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SECURITIES COMMISSIONER

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## State Securities Board

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April 15, 1998

NICHOLAS C. TAYLOR  
CHAIRMAN

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MEMBER

JOSE ADAN TREVINO  
MEMBER

Ms. Patricia Cappeto  
Citibank, N.A.  
153 East 53rd Street  
New York, New York 10043

RE: Investment Adviser Activities

Dear Ms. Cappeto:

This is in response to your letter dated January 27, 1998, received by this Agency January 28, 1998, as well as a number of telephone conversations between you and Agency staff members during the intervening period.

Your letter and supplemental materials describe the proposed activities of Citibank, N.A., ("Citibank"), a national banking association, as an investment adviser in connection with the activities of its affiliate, Citicorp Investment Services ("CIS"), in the State of Texas. CIS is presently registered in Texas as a general securities dealer with a pending amendment to add investment advisory services to its registration. Citibank is not registered as an investment adviser in this State, nor has it complied with the notice filing requirements for federal covered advisors by submitting a consent to service of process and a copy of its Form ADV, and by paying a fee, as prescribed by Section 115.1(i) of the Rules and Regulations of the State Securities Board.

You represented that in conducting its activities in Texas, CIS does not itself provide investment management services to clients. Rather, you stated, if a client desires such services, CIS refers the client to Citibank. According to your letter, the client and Citibank contract directly if the client wishes to engage Citibank to provide these services. You have asked for confirmation that Citibank, in providing investment advisory services to clients in Texas, is not required to register as an investment adviser or make a notice filing with the Securities Commissioner.

Based upon the foregoing understanding, the Staff of the State Securities Board will recommend no action to require registration or notice filing by Citibank or its employees in relation to its above-described activities as an investment adviser in Texas. Please note, however, activities that constitute the sale of securities in this State would require registration of Citibank and its agents. Section 4.E of the Texas Securities Act broadly defines the terms "sale," "offer for sale," and "sell." Likewise, the interpretation of those terms as espoused by the Supreme Court of Texas in Brown v. Cole, 291

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S.W.2d 704 (1956), found that a seller may be "any link in the chain of the selling process or in the words of the Act he is one who performs 'any act by which a sale is made.'" Accordingly, if Citibank's activities in Texas expand to include compensated referral of clients to CIS and CIS representatives for brokerage transactions, a different question is raised that is not addressed by this letter.

Please be advised that, although the Staff's no action recommendation would alleviate the necessity that Citibank and its employees register or notice file in order to conduct investment advisory activities, the antifraud provisions of the Texas Securities Act would continue to be applicable to those activities.

Please note that this Agency has not made an independent investigation of the facts, but has relied solely upon the information you have provided. If this information is incorrect or changes substantially, the staff would reconsider the matter and the no-action position stated above would be void.

I trust this answers your inquiry. Please feel free to write us if you need further information.

Very truly yours,

DENISE VOIGT CRAWFORD  
Securities Commissioner

/dw

David Weaver  
General Counsel