreement, the parties’ briefs, declarations, and oral arguments in support thereof, and
12 the proceedings in this action to date, as follows:

13 1. Except as otherwise specified herein, the Court for purposes of this Order
14 adopts all defined terms set forth in the Settlement Agreement, attached as Exhibit 1 to the May 1,
15 2008 order granting preliminary approval.

16 2. This Court has jurisdiction over the subject matter of this litigation and all
17 matters relating thereto, and over the plaintiffs and the defendant.

18 3. This Court confirms as final its conditional certification of the Settlement
19 Class, as defined in the Section III of its May 1, 2008 Order granting Preliminary Settlement
20 Approval (“Preliminary Approval Order;” Docket No. 172), for purposes of settlement and based
21 on the findings therein and the absence of any objections from any class members to such
22 certification.

23 4. The Court confirms as final the appointment of Renee Fassbender
24 Amochaev, Deborah Orlando, Kathryn N. Varner and Ivy So as class representatives as stated in
25 Section IV of the May 1, 2008 Order.

26 5. The Court confirms as final the appointment of the following as Class
27 Counsel: Lief, Cabraser, Heimann & Bernstein, LLP, Outten & Golden LLP, Mehri & Skalet,
28 PLLC and Altshuler Berzon LLP. The Court further confirms the appointment of the following

1 as Lead Class Counsel: Kelly M. Dermody of Lieff, Cabraser, Heimann & Bernstein, LLP, Adam
2 T. Klein of Outten & Golden LLP, and Cyrus Mehri of Mehri & Skalet, PLLC.

3 6. The Class Notice and Claim Form mailed to Class Members, pursuant to
4 this Court's orders, constituted the best notice practicable under the circumstances, was
5 accomplished in all material respects, and fully met the requirements of Rule 23 of the Federal
6 Rules of Civil Procedure, due process, the United States Constitution and any other applicable
7 law.

8 7. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, this Court
9 grants final approval to the Settlement Agreement and the terms set forth therein. The Court finds
10 that the Settlement Agreement and its terms are fair, reasonable, and adequate in all respects. The
11 Court specifically finds that the settlement is rationally related to the strength of plaintiffs' and
12 Class members' claims given the risk, expense, complexity, and duration of further litigation.
13 This Court also finds that the Settlement Agreement is the result of arms-length negotiations
14 between experienced counsel representing the interests of the plaintiffs and defendant, after
15 thorough factual and legal investigation. *Staton v. Boeing*, 327 F.3d 938, 960 (9th Cir. 2003);
16 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

17 8. The Court further finds that the response of the Class to the settlement
18 supports settlement approval. Of the 2,411 Class members who received mailed notice, 1,219
19 had already submitted claim forms as of July 23, 2008. This is a claim submission rate of over
20 50% well before the deadline for postmarking claim forms on September 17, 2008. As of August
21 12, 2008, no class members had submitted objections.

22 9. The Court finds the proposed plan of allocation is rationally related to the
23 relative strengths and weaknesses of the respective claims asserted. The mechanisms and
24 procedures set forth in the Settlement Agreement by which payments are to be calculated and
25 made to Class members filing timely claims are fair, reasonable and adequate, and payment shall
26 be made according to those allocations and pursuant to the procedure set forth in the Settlement
27 Agreement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. By operation of the entry of this Order and the Final Judgment, all released Class and Named Plaintiff claims (as described in Section V.A and B. of the Settlement Agreement and as set forth in the Class Member Release and Named Plaintiff Release appended as Exhibits A and B thereto) are fully, finally and forever released, relinquished and discharged, pursuant to the terms of the Settlement Agreement, as to all Settlement Class members other than those listed in Exhibit A to the Final Judgment, who timely opted out pursuant to the terms of the Court’s Preliminary Approval Order and the Settlement Agreement. The Court has reviewed the release provision in the Settlement Agreement and in the Class member Release and Named Plaintiff Release appended as Exhibits A and B thereto, and the Court finds the releases to be fair, reasonable, and enforceable under applicable law. All claims released pursuant to the Settlement Agreement are dismissed with prejudice as to all members of the Settlement Class other than those listed in Exhibit A to the Final Judgment.

11. The Court retains jurisdiction over this matter for purposes of resolving issues relating to administration, implementation, and enforcement of the Settlement Agreement.

IT IS SO ORDERED.

Dated: 8/13/08

