

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions.

DRAFT ADVISORY OPINION 2012-21 is now available for comment. It was requested by Stefan C. Passantino, Esq., on behalf of Primerica, Inc., and is scheduled to be considered by the Commission at its public meeting on June 21, 2012. The meeting will begin at 10:00 a.m. and will be held in the 9th Floor Hearing Room at the Federal Election Commission, 999 E Street, NW, Washington, DC. Individuals who plan to attend the public meeting and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Commission Secretary, at (202) 694-1040, at least 72 hours prior to the meeting date.

If you wish to comment on DRAFT ADVISORY OPINION 2012-21, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on June 20, 2012.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email (Secretary@fec.gov), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.

FOR FURTHER INFORMATION

Press inquiries: Judith Ingram
Press Officer
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth
(202) 694-1040

Comment Submission Procedure: Kevin Deeley
Acting Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2012-21, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

Office of the Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of General Counsel
ATTN: Kevin Deeley, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

AGENDA DOCUMENT NO. 12-49

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2012 JUN 18 P 4: 49

AGENDA ITEM

For Meeting of 6-21-12

SUBMITTED LATE

June 18, 2012

MEMORANDUM

TO: The Commission

FROM: Anthony Herman *AH by KO*
General Counsel

Kevin Deeley *KE*
Acting Associate General Counsel

Amy Rothstein *AR by KC*
Assistant General Counsel

Cheryl Hemsley *CH by TK*
Attorney

Subject: Draft AO 2012-21 (Primerica, Inc.)

Attached is a proposed draft of the subject advisory opinion. We have been asked to have this draft placed on the Open Session agenda for June 21, 2012.

Attachment

1 ADVISORY OPINION 2012-21

2

3 Stefan Passantino, Esq.
4 McKenna Long & Aldridge LLP
5 1900 K Street, NW
6 Washington, DC 20006-1108

DRAFT

7

8 Dear Mr. Passantino:

9

We are responding to your advisory opinion request on behalf of Primerica, Inc.

10

("Primerica") concerning the application of the Federal Election Campaign Act of 1971,

11

as amended (the "Act"), and Commission regulations to the possible disaffiliation of

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Primerica and Citigroup, Inc.¹ ("Citigroup").

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The Commission concludes that Primerica and Citigroup are disaffiliated entities.

14

Thus, Primerica may establish a separate segregated fund ("SSF") that is not affiliated

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with Citigroup's SSF.

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Background

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The facts presented in this advisory opinion are based on your letter received on

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January 6, your letter and attachments received on April 27, and your emails received on

19

May 14 and June 7, 2012.

20

Primerica is a for-profit, publicly traded distributor of life insurance and financial

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products (primarily term life insurance, mutual funds, and annuities). It was incorporated

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in Delaware in October 2009 by Citigroup as a holding company for the Primerica

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businesses, which were wholly-owned, indirect subsidiaries of Citigroup. In April 2010,

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Citigroup transferred these businesses to Primerica through a corporate reorganization

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and spun off Primerica through an initial public offering ("IPO") of Primerica stock.

¹ As used in this advisory opinion, the terms "Citigroup, Inc." and "Citigroup" refer to Citigroup and its subsidiaries, unless the context dictates otherwise.

1 Immediately after the spin-off, Citibank held approximately 40 percent of
2 Primerica's outstanding common stock; 37 percent was held by members of the public;
3 and 23 percent was held by various private equity funds managed by Warburg Pincus,
4 LLC ("Warburg"). Citigroup continued to divest itself of Primerica stock after the spin-
5 off. As of December 2011, Citigroup no longer owned any shares of Primerica's
6 outstanding voting common stock, and Citigroup's subsidiaries held only about .02
7 percent of the outstanding shares.

8 In March and April 2010, Citigroup and Primerica entered into a number of
9 agreements related to the reorganization and spin-off. These included an Intercompany
10 Agreement by and between Primerica and Citigroup (the "Separation Agreement");² a
11 Transition Services Agreement and a Long Term Services Agreement, regarding the
12 provision of transitional and long-term administrative services for term life insurance
13 policies or regarding the sale of Citigroup products;³ a number of co-insurance and co-
14 insurance trust agreements⁴ and related monitoring and reporting agreements;⁵ a Tax
15 Separation Agreement;⁶ a Registration Rights Agreement;⁷ and a Note Agreement,
16 regarding Primerica's issuance to Citigroup of a \$300 million note.⁸ Several of these
17 agreements, such as the transitional and long-term administrative services agreements,

² See Advisory Op. Request Attach. 1.

³ See Advisory Op. Request Attachs. 7-8.

⁴ See Advisory Op. Request Attachs. 9-15.

⁵ See Advisory Op. Request Attachs. 22-23.

⁶ See Advisory Op. Request Attach. 17.

⁷ See Advisory Op. Request Attach. 21.

⁸ See Advisory Op. Request Attach. 25.

1 have since terminated. The requestor represents that the co-insurance and co-insurance
2 trust agreements remaining in effect “represent standard co-insurance contracts that are
3 fully in line with insurance industry standards.”

4 Primerica is governed by a Board of Directors. The directors are elected by a
5 plurality of the shareholder votes cast at each Annual Meeting and can be removed only
6 for cause and only by an affirmative vote of at least two-thirds of the votes entitled to be
7 cast by holders of the then-outstanding capital stock. *See* Bylaws, Art. III, sec. 1.

8 Pursuant to the Securities Purchase Agreement between Primerica and Citigroup,
9 Citigroup has one representative on Primerica’s Board of Directors. As one of nine
10 members of Primerica’s Board, this director has the same ability to direct or to participate
11 in Primerica’s governance as do the other eight directors. All members of the Board hold
12 equal voting rights with regard to key personnel decisions associated with corporate
13 officers.

14 The Nominating and Corporate Governance Committee of the Board has the
15 authority of an executive committee. It takes the lead in shaping corporate governance
16 policies and practices. *See* Primerica, Inc. Nominating and Corporate Governance
17 Committee Charter at 1. The Board as a whole has the authority to elect, remove, and fix
18 the salaries of all corporate officers. The Board also possesses the sole power to fill
19 vacancies in the positions of Chief Executive Officer, President, Secretary, and Treasurer
20 of the corporation. In addition, the Board holds the authority to create and fill other
21 corporate officer positions as needed.

22 Aside from the one Citibank director on Primerica’s Board, who is an officer of
23 Citi Holdings, Primerica and Citigroup do not have any overlapping officers or

1 employees. The majority of Primerica's workforce consists of former Citigroup
2 employees. As of December 31, 2011, approximately 86.4 percent of Primerica's
3 workforce (2,192 of 2,537 employees) were former Citigroup employees because they
4 had been employed by Primerica before the April 2010 spin-off. Moreover, many key
5 members of Primerica's current executive team were also employees of Citigroup before
6 the spin-off. These key Primerica executives were not, however, part of Citigroup's
7 senior management team.

8 Outside of the above-referenced agreements, the services provided by Primerica
9 to Citigroup, and by Citigroup to Primerica, are described by the requestor as
10 "administrative in nature." For example, Primerica currently sublets office space from
11 Citigroup in Long Island City, N.Y. for \$75,000 per month, and receives certain
12 administrative support services in connection with its sublease. The requestor represents
13 that this monthly rental fee "is commensurate with the fair market value at the time of the
14 execution of the sublease for office space of comparable quality in the Long Island City
15 section of the New York City borough of Queens." Primerica and Citigroup have also
16 offered each other minor forms of organizational support, such as for printing, shipping,
17 and warehousing printed materials. The requestor represents that, "[a]t all times . . . the
18 party receiving organizational assistance has paid a fair market price for such services."

19 Primerica does not currently have an SSF and intends to form one. Citigroup will
20 not pay any of the administrative, fundraising, or operational costs associated with
21 Primerica's SSF, nor will it provide any other form of support. The SSF will be overseen
22 by Primerica personnel. Primerica intends to establish an independent board consisting
23 of from five to seven Primerica employees to work with the SSF's Treasurer in

1 overseeing the SSF's day-to-day operations. These employees will not be members of
2 Primerica's Board of Directors, nor will they consult with the Board when making
3 decisions about the SSF's activities. Although the SSF is still in the development stage,
4 Primerica expects that its Board of Directors will be consulted only "sporadic[ally]"
5 about the SSF during the planning process, and will play even less of a role once the SSF
6 becomes operational.

7 Citigroup currently has two SSFs registered with the Commission.⁹ Primerica
8 states that its planned SSF will function independently of Citigroup and Citigroup's SSFs
9 and asks the Commission to determine that its SSF will not be affiliated with either
10 entity. Through counsel, Citigroup has indicated its support for Primerica's advisory
11 opinion request.

12 ***Question Presented***

13 *Are Primerica and Citigroup disaffiliated?*

14 ***Legal Analysis and Conclusions***

15 Yes, Primerica and Citigroup are disaffiliated. Accordingly, Primerica may
16 establish an SSF that will not be affiliated with Citigroup's SSFs.

17 ***1. Applicable Law***

18 Political committees, including SSFs, that are established, financed, maintained,
19 or controlled by the same corporation, labor organization, person, or group of persons,
20 including any parent, subsidiary, branch, division, department, or local unit thereof, are
21 affiliated. See 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1)(ii). Contributions

⁹ These SSFs are Citigroup, Inc., Political Action Committee – Federal, and Citigroup, Inc. Political Action Committee – Federal/State.

1 made to or by such political committees are considered to have been made to or by a
2 single political committee. 2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1).

3 *2. Per Se Affiliation*

4 Commission regulations identify certain organizations that are *per se* affiliated,
5 and hence whose SSFs are *per se* affiliated. These organizations include a single
6 corporation and its subsidiaries, as well as a single person or group of persons. *See* 11
7 CFR 100.5(g)(3)(i), 110.3(a)(2)(i). Although Primerica and Citigroup were previously
8 *per se* affiliated, following the reorganization and spin-off, they do not meet the criteria
9 for *per se* affiliation.

10 *3. Affiliation Factors*

11 In the absence of *per se* affiliation, Commission regulations provide for an
12 examination of various non-exhaustive factors in the context of the overall relationship to
13 determine whether one sponsoring organization has established, financed, maintained, or
14 controlled the other sponsoring organization or committee, and hence whether their
15 respective SSFs are affiliated. *See* 11 CFR 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii);
16 Advisory Opinion 2009-18 (Penske Truck Leasing), Advisory Opinion 2007-12 (Tyco).
17 “In analyzing the significance of these factors when presented with a request for the
18 disaffiliation of companies, the Commission does not have a formula whereby the presence
19 of a specific number of factors is sufficient or insufficient for continued affiliation.” Advisory
20 Opinion 1996-23 (ITT). These factors are considered in turn.

21

1 (A) *Whether one sponsoring organization owns a controlling interest in the voting*
2 *stock or security of another sponsoring organization.*

3 Citigroup does not own a controlling interest in Primerica's voting stock or
4 securities. 11 CFR 100.5(g)(4)(ii)(A), 110.3(a)(3)(ii)(A). As of December 2011,
5 Citigroup did not hold any shares of Primerica's outstanding public stock.¹⁰ Moreover,
6 there is no indication that Primerica owns any voting stock or securities in Citigroup or
7 its subsidiaries. The absence of such a controlling interest suggests that the entities are
8 not affiliated.

9 (B) *Whether a sponsoring organization or committee has the authority or ability to*
10 *direct or participate in the governance of another sponsoring organization or*
11 *committee through provisions of constitutions, bylaws, contracts or other rules, or*
12 *through formal or informal practices or procedures.*

13 Citigroup has only minimal authority or ability to direct or participate in the
14 governance of Primerica and will have even less authority or ability to do so for
15 Primerica's SSF. 11 CFR 100.5(g)(4)(ii)(B), 110.3(a)(3)(ii)(B).

16 Primerica is governed by its Board of Directors. *See* Primerica By-Laws, Art. III,
17 sec. 3. The Directors are divided into three classes with staggered three-year terms. At
18 each annual meeting of Primerica's shareholders, directors in one class are elected by a
19 plurality of the shareholder votes cast. The terms of directors in the first class expired
20 and elections were held at the 2011 annual meeting; the terms of directors in the second
21 class expired and elections were held at the 2012 annual meeting; and the terms of

¹⁰ Primerica indicates that Citigroup's subsidiaries that are brokers, from time-to-time, may hold small amounts of Primerica's stock on behalf of clients in the ordinary course of their business. As of December 2011, Citigroup's subsidiaries held about .02 percent of Primerica's stock.

1 directors in the third class will expire and elections will be held at the 2013 annual
2 meeting. Directors may be removed only for cause, by an affirmative vote of at least
3 two-thirds of the votes entitled to be cast by holders of the then-outstanding capital stock.
4 *See* Primerica's Bylaws, Art. III, sec. 1. Vacancies in the Board are filled by majority
5 vote of the remaining directors.

6 Upon completion of the IPO, Primerica's Board consisted of six directors, with
7 two in each class. The Board now has nine Directors.¹¹ By agreement between the
8 requestor and Citigroup, Citigroup's representation on Primerica's Board of Directors is
9 limited to one member.¹² The requestor represents that this limitation remains in effect
10 and that there is no desire among corporate management or the Board of Directors to
11 remove or change it. No other director on Primerica's Board has a current attachment to
12 Citigroup, and only one director has any former attachment to Citigroup.¹³

13 As one of nine members of Primerica's Board, Citigroup's representative has the
14 same ability to direct and participate in Primerica's governance as the other eight
15 members. Indeed, he may play even a smaller role than some of the other Directors,
16 insofar as he is not a member of the Nominating and Corporate Governance Committee,
17 which "takes a leadership role in shaping corporate governance policies and practices,

¹¹ Primerica's Board may have up to 15 Directors, at the discretion of the Board, subject to an agreement with Warburg that the Board will have no more than nine members so long as Warburg owns certain threshold amounts of Primerica stock. *See* Primerica Form S-1/A filed with the Securities Exchange Commission, March 31, 2010, http://google.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHtmlSection1?SectionID=7156274-684231-704841&SessionID=zgW7Hjuc9vn9i77 (last viewed June 5, 2012).

¹² Mr. Mark Mason, Chief Executive Officer of Citi Holdings, currently serves as Citigroup's representative on Primerica's Board of Directors.

¹³ Ms. Yastine was employed by Citigroup and its predecessors from 1987 to 2002. *See* <http://investors.primerica.com/od.aspx?iid=4245322> (last viewed June 5, 2012).

1 including recommending to the Board of Directors the Corporate Governance Guidelines

2 . . . and monitoring [Primerica's] compliance with said policies and Guidelines.”

3 Primerica, Inc. Nominating and Corporate Governance Committee Charter at 1.

4 Additionally, Citigroup's representative on the Board will have little to no role in
5 the establishment and operation of Primerica's proposed SSF. The requestor represents
6 that Primerica's Board of Directors will have only a minimal consultative role in the
7 establishment of Primerica's SSF and will play an even smaller role in the SSF's
8 operations. Instead, the SSF will have an independent board consisting of Primerica
9 personnel, with no overlap in membership between the SSF board and Primerica's Board
10 of Directors, and the SSF will not consult with Primerica's Board of Directors regarding
11 the SSF's daily activities.

12 The Commission has concluded that some spun-off companies remained affiliated
13 with their former parent, in part, because of bylaw provisions that entrenched the
14 positions of board members appointed by the former parent and limited control by
15 shareholders. *See* Advisory Opinion 1987-21 (MAXUS Energy) (all current members of
16 former subsidiary's board were selected by the former parent and “the spun-off
17 corporation's articles of incorporation and by-laws make it very difficult to wrest control of
18 the new corporation from the control of the previously appointed board”), Advisory Opinion
19 1986-42 (Dart & Kraft) (former parent elected entire board for subsidiary and “took steps
20 . . . to perpetuate the control . . . for the foreseeable future and to make it more difficult for
21 shareholders to acquire control” of the former subsidiary). The Commission has found
22 other spin-off companies with some indicia of an entrenched board not to be affiliated,
23 however, when other factors such as a lack of overlap in boards of directors were present.

1 See Advisory Opinion 2007-12 (Tyco) (selection of pre-spin-off board by parent
2 outweighed by “minimal nature of director, officer, and employee overlap, the background
3 of the board members selected, and vigorous trading of the shares in the companies resulting
4 in a diversification in the groups of persons holding shares” in the companies), Advisory
5 Opinion 1993-23 (Pacific Telesis) (significance of provisions aimed at preventing outside
6 or hostile takeovers that entrenched the positions of board members appointed by the former
7 parent and that limited the control by shareholders were minimized by a complete lack of
8 overlap of boards of directors).

9 The provisions of Primerica’s Bylaws and Certificate of Incorporation contain
10 certain elements of an entrenched board. These include (i) staggered board membership
11 classes; (ii) some ability of the board to increase its size and to fill vacancies without
12 shareholder approval; (iii) the inability of shareholders to remove directors without cause,
13 and then only by a supermajority of the voting shares; and (iv) a requirement of an
14 affirmative vote by 80 percent of the issued shares to amend such provisions. See
15 Bylaws, Art. III, sec. 1; Revised Certificate of Incorporation at 8.

16 Nonetheless, as in Advisory Opinion 2007-12 (Tyco) and Advisory Opinion
17 1993-23 (Pacific Telesis), the Commission concludes that the effect on Primerica of
18 Citigroup’s pre-spin-off selection of the majority of Primerica’s current Board of
19 Directors is outweighed by other factors. These factors include: (1) the minimal degree
20 of overlap between Primerica’s and Citigroup’s directors and officers; (2) the minimal
21 connection to Citigroup of Primerica’s board members; and (3) the absence of Citigroup
22 ownership of Primerica stock.

1 Thus, Citigroup's limited ability to participate in the governance of Primerica and
2 its SSF also suggests that the entities are not affiliated.

3 ***(C) Whether a sponsoring organization or committee has the authority or ability to***
4 ***hire, appoint, demote or otherwise control the officers or other decisionmaking***
5 ***employees of another sponsoring organization or committee.***

6 Citigroup has only minimal authority or ability to hire, appoint, demote or
7 otherwise control the officers or other decisionmaking employees of Primerica, and will
8 have even less authority or ability to do so for Primerica's SSF. 11 CFR
9 100.5(g)(4)(ii)(C), 110.3(a)(3)(ii)(C).

10 All members of the Board hold equal voting rights with regard to key personnel
11 decisions associated with corporate officers. The Board as a whole has the authority to
12 elect, remove, and fix the salaries of all corporate officers. The Board also possesses the
13 sole power to fill a vacancy in the positions of chief executive officer, president,
14 corporate secretary and corporate treasurer, and may create and fill other corporate
15 officer positions as the need arises.

16 As discussed above, Citigroup has only one representative on Primerica's Board
17 of Directors. This representative is not a member of the Nominating and Corporate
18 Governance Committee, which identifies and nominates candidates for the Board¹⁴.
19 Rather, he serves as only one of nine members, each of whom has an equal vote on
20 matters before the Board. Further, while the Board has the authority to elect, remove,

¹⁴ "The members of the Nominating and Corporate Governance Committee must meet the Independence requirements of the New York Stock Exchange corporate governance rules and all other applicable laws, rules and regulations governing director independence, as determined by the Board." Nominating and Corporate Governance Committee Charter at 1. "Because of his affiliation as an officer of Citi, Mr. Mason will not be considered independent under the rules applicable to companies listed on the NYSE until April 2013." Primerica's 2012 Proxy Statement at 8.

1 and fix the salaries of all corporate officers; fill vacancies in these position in the cases of
2 death or resignation; and to create and fill other corporate officer positions as needed,
3 Citigroup's representative has but one of nine votes on these matters.

4 Citibank's minimal control over Primerica's decisionmaking employees does not
5 suggest that the entities are affiliated.

6 *(D) Whether a sponsoring organization or committee has common or overlapping*
7 *membership with another sponsoring organization or committee which indicates*
8 *a formal or ongoing relationship between the sponsoring organizations or*
9 *committees.*

10 Neither Primerica nor Citigroup is a labor organization, membership organization,
11 a cooperative, or a trade association. 11 CFR 100.5(g)(4)(ii)(D), 110.3(a)(3)(ii)(D).

12 Accordingly, this factor does not apply here.

13 *(E) Whether a sponsoring organization or committee has common or overlapping*
14 *officers or employees with another sponsoring organization or committee which*
15 *indicates a formal or ongoing relationship between the organizations or*
16 *committee; and*

17 *(F) Whether a sponsoring organization or committee has any members, officers or*
18 *employees who were members, officers, or employees of another sponsoring*
19 *organization or committee which indicates a formal or ongoing relationship or*
20 *the creation of a successor entity.*

21 Other than the single representative on Primerica's Board of Directors, discussed
22 above, Primerica and Citigroup do not have any common or overlapping officers or
23 employees. 11 CFR 100.5(g)(4)(ii)(E), 110.3(a)(3)(ii)(E). Nor is there any indication

1 that Primerica's SSF will have any common or overlapping officers or employees with
2 Citigroup or Citigroup's SSFs

3 As of December 31, 2011, over 86 percent of Primerica's employees were former
4 Citigroup employees because they had been employed by Primerica when it was still a
5 wholly-owned subsidiary of Citigroup. 11 CFR 100.5(g)(4)(ii)(F), 110.3(a)(3)(ii)(F).

6 Although many key members of Primerica's current executive team were also employed
7 by Primerica when it was a Citigroup subsidiary, they were not part of Citigroup's senior
8 management team. Also, as discussed above, one current member of Primerica's Board
9 of Directors was an officer of Citigroup some ten years ago.

10 Corporations may be disaffiliated even when the former officers, directors or
11 employees of one corporate entity continued to serve as officers, directors, or employees
12 of the spun-off entity. For example, in Advisory Opinion 2007-12 (Tyco), the
13 Commission found two spun-off companies not to be affiliated either with each other or
14 with the company from which they had spun, even though two of 11 directors of one
15 spun-off entity, and three of 11 directors of a second spun-off entity, had previously
16 served as directors or officers of the pre-spin-off company. The presence of former
17 directors or officers was "merely a function of the division of a major corporation into
18 three parts." Advisory Opinion 2007-12 (Tyco).

19 In this instance, a high percentage of Primerica's employees are former Citigroup
20 employees because they were employed by Primerica when it was a subsidiary of
21 Citigroup. As in Advisory Opinion 2007-12 (Tyco), this is no more than a function of a
22 parent company spinning off a subsidiary corporation. Under these circumstances,

1 Primerica's employment of former Citigroup employees does not indicate a formal or
2 ongoing relationship between the companies or the creation of a successor entity.

3 In sum, these factors do not suggest that Primerica and Citigroup are affiliated.

4 *(G) Whether a sponsoring organization or committee provides goods in a significant
5 amount or on an ongoing basis to another sponsoring organization or committee.*

6 *and*

7
8 *(H) Whether a sponsoring organization or committee causes or arranges for funds in
9 a significant amount or on an ongoing basis to be provided to another sponsoring
10 organization or committee.*

11 Citigroup and its SSF do not provide goods in a significant amount or on an
12 ongoing basis to Primerica, and will not do so for Primerica's SSF. 11 CFR
13 100.5(g)(4)(ii)(G), 110.3(a)(3)(ii)(G). Citigroup provides services to Primerica under
14 agreements that are in line with industry standards and at fair market rates. 11 CFR
15 100.5(g)(4)(ii)(H), 110.3(a)(3)(ii)(H). Citigroup will not fund or otherwise support
16 Primerica's SSF.

17 At the time of the corporate reorganization and spin-off, Primerica and Citigroup
18 entered into a number of agreements that set forth the terms under which assets,
19 liabilities, business opportunities, tax consequences, and other matters would be divided
20 between them. For example, the Separation Agreement between Primerica and Citigroup
21 provides for "phase out" trademark licensing, equity purchase rights, indemnification,
22 and noncompetition between the companies, among other provisions. Many of these
23 provisions are transitional in nature and of reasonably short duration. *See, e.g.,*
24 Separation Agreement, sec. 3.4 (Termination of Trademark Licenses). Moreover, two

1 agreements regarding the provision of services between the companies – the Transition
2 Services Agreement and the Long-Term Services Agreement – are no longer in force, the
3 former having expired on October 6, 2011, and the latter having been terminated on July
4 1, 2011. Similarly, Citigroup’s right to be the sole underwriter for the refinancing of
5 Primerica’s Note, discussed below, has also lapsed.¹⁵ See Note Agreement, sec. 8.4(b).

6 At the time of the corporate reorganization and spin-off, Primerica and Citigroup
7 also entered into several co-insurance agreements for policies written by Primerica and its
8 subsidiaries and underwritten by Citigroup subsidiaries. The requestor states that, “[t]o
9 the best of [its] knowledge, all co-insurance and co-insurance trust agreements . . .
10 represent standard co-insurance contracts that are fully in line with insurance industry
11 standards.”

12 The requestor has explained that these agreements were entered into “for the
13 purpose of facilitating an orderly business transition during [the spin-off].” The requestor
14 further represents that “none of the agreements . . . were designed to undermine
15 Primerica’s status as a fully independent company in the wake of its spin-off or to make
16 Primerica a formal affiliate of Citigroup or successor to its corporate interests.”

17 With regard to funding, Primerica and Citigroup entered into a Note Agreement,
18 under which Primerica issued to Citigroup a note in the amount of \$300 million, payable
19 at 5.5 percent interest and due on March 31, 2015. Primerica has explained that the Note
20 Agreement contains “standard terms and fair market value interest rates” as of the time of
21 the Agreement’s execution.

¹⁵ Citigroup currently has the right to participate as a bookrunning underwriter or placement agent (but not necessarily the sole bookrunning underwriter or placement agent) for any such refinancing.

1 Separation agreements after corporate spin-offs often provide for some continuing
2 transactions between the companies. Even when the agreements entail substantial
3 financial arrangements, however, the Commission has accepted representations that they
4 merely sorted out the companies' post-spin-off obligations rather than continuing one
5 company's control. *See* Advisory Opinion 2007-12 (Tyco) (citing advisory opinions).
6 Here, the Commission accepts Primerica's statement that these agreements were entered
7 into "for the purpose of facilitating an orderly business transition during Primerica's
8 corporata spin-off, rather than for the purpose of perpetuating Citigroup's control over"
9 Primerica or to create a formal affiliate or successor to Citigroup's corporate interests.

10 In addition to these agreements, Primerica and Citigroup have also provided each
11 other with administrative support through the provision of services contracts. For
12 example, Primerica currently sublets office space from Citigroup in Long Island City,
13 N.Y. for \$75,000 per month, and receives certain mail, security, voice, conferencing, and
14 other services from Citigroup, and various outside providers, in connection with the
15 sublease. The requestor represents that the fee paid by Primerica to Citigroup for these
16 services "represents a rate that is commensurate with the fair market value at the time of
17 the execution of the sublease for office space of comparable quality in the Long Island
18 City section of the New York City borough of Queens." Primerica and Citigroup have
19 also provided each other with organizational services since the end of the Transition
20 Services Agreement. The requestor represents that, "[a]t all times, . . . the party receiving
21 organizational assistance has paid a fair market price for such services."

22 Disaffiliated companies may maintain some customer-supplier relationships. *See*
23 Advisory Opinion 2009-18 (Penske Truck Leasing), Advisory Opinion 2000-28 (ASHA),

1 Advisory Opinion 2003-21 (Lehman Brothers), Advisory Opinion 2004-41 (CUNA
2 Mutual), Advisory Opinion 2007-13 (United American Nurses), Advisory Opinion 1996-
3 42 (Lucent Technologies). The provision of funding or goods and services between the
4 companies in these prior advisory opinions was either not significant or represented arm's
5 length transactions at commercially reasonable rates. The Commission recognized that
6 those "transactions, rather than illustrating the continued affiliation of the two
7 organizations, instead can be seen as part of the process to establish the independence and
8 separation of [an entity] from its organizational parent." Advisory Opinion 2007-13
9 (United American Nurses) (quoting Advisory Opinion 2000-28 (ASHA)). Based on
10 Primerica's representations, the Commission concludes that such is the case here as well.

11 With respect to Primerica's planned SSF, Primerica represents that Citigroup will
12 not pay any of the administrative, fundraising, or operational costs associated with the
13 SSF. Nor will Citigroup provide any other form of support to the SSF.

14 Accordingly, the goods provided and financing arranged between Citibank and
15 Primerica do not suggest that the entities are affiliated.

16 *(I) Whether a sponsoring organization or committee had an active or significant role*
17 *in the formation of another sponsoring organization or committee.*

18 The relationship between the entities is part of the assessment regarding
19 affiliation. As Primerica's former parent company, Citigroup had an active role in the
20 formation of Primerica as it exists today. 11 CFR 100.5(g)(4)(ii)(I), 110.3(a)(3)(ii)(I).
21 One entity's involvement in the formation of a spun-off entity, however, "does not
22 necessitate a finding of continued affiliation when significant changes in the relevant
23 relationships have occurred, such as arrangements separating the operations of the

1 companies and apportioning their assets and obligations and nearly complete separation
2 of corporate leadership and personnel.” Advisory Opinion 2007-12 (Tyco).

3 In light of the separation of business operations, arm’s length agreements setting
4 forth the obligations of both Citigroup and Primerica at each stage of the spin-off and
5 post-separation, and the almost total separation of leadership and personnel, Citibank’s
6 role in the formation of Primerica does not require a finding that the entities are affiliated.

7 *(J) Whether the sponsoring organizations or committees have similar patterns of*
8 *contributions or contributors which indicate a formal or ongoing relationship*
9 *between the sponsoring organizations or committees.*

10 Primerica does not yet have an SSF on which to make comparisons to Citigroup’s
11 SSFs. 11 CFR 100.5(g)(4)(ii)(J), 110.3(a)(3)(ii)(J).

12 **4. Conclusion**

13 For the reasons given above, the Commission concludes that Primerica and
14 Citigroup are disaffiliated. Citigroup no longer owns any Primerica stock, does not
15 control the day-to-day operations of Primerica, and has only one representative on
16 Primerica’s nine-member Board of Directors. In addition, Citigroup’s only involvement
17 in the formation of Primerica’s SSF will be through its sole representative on Primerica’s
18 Board, whose role will be minimal, and will not extend to the administration of that SSF.
19 While Primerica and Citigroup still hold certain coinsurance contracts and a note
20 agreement and provide certain administrative assistance to each other, Primerica
21 represents that these contracts reflect arm’s length transactions that are standard in the
22 industry and reflect fair market value.

