CITADEL

February 6, 2013

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

Ms. Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Further Proposed Guidance Regarding Compliance With Certain Swap Regulations
RIN Number 3038–AD85

Dear Ms. Jurgens:

Citadel LLC[1] ("Citadel") welcomes the opportunity to comment on the Commodity Futures Trading Commission's (the "Commission") original and further proposed interpretative guidance regarding the cross-border application of the swap provisions of the CEA as added by Title VII of the Dodd-Frank Act.[2]

We believe strongly that Title VII's clearing and reporting requirements will mitigate systemic risk, increase transparency, promote competition, and otherwise improve the safety, stability and integrity of the swaps market. A material volume of swap market activity is conducted by funds that are organized or incorporated outside of the U.S., but that have a U.S. nexus.[3] We therefore agree with the Commission's proposed application of the transaction-level requirements, including clearing and reporting, to swaps entered into by offshore funds that have a sufficient U.S. nexus.

The Dodd-Frank Act states that its provisions applicable to swaps (including subsequent Commission rulemaking) "shall not apply to activities outside the United States unless those activities have a direct and significant connection with activities, or effect on, commerce of the

[1] Established in 1990, Citadel is a leading global financial institution that provides asset management and capital markets services. With over 1,100 employees globally, Citadel serves a diversified client base through its offices in the world's major financial centers including Chicago, New York, London, Hong Kong, San Francisco and Boston.

[2] We refer to both the "Proposed Guidance" at 77 Fed Reg. 41214-41242 (July 12, 2012) and the "Further Proposed Guidance" at 78 Fed Reg. 909-913 (January 7, 2013)

[3] Including, for example, those offshore funds that have a U.S.-based investment manager, that have majority ownership by U.S. investors, or whose operator is required to register with the Commission as a CPO.

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United States…"[4] In our view, the Commission correctly concludes in the Proposed Guidance that, given the global nature of the swaps market, "U.S. persons' swap activities outside the United States have the requisite connection with or effect on U.S. commerce" and that "the risks to U.S. persons and the U.S. financial system … does not depend on the location of such swap activities…"[5] Thus, the Commission is correct to conclude that offshore funds with a requisite U.S. nexus are deemed to be U.S. persons for the purposes of compliance with the transaction-level requirements for swaps, as it has proposed. For example, the Commission has logically described prong (iv) of its proposed U.S. person definition as being "intended to capture collective investment vehicles that are created for the purpose of pooling assets from U.S. investors and channeling those assets to trade or invest in line with the objectives of the U.S. investors, regardless of the place of the vehicle's organization or incorporation."[6]

We understand that a material volume of swaps market activity is conducted by funds that are organized or incorporated outside of the U.S., but that have a U.S. nexus. If the U.S. person definition were not to apply to such offshore funds, despite their U.S. nexus, then a core, active portion of the swaps market would fall outside the scope of the transaction-level requirements, including the clearing and reporting requirements. This would undermine central objectives of the Dodd-Frank Act, create opportunities for regulatory arbitrage, and risk fragmenting the swaps market.

We believe that the Commission has thus correctly proposed a definition of U.S. person, in both the Proposed Guidance and Further Proposed Guidance, which includes offshore funds with a sufficient U.S. nexus. As the Commission continues to consider the definition of U.S. person in advance of its final guidance, we believe care must be taken so as to not inadvertently make changes to the proposed U.S. person definition that would result in such offshore funds falling outside of the U.S. person definition.

There are three approaches by which the Commission includes relevant offshore funds in its proposed U.S. person definition:

- First, the U.S. person definition captures offshore funds that are managed by a U.S.-based investment manager by including a principal place of business test in prong (ii);

- Second, the U.S. person definition captures offshore funds with majority ownership by U.S. investors in prong (iv); and

- Third, the U.S. person definition captures offshore funds whose operator is required to

[4] Dodd-Frank Act, Sec. 722(d)

[5] Proposed Guidance at 41234

[6] Further Proposed Guidance at 913

register as a CPO under prong (v).

By way of background, the U.S. hedge fund industry typically employs master-feeder structures, in which trading and investment activity is conducted in an offshore master fund, at the direction of a registered CPO or U.S.-based investment manager, while the investors in the master fund are a combination of onshore feeder funds (which pool investments from U.S. investors) and offshore feeder funds (which pool investments from foreign and U.S. tax-exempt investors). Given such an arrangement, solely looking at the domicile or place of incorporation of the master fund – which is the legal counterparty to any swap activity – ignores the otherwise direct and significant connections to the U.S. Consequently, prongs (ii), (iv) and (v) of the proposed U.S. person definition ensure that swaps market activity conducted by offshore funds with sufficient U.S. nexus will be subject to the clearing, reporting, and other transaction-level requirements.

We acknowledge that there are challenging cross-border issues that have generated robust debate,[7] and we appreciate that there may need to be ongoing refinement and clarifications to some prongs of the proposed definition to facilitate their applicability by market participants.[8] Nevertheless, the proposed U.S. person definition represents a practical approach to identifying those market participants who are engaged in swaps market activity that has a direct and significant connection with, or effect on, U.S. commerce. Therefore, the U.S. person definition should be adopted in the final guidance in substantially the same form as proposed.

Finally, in recognition of the challenging cross-border issues presented, it may well be appropriate to amend the guidance, or have it partially sunset, at such time as comparable foreign regulatory regimes come into effect. This would have the effect of limiting the extent to which overlapping regulations are applied to certain offshore funds that have both a U.S. nexus and a nexus in a jurisdiction with a comparable regulatory regime for swaps.

Ensuring that swaps market activity conducted by offshore funds with a sufficient U.S. nexus is subject to clearing, reporting, and other transaction-level requirements is fundamental towards achieving the goals of Title VII of the Dodd-Frank Act, as well as to meeting the commitments of the G-20 nations to reform the OTC derivatives markets.

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[7] For example, an offshore fund that has no U.S. investors and is managed by a non-U.S. investment manager that is otherwise registered as a CPO would be captured as a US person.

[8] For example, in certain instances, assessing indirect ownership may become difficult or impossible, and as such, entities may need to be able to rely on the representations of their investors and/or their own best efforts at ascertaining the percentage of indirect U.S. owners they have.

We appreciate the opportunity to provide comments on the Further Proposed Guidance. 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