

December 19, 2016

Via Electronic Submission: <http://comments.cftc.gov>

Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants (RIN 3038-AE54)

Dear Mr. Kirkpatrick:

Citadel LLC¹ (“Citadel”) appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the “Commission”) on its proposed rule addressing the cross-border application of certain swap provisions under the Commodity Exchange Act (the “Proposal”).²

Citadel is a significant participant in the OTC derivatives markets, and supports the Commission’s continued efforts to promote market safety, stability and integrity and to improve conditions for investors through increased transparency and competition. In this regard, Citadel fully supports the Commission’s conclusion set forth in the Proposal that swap transactions arranged, negotiated or executed using personnel located in the United States (“ANE Transactions”) fall squarely within the Commission’s regulatory jurisdiction under the Commodity Exchange Act, even if the transactions are booked to non-U.S. entities. These transactions constitute swap activity *in the United States*,³ and are relevant from the perspective of protecting U.S. investors and increasing overall market transparency, competition, and integrity.⁴ As the Commission has observed for some time now, purportedly offshore transactions can pose threats

¹ Citadel is a global financial firm built around world-class talent, sound risk management, and innovative market-leading technology. For more than a quarter of a century, Citadel’s hedge funds and capital markets platforms have delivered meaningful and measurable results to top-tier investors and clients around the world. Citadel operates in all major asset classes and financial markets, with offices in the world’s leading financial centers, including Chicago, New York, San Francisco, Boston, London, Hong Kong, and Shanghai.

² Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants, 81 Fed. Reg. 71946 (Oct. 18, 2016), available at: <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-24905a.pdf> (the “Proposal”).

³ See Proposal at 71953.

⁴ See Proposal at 71952-53.

to the U.S. financial system, and the regulation and oversight of ANE Transactions directly impacts the efficacy of other Commission regulatory requirements designed to protect U.S. investors.⁵

Citadel also supports the Commission's continued efforts to harmonize its rules with foreign jurisdictions and to allow for substituted compliance or equivalence arrangements when appropriate, including when determining which rules apply to ANE Transactions.

I. The Commission Has Jurisdiction Over ANE Transactions

A. The Proposal Reflects the Commission's Regulatory Mandate

Citadel strongly agrees with the Commission's conclusion in the Proposal that ANE Transactions fall directly within its regulatory jurisdiction even if the transactions are booked to non-U.S. entities. The Commission has an unambiguous mandate from Congress under section 2(a)(1)(A) of the Commodity Exchange Act ("CEA") to regulate such activities as it would any other swap activities that occur *inside the United States*. As the Commission correctly observes, where a firm "uses personnel located in the United States (whether its own personnel or personnel of an agent) to arrange, negotiate, or execute its swap dealing transactions . . . such person is conducting a substantial aspect of its swap dealing activity within the United States".⁶

The Commission's affirmation of its jurisdiction over ANE Transactions is consistent with prior Commission action and conclusions reached by other regulatory agencies. Specifically, the Securities and Exchange Commission has concluded that they have jurisdiction over ANE Transactions involving security-based swaps.⁷ In addition, both the Commission's Cross-Border Guidance⁸ and the Division of Swap Dealer and Intermediary Oversight's Staff Advisory⁹ previously affirmed jurisdiction over ANE Transactions.

Recognizing jurisdiction over ANE Transactions helps to protect the U.S. financial system by ensuring that financial firms are not operating within the United States without Commission oversight merely by booking swaps to a non-U.S. entity. As the Commission has recognized, U.S. financial groups can be expected to stand behind the obligations of their offshore affiliates even in

⁵ See Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 45292, 45293 (July 26, 2013) (the "Cross-Border Guidance").

⁶ Proposal at 71952. Given the Commission's exclusive jurisdiction over "agreements . . . and transactions involving swaps" in the United States pursuant to CEA section 2(a)(1)(A), it is not necessary to address the Commission's extraterritorial jurisdiction in the context of ANE Transactions. However, even if ANE Transactions could be viewed as outside the Commission's domestic jurisdiction, they would clearly be captured by the Commission's extraterritorial authority under CEA section 2(i) given their direct and significant connection with activities in, or effect on, commerce of the United States.

⁷ See Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception, 81 Fed. Reg. 8598, 8623 (Feb. 19, 2016).

⁸ Cross-Border Guidance at 45350 n.513.

⁹ See CFTC Staff Advisory No. 13-69 (Nov. 14, 2013) ("Staff Advisory"), available at: <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/13-69.pdf>.

the absence of explicit guarantees.¹⁰ Therefore, the financial risks related to ANE Transactions may not always remain in the entity in which the swaps are booked and can significantly impact the U.S. financial system and U.S. investors.¹¹ As such, it would undermine the fundamental policy goals of protecting U.S. investors and the overall integrity of the U.S. swap market if ANE Transactions were excluded from Commission jurisdiction solely because the transactions were booked to non-U.S. entities.¹²

B. Citadel Supports the Commission's Proposal to Implement its Jurisdiction over ANE Transactions in a Targeted Manner

Having affirmed its jurisdiction over ANE Transactions, the Commission must determine how to apply that jurisdiction. Since confirming its jurisdiction in the Cross-Border Guidance and Staff Advisory over 3 years ago, the Commission has provided market participants with temporary no-action relief to afford them time to “organize their internal policies and procedures to come into compliance.”¹³ However, the Commission now proposes to further tailor the application of its jurisdiction over ANE Transactions by specifying the particular rules that will be applicable to ANE Transactions. This additional step should only further increase the clarity and workability of the regulatory framework for market participants.

In determining the specific rules that should be applied to ANE Transactions, Citadel strongly agrees with the Commission that it should take into account its supervisory interests¹⁴ and “the extent that ANE transactions raise regulatory concerns of the type that [Congress] intended to address”.¹⁵ As highlighted by the Commission, these regulatory concerns include not only the mitigation of systemic risk, but also improving conditions for investors through increased transparency, competition, and market integrity.¹⁶ Citadel agrees with the Commission that a cross-border framework focusing solely on the domicile of a market participant’s booking entity would be less effective in achieving these goals.¹⁷

The Proposal suggests the Commission will continue to evaluate which rules should be applied to ANE Transactions. We believe Commission rules relating to public transparency, clearing, and trading are critical in bringing the intended benefits of increased transparency, more competition, and better pricing to U.S. investors transacting in OTC derivatives. Specifically, public reporting

¹⁰ Proposal at 71951 n.42.

¹¹ See, e.g., Proposal at 71948, 71950.

¹² Proposal at 71952-53.

¹³ See CFTC Letter No. 16-64 at 3 (Aug. 4, 2016), available at: <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/16-64.pdf>.

¹⁴ See Proposal at 71953.

¹⁵ See Proposal at 71952. The Commission stated in the Proposal that it expects to address the cross-border application of other substantive swap requirements (including the trading and clearing mandates and reporting requirements) in subsequent rulemakings. Proposal at 71951 n.41.

¹⁶ See Proposal at 71953.

¹⁷ See Proposal at 71953.

requirements promote transparency, enhance price discovery and improve risk management, among other benefits.¹⁸ In turn, central clearing reduces interconnectedness and systemic risk while promoting price competition and improving liquidity by eliminating bilateral counterparty credit exposure and transforming how OTC derivatives can be traded. Finally, the Commission’s trading rules are intended to provide market participants with pre-trade price transparency and competitive execution and “the trade execution requirement furthers the statutory goals of financial stability, market efficiency, and enhanced transparency.”¹⁹ As further evidence of the importance of these specific rules, recent Bank of England research found that the implementation of the U.S. clearing and trading reforms in the USD interest rate swap market is yielding better liquidity and lower execution costs, with market participants saving as much as \$20 million - \$40 million *per day*, of which \$7 million - \$13 million is being saved by market end-users alone *per day*.²⁰

As such, it is critical to apply the Commission’s rules on public transparency, clearing, and trading to ANE Transactions in order to achieve the relevant Congressional objectives. The failure to apply these rules to ANE Transactions would allow market participants operating in the U.S. to avoid them simply by booking transactions to a non-U.S. entity. This would significantly undermine the intended market benefits of increased transparency, more competition, and improved market integrity.

C. Substituted Compliance Should Continue to be Pursued for ANE Transactions

Citadel supports the Commission’s continued efforts to harmonize its rules with foreign jurisdictions and to allow for substituted compliance or equivalence arrangements when appropriate, including for ANE Transactions. The Commission can both confirm that specific Commission rules, such as those relating to public transparency, clearing, and trading, apply to ANE Transactions and determine that a foreign regulatory regime is equivalent with respect to those areas. In connection with such a determination, the Commission could then permit firms operating in such foreign jurisdiction to only comply with local requirements when engaging in ANE Transactions.

This approach allows the Commission to retain oversight of ANE Transactions while increasing the workability of the regulatory framework for market participants. This will better protect the U.S. financial system and ensure U.S. investors continue to accrue the intended benefits of OTC derivatives regulatory reform as the global swaps market continues to evolve.

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¹⁸ Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182, 1233 (Jan. 9, 2012).

¹⁹ Cross-Border Guidance at 45334.

²⁰ See Staff Working Paper No. 580 “Centralized trading, transparency and interest rate swap market liquidity: evidence from the implementation of the Dodd-Frank Act”, Bank of England (January 2016), available at: <http://www.bankofengland.co.uk/research/Documents/workingpapers/2016/swp580.pdf>.



We appreciate the opportunity to provide comments on the Commission's Proposal. Please feel free to call the undersigned at (312) 395-3100 with any questions regarding these comments.

Respectfully,

/s/ Adam C. Cooper

Senior Managing Director and Chief Legal Officer