MANAGED FUNDS ASSOCIATION

WRITTEN STATEMENT

OF

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CITADEL LLC

ON BEHALF OF
MANAGED FUNDS ASSOCIATION

For the Hearing
Reauthorization of the Commodity Futures Trading Commission

BEFORE THE

U.S. SENATE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

JULY 17, 2013

My name is Adam Cooper and I am Senior Managing Director and Chief Legal Officer of Citadel LLC, a global financial institution that engages in a wide range of asset management activities on behalf of institutional investors, as well as capital markets activities on behalf of retail and institutional investors, around the world. We are one of the largest and most established asset managers in the industry, growing capital for our investors around the world for nearly 25 years. And Citadel Securities is a leading market maker, simplifying complex markets and providing liquidity and execution services on behalf of millions of retail investors since 2005. Based in Chicago, we operate globally through the world's financial centers, including New York, London, Hong Kong, San Francisco and Boston.

I am here today to speak on behalf of Managed Funds Association ("**MFA**") and its members. On their behalf, I am pleased to provide this statement in connection with the U.S. Senate Committee on Agriculture, Nutrition and Forestry's hearing held on July 17, 2013 on Reauthorization of the Commodity Futures Trading Commission (the "**CFTC**"). MFA represents the majority of the world's largest hedge funds and is the primary advocate for sound business practices and industry growth for professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. MFA's members manage a substantial portion of the approximately $2.375 trillion invested in absolute return strategies around the world. Our members serve pensions, university endowments, and other institutions.

MFA's members are among the most sophisticated institutional investors and play an important role in our financial system. They are active participants in the commodity and securities markets, including over-the-counter ("**OTC**") derivatives markets. They provide liquidity and price discovery to capital markets, capital to companies seeking to grow or improve their businesses, and important investment options to investors seeking to increase portfolio returns with less risk, such as pension funds trying to meet their future obligations to plan beneficiaries. MFA members engage in a variety of investment strategies across many different asset classes. The growth and diversification of investment funds have strengthened U.S. capital markets and provided investors with the means to diversify their investments, thereby reducing overall portfolio investment risk. As investors, MFA members help dampen market volatility by providing liquidity and pricing efficiency across many markets. Each of these functions is critical to the orderly operation of our capital markets and our financial system as a whole.

MFA appreciates the Committee's thoughtful review and focus on CFTC Reauthorization. After three years of rulemaking to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "**Dodd-Frank Act**"), the new regulatory landscape is now taking shape. MFA supported financial reform and policymakers' goals to improve the functioning of the markets and to protect customers by endorsing central clearing of derivatives, increasing transparency and implementing other measures intended to mitigate systemic risk. We believe some additional refinements to the Commodity Exchange Act ("**CEA**") should be made to further fulfill these objectives and to enhance regulatory protections, coordination and efficacy.

In these respects, we believe Congress should: (1) amend the Bankruptcy Code to help shield derivatives customers from another MF Global or Peregrine-like failure by enhancing protections of customer collateral; (2) improve and streamline oversight of commodity pool operators ("**CPOs**") and commodity trading advisors ("**CTAs**"); (3) amend the CEA by adopting stronger protections for confidential information; (4) encourage data-driven regulations concerning position limits; and (5) continue to encourage international coordination on the global regulation of derivatives through its oversight of the CFTC and through Congress's international diplomacy.

On behalf of MFA, we appreciate the Committee's consideration of this testimony. As active participants in the derivatives markets, we are committed to working with the Congress, the CFTC, and other interested parties in addressing issues for CFTC Reauthorization.

PROTECTION OF CUSTOMER COLLATERAL

Protection of Cleared Swaps Customer Collateral

MFA supports efforts to strengthen the legal framework applicable to collateral for customers related to cleared swaps transactions with futures commission merchants ("**FCMs**") and believes that Congress should amend the Bankruptcy Code to bolster such protection.

MFA appreciates that Congress remains vigilant about protection of investors and has held hearings related to the MF Global, Inc. ("**MF Global**") and Peregrine Financial Group, Inc. ("**Peregrine**") insolvencies. Our members are fiduciaries to their investors and are customers themselves. As a result, we remain deeply troubled by the MF Global and Peregrine events and the consequences of their insolvencies. The misuse or misplacement of customer funds in those situations resulted in customers experiencing a delay, in some cases a significant delay, in the return or outright loss of substantial amounts of their assets. The protection of customer funds is one essential element to preserving the financial integrity of the markets. Accordingly, we support thoughtful legislative and regulatory changes to strengthen protections of FCMs' customers trading cleared swaps.

Under current law, if an FCM becomes insolvent, all of the collateral of the FCM's cleared swaps customers would be aggregated and distributed to each customer on a *pro rata* basis. Therefore, even when a customer was not at fault, if there is an insufficient amount of cleared swaps customer collateral available in the FCM's customer account to repay all customers who posted collateral, the customer would lose a portion of its posted collateral. To remedy this concern, we urge Congress to amend Chapter 7 of the Bankruptcy Code so that, upon an FCM's insolvency, customer assets posted as collateral on cleared swaps transactions would not be subject to *pro rata* distribution.

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Such an amendment would ensure that cleared swaps customers do not share in any shortfall due to the FCM's or another customer's default.

An amendment to the Bankruptcy Code also would enhance the effectiveness of existing and potential segregation protections for cleared swaps customers. For example, the CFTC has adopted the "legally segregated operationally commingled" model ("**LSOC**") for cleared swaps, which should generally reduce the likelihood of there being a customer asset shortfall in certain FCM default scenarios. However, LSOC is a new segregation model, so there is some uncertainty as to how it will perform in an FCM insolvency. An amendment to the Bankruptcy Code, as discussed above, would alleviate this uncertainty and further assure the protection of non-defaulting customers in certain FCM default situations.

In addition, market participants are continuing to consider other enhancements to customer protections, such as optional full physical segregation of customer collateral. This arrangement would allow a customer to put its collateral in an account with a custodian or other third party in the customer's name, rather than have the customer's FCM hold its collateral directly, and thus, protects the customer in the event that its FCM or another customer becomes insolvent. Without a Bankruptcy Code amendment, however, a cleared swaps customer's physically segregated collateral might be considered part of the pool of customer assets of the insolvent FCM, and thus, distributed on a *pro rata* basis. Therefore, MFA believes that, if Congress amended the Bankruptcy Code, it would significantly enhance customer protection.

Protection of Futures Customer Collateral

In light of the MF Global and Peregrine failures, MFA feels it is also appropriate for the CFTC to re-examine the protections available to participants in the futures market, and to assess the appropriate balance between the costs of enhanced protections versus the costs to investors and the market as a whole of a segregation failure. As mentioned, we appreciate that the CFTC is working on proposals to enhance customer protections. As a further step, we think that the Committee should encourage the CFTC to hold one or more roundtables, as the CFTC did when considering segregation rules for cleared swaps, to ensure full consideration of the lessons learned, and to assess whether further protections of the collateral of futures customers are appropriate.

OVERSIGHT OF COMMODITY POOL OPERATORS

Re-Focusing CPO Registration

MFA believes that Congress should amend the CEA to focus CPO regulation on entities that are meaningfully engaged in trading commodity interests. More specifically, MFA believes that the CFTC's regulatory resources should be focused on CPOs that are

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"engaged primarily" in or formed "for the purpose of trading commodity interests," rather than stretched to cover already regulated investment entities whose trading in commodity interests is incidental to their primary trading activities in other financial instruments or that have indirect commodity interest exposure.

It is clear that the Dodd-Frank Act in amending the definition of commodity pool and CPO to include swaps transactions broadened the CFTC's registration mandate. On the other hand, we believe the CFTC's repeal of Regulation 4.13(a)(4), the CPO registration exemption for a CPO of a private pool, overly broadened the registration requirement such that investment entities that were not originally established to function as registered CPOs are now subject to the CFTC's regulatory scheme. As a result, the CFTC and National Futures Association ("**NFA**") must now spend even greater resources addressing regulatory issues with respect to entities: (i) whose business models do not fit the commodity pool regulatory framework; (ii) whose trading in commodity interests are incidental to their primary trading activities in other financial instruments; (iii) that are currently subject to different regulatory regimes; or (iv) that have indirect exposure to commodity interests.

These entities include investment advisers registered with the Securities and Exchange Commission ("**SEC**"), securitization vehicles, real estate investment trusts, private equity firms, fund-of-funds, family offices, foreign pool operators and business development companies. The CFTC's repeal of Regulation 4.13(a)(4) generated a substantial number of requests for interpretive and compliance relief as investment managers and other entities struggled to rationalize and adapt to different, overlapping regulatory regimes. MFA submitted numerous requests to the CFTC for clarifications, no-action or interpretive relief, petition for rulemaking, and guidance on the application of a regulatory regime not tailored to many of its new constituencies. Many of our requests are outstanding and we continue to work on new requests for regulatory relief.

The CFTC's CPO regulations require entities to register if they have indirect commodity interest exposure or even if their use of commodity interests is limited for hedging purposes. As a consequence, many SEC-registered investment advisers of fund-of-funds and private investment funds that do not trade commodity interests or that use commodity interests for limited purposes, such as hedging, are required to register with the CFTC as a CPO.

We believe the CEA does contemplate a broader exemption from CPO registration. The CEA provides that "[t]he term 'commodity pool' means any investment trust, syndicate, or similar form of enterprise ***operated for the purpose of trading in commodity interests***," (***emphasis added***). Also, Section 4m(3) of the CEA introduces the concept of "engaged primarily" with respect to CTA registration, and excepts a CTA that is:

> registered with the Securities and Exchange Commission as an investment adviser whose business does not consist ***primarily of acting*** as a commodity trading advisor, as defined in section 1a, and that does not act

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> as a commodity trading advisor to any commodity pool that is ***engaged primarily*** in trading commodity interests (***emphasis added***).

Section 4m(3)(B) of the CEA provides that:

> a commodity trading advisor or a commodity pool shall be considered to be "engaged primarily" in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being engaged primarily, or proposes to engage primarily, in the business of advising on commodity interests or investing, reinvesting, owning, holding, or trading in commodity interests, respectively.

Given that regulatory resources are limited, we believe Congress should direct the CFTC to focus registration oversight of CPOs on entities that are engaged primarily or operated for the purpose of trading commodity interests rather than overseeing entities whose trading in commodity interests are incidental to their primary trading activities in other financial instruments or that have indirect exposure to commodity interests. To be clear, we are not asking this Committee to overturn in its entirety the CFTC's repeal of Regulation 4.13(a)(4). Instead, we suggest that the repeal is overly broad. Accordingly, we recommend that Congress amend the CEA by providing a registration exemption for operators of entities that are not engaged primarily in trading commodity interests or formed for the purpose of trading commodity interests.

CFTC-SEC Coordination on Regulation Pertaining to Private Fund Operators/Advisors

As a majority of the new CPO registrants are registered investment advisers of private funds, we believe Congress should direct the CFTC and SEC to streamline regulations for operators of private funds and to ensure consistency among regulations. We are concerned that the differences between the CFTC's and the SEC's regulatory frameworks for operators/advisers of private funds creates a significant burden on the private fund industry.

For example, despite the fact that the Dodd-Frank Act directs the CFTC and the SEC to promulgate a joint systemic risk report, a private fund manager registered as an investment adviser, CPO and CTA faces three different reporting obligations—

(i) filing Form PF with the SEC;

(ii) filing Form CPO-PQR and CTA-PR with the CFTC; and

(iii) filing quarterly PQR and PR reports with NFA.

The SEC and CFTC forms request similar (though not identical) information but direct it be compiled by different methodologies. Moreover, we are concerned that the information collected will not be helpful to FSOC's Office of Financial Research in

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assessing systemic risk because the data required by the CFTC and the SEC are different and cannot be aggregated.

Another example of an important dichotomy between the CFTC and the SEC's regulations at the moment relates to the enactment of the Jumpstart Our Business Startups Act of 2012 ("**JOBS Act**"). The JOBS Act directed the SEC to amend the securities regulations to eliminate the prohibition on general solicitation and advertising with respect to private offerings under Regulation D, which apply to both privately-offered investment funds and commodity pools. The SEC has adopted rules pursuant to the JOBS Act, however, the CFTC's CPO regulations are now inconsistent with the JOBS Act and the securities regulations. We believe this situation creates an unreasonable dichotomy between the regulation of advisers of private funds and CPOs of privately-offered commodity pools.

We believe the regulation of private fund managers between the CFTC and SEC should be consistent. Accordingly, we recommend that Congress direct the CFTC and the SEC to collaborate in ensuring that their private fund regulations are consistent.

STRENGTHENING PROTECTIONS FOR CONFIDENTIAL/PROPRIETARY INFORMATION

Reports of Commodity Pool Operators and Commodity Trading Advisors

MFA believes that Congress should strengthen the confidentiality protections for proprietary data in the CFTC's possession. MFA consistently has supported reasonable reporting requirements to ensure that regulators have meaningful data upon which to make sound policy decisions, but it is critically important that our members know that in fulfilling their reporting obligations, their proprietary portfolio and other confidential information is appropriately safeguarded. Market participants—whether hedgers or investors—invest significant research, time and resources into developing proprietary hedging or investment strategies. Such trading strategies are proprietary information; the CEA and other statutes have recognized the legitimate commercial need to protect the confidentiality of such information.

At the same time that the Dodd-Frank Act required members of the Financial Stability Oversight Council ("**FSOC**"), including the CFTC, to collect sensitive and confidential data for the purpose of assessing financial stability, it also included important provisions directing FSOC members to maintain the confidentiality of such data. The Dodd-Frank Act specifically amended the Investment Advisers Act of 1940 ("**Advisers Act**") to protect the confidentiality of reports that the SSEC requires for SEC-registered investment advisers, but no corresponding amendments were made to the CEA for CFTC reports. Such amendments would be appropriate to ensure that consistent confidentiality protections would extend to the reports, documents, records and sensitive and proprietary information of CPOs and CTAs.

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The current inconsistency between the confidentiality protections afforded to reports by investment advisers as opposed to reports by CPOs and CTAs creates two potential difficulties. First, it may expose data from CFTC-regulated entities to greater risk of public disclosure. Second, it creates a potential unlevel regulatory playing field, disadvantaging the CFTC in its efforts to collect, analyze, and share data. For example, we note that the SEC and CFTC have jointly adopted Form PF for certain reporting obligations. A dually registered entity filing Form PF with the SEC would have greater confidentiality protection than if the entity filed the exact same report with the CFTC. To afford confidential information consistent treatment for CPOs and CTAs as well as investment advisers, we recommend that the Committee consider amending section 8 of the CEA by extending these important Dodd-Frank Act protections for sensitive or proprietary information to CPOs and CTAs.

Protection of the Identity of Traders and
the Confidentiality of Trade Data

MFA believes that Congress should amend the CEA to strengthen the confidentiality requirements for registered swap data repositories ("**SDRs**") and other regulated market utilities, such as self-regulatory organizations, swap execution facilities ("**SEFs**"), designated contract markets ("**DCMs**"), and derivatives clearing organizations or clearinghouses ("**CCPs**") (collectively, "**Regulated Entities**") to protect both the identity of traders and the nature of their trading activities. In particular, these confidentiality protections must explicitly extend to swap transaction data reported to SDRs under the CFTC's data reporting rules. Our concern is not hypothetical; we are aware of instances where the confidentiality of trade data at SDRs was compromised. As a result of the failure of confidentiality protections, market participants may have had access to, and could have traded upon, confidential information of competitors and counterparties.

The specifics giving rise to these concerns are best illustrated under the CFTC's final SDR rules, wherein it is clear that an SDR must protect the confidentiality of reported swap data and may not disclose it to market participants. However, the same rules provide an exception to this prohibited access rule, allowing a party to a particular swap to have access to "data and information" related to such swap. The final SDR rules do not define the broad phrase "data and information."

For swaps that are traded anonymously on DCMs and SEFs and then cleared in accordance with the CFTC's straight-through processing ("**STP**") requirements, the CCP or DCM/SEF reports the swap transaction data and information to the SDR, which includes the identity of the two original counterparties. If either one of those counterparties is then permitted to discover the identity of the other by accessing information at the SDR, notwithstanding the anonymous nature of the original trade, the confidentiality of that market participant's trading positions and/or investment strategies is breached. Such disclosure would harm competition, and would impair the smooth transition to anonymous trading on DCMs and SEFs.

Another source of data disclosure risk stems from the sheer volume of data that the CFTC is now processing and analyzing from SDRs. While the CFTC's access to such data no doubt presents an opportunity for unprecedented regulatory insight into the derivatives markets – which we support – we are also mindful that it creates another source of disclosure risk if data confidentiality and integrity are not rigorously protected by the CFTC's policies, procedures and internal controls.

Accordingly, MFA recommends that Congress amend the CEA to clarify the CFTC's and each Regulated Entity's obligations to maintain the confidentiality and integrity of swap trade data and the consequences of failures to perform this obligation. MFA further urges the Committee to use its oversight to ensure that both the CFTC and Regulated Entities have appropriate safeguards to preserve the confidentiality of sensitive market information and data furnished to regulators and Regulated Entities.

Finally, we are alarmed at reports from this spring that academics have had access to confidential trading data and trading messages from the CFTC. According to these reports, the academic used this information to reverse-engineer trading strategies and published their findings in academic journals. We commend CFTC Chairman Gary Gensler for requesting that the CFTC Inspector General investigate this matter. We believe this disclosure is a fundamental violation of confidentiality and urge the Committee to review the CFTC Inspector General's findings and the steps the CFTC agrees to take to enhance its policies and controls with respect to non-public information.

MFA has prepared a *White Paper* outlining its concerns regarding protection of confidential information and submitted it to all members of the Financial Stability Oversight Council. We include a copy of that *White Paper* as an Appendix to our testimony.

POSITION LIMITS

MFA urges the Committee through its oversight function to carefully assess any new CFTC efforts to impose position limits more broadly pursuant to the Dodd-Frank Act. MFA continues to have significant reservations about the efficacy of position limits to benefit the public. Academic and governmental studies and real world examples: (i) have not found excessive speculation to be the cause of market volatility in recent years, and (ii) show that policies restricting investor access to derivatives markets impair the ability of commercial participants to manage risk.[1] Nonetheless, we have sought to work

[1] *See* CFTC Inter-Agency Task Force on Commodity Markets—Interim Report on Crude Oil (July 2008); GAO Briefings to the House Committee on Agriculture on Issues Involving the Use of Futures Markets to Invest in Commodity Indexes (Dec. 2008); International Organization of Securities Commission's Technical Committee (IOSCO) Final Report (Mar. 2009); IMF World Economic Outlook (Oct. 2008); HM Treasury Global Commodities: A long term vision for stable, secure and sustainable global markets (June 2008); CME Group white paper "Excessive Speculation and Position Limits in Energy Derivatives Markets," available at http://cmegroup.com/company/files/PositionLimitsWhitePaper.pdf; *Dr Evil, or drivel? The charge-sheet against commodity speculators is flimsy*, Economist, November 11, 2010 ("In fact there is little empirical evidence that

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constructively with the CFTC on its efforts to implement position limit rules more broadly to energy and metal commodities.

We believe that the CFTC, in promulgating position limit rules, should do so based on detailed quantitative data and analysis reflecting, among other things, the size and depth of markets. We are concerned that inappropriate limits could reduce hedging activity, decrease market liquidity, and artificially raise commodity prices. While the CFTC collects this data, we believe position limits should be limited to the spot month where the deliverable supply of the commodity may be limited and, thus, subject to control and manipulation.

Under current position limit rules for agricultural commodities, the CFTC provides relief from having to aggregate accounts or positions based on ownership where discretion over trading is granted to an independent third party. This accurately reflects the fact that the beneficial owners in these cases do not directly or indirectly control the trading of the accounts or positions involved, and they are often unaware of the specific orders. If the CFTC does choose to adopt position limit rules for commodities more broadly, we believe that persons with independently controlled accounts should be able to treat such accounts separately and not aggregate the positions of such accounts for position limit purposes. Oftentimes, a fund may have ownership interests in other funds, accounts or enterprises for which it does not control or have position level transparency; or a fund may engage in multiple independent investment or trading strategies. If the CFTC adopts new rules on position limits, it should retain its longstanding disaggregation policy for independent account controllers.

We respectfully urge the Committee to encourage the CFTC to take a data-driven approach in setting position limits if it finds that limits are appropriate. This will minimize the possibility of unintended consequences, such as the reduction of market liquidity and the inability of market participants to appropriately diversify and hedge risk.

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investors cause more than fleeting distortions to commodity prices. The most persuasive explanation for the rises and falls of commodities is demand and supply."); Irwin, Scott. H., and Sanders, Dwight R. (2010), The Impact of Index and Swap Funds on Commodity Futures Markets: Preliminary Results, OECD Food, Agriculture and Fisheries Working Papers, No. 27, OECD Publishing; "With Better Data, Better Understanding" (Jan. 27, 2009); Lawrence Eagles, J.P. Morgan; CFTC Staff Report on Commodity Swap Dealers & Index Traders (Sept. 2008); "Commodity Price and Futures Positions" (Dec. 16, 2009), Ruy Ribero, Lawrence Eagles and Nicholas von Solodkoff, J.P. Morgan; "We can safely say there is no indication in this data of the fact speculators are pushing the price of oil," Christophe Barret, global oil analyst at Credit Agricole, quoted in Energy Risk (Apr 13, 2010), available at http://www.risk.net/energy-risk/news/1600919/cftc-speculators-influence-commodity-markets; Prepared Testimony of Philip K. Verleger, Jr., Haskayne School of Management, University of Calgary, PKVerleger LLC, to Commodity Futures Trading Commission on The Role of Speculators in Setting the Price of Oil (Aug. 5, 2009); "Speculators Cleared in U.K. Oil Volatility" (July 28, 2009), *The Wall Street Journal*; CFTC Interagency Task Force on Commodity Markets, Interim Report on Crude Oil, *supra* note 11; and Büyükşahin, Haigh, Harris, Overdahl and Robe, Fundamentals, Trader Activity and Derivative Pricing (December 4, 2008), available at: http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/marketreportenergyfutures.pdf.

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International Coordination

MFA urges U.S. policymakers and regulators to continue to enhance their coordination with their European, Asian, and other counterparts to ensure that derivatives regulatory reform is consistent, where applicable, and addresses counterparty and systemic risk, while permitting access to, and competition among, CCPs. We appreciate the recent agreement between the CFTC and the European Commission ("**EC**") on a "common path forward" on regulation of cross-border swaps. We think it reflects positive collaboration, and we continue to review and develop our views on its substance.

As the Committee is aware, European, Asian, and other policymakers are currently finalizing or beginning to implement their regulatory reforms with respect to OTC derivatives. While MFA expects these regulations to complement the U.S. market reform to a certain extent, the scope is not identical to the U.S. regulations and they are proceeding at different paces. Therefore, we are concerned that, without sufficient coordination and harmonization as to timing and scope of these different initiatives, conflicting rules will impair the derivatives market.

For example, with respect to margin requirements for uncleared derivatives, MFA strongly believes that an internationally uniform set of margin requirements is necessary and will facilitate orderly collateral management practices and minimize regulatory arbitrage. MFA applauds the formation of the Working Group on Margining Requirements of the Basel Committee of Banking Supervision and the International Organization of Securities Commissions to develop a unified international framework for margining uncleared derivatives. In the absence of such uniformity, market participants, including MFA members, will have to monitor and comply with multiple margin regimes, which would be administratively difficult, costly and burdensome, and may increase the likelihood for errors and instances of non-compliance.

Similarly, STP is a critical aspect of mandatory clearing that requires CCPs to accept or reject trades that dealers submit for clearing as quickly as technologically practicable. STP is important because it provides counterparties with immediate certainty as to whether or not their trade has cleared and whether they will face the CCP as their counterparty rather than each other. The CFTC has exhibited strong leadership and has finalized and implemented STP rules. In addition, European authorities have included a similar STP mandate in the Council Text of the Markets in Financial Instruments Directive (2004/39/EC), and the CFTC, EC and the European Securities and Markets Authority recently agreed to continue to work together on similar approaches to STP. We believe it is necessary for STP to become an international mandate to ensure: (i) market participants' ability to reduce their global counterparty credit risk without delay; (ii) market participants' unrestricted access to the broadest range of executing counterparties; and (iii) liquidity and competitive pricing of derivatives transactions.

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Lastly, it is important that approval by U.S. and non-U.S. regulators of CCPs organized outside their jurisdiction (*i.e.*, third country CCPs) not become unreasonably difficult to obtain. Because of mandatory requirements for clearing of derivatives, it is important to ensure that market participants have sufficient access to, availability of, and competition among, CCPs organized in U.S. and non-U.S. jurisdictions. Otherwise, there is potential that the derivatives market will become fragmented along jurisdictional lines, which could significantly harm the markets by, among other things, impeding competition, impairing portability, limiting participant access to clearing, and ultimately creating artificial barriers across a global marketplace and instrument type.

While MFA recognizes that the regulatory regimes of different countries may need to diverge to a certain extent to reflect local concerns, inconsistent regulations will be costly, burdensome and, in some cases, make it impossible for market participants to comply with both regimes. We are appreciative of the ongoing joint efforts of U.S. and non-U.S. policymakers and regulators to avoid any disharmony, duplication or conflicts between the regulations. We urge the Committee to continue to encourage international coordination on the global regulation of derivatives through its oversight of the CFTC and through Congress's international efforts.

Extraterritorial Application of International Regulations

MFA encourages U.S. and non-U.S. regulators to harmonize the extraterritorial scope and substituted compliance frameworks of their derivatives regulatory regimes. The extraterritorial application of the U.S. and non-U.S. derivatives regulations (particularly the European Markets Infrastructure Regulation) remains a significant area of focus and concern for MFA. Unfortunately, considerable uncertainty continues to exist with regard to this issue. We appreciate the need to ensure that where a market participant's activities have a direct and significant effect on a jurisdiction, that market participant is subject to adequate regulation in that jurisdiction. However, because the derivatives market is a global market, market participants and their transactions will be subject to regulation in multiple jurisdictions. Thus, we urge continued harmonization of these regulations to ensure that the extraterritorial scope of the various international reforms will not be duplicative and that related substituted compliance regimes will give sufficient deference to comparable regulations. We believe it important to ensure that, together, the final regulations will provide certainty to market participants, ensure the continued robustness of the derivatives markets and further the progress of international harmony and consistency.

As mentioned previously, we appreciate the CFTC's and EC's recent agreement on a "common path forward" on the extraterritorial application of their respective derivatives regulations. We think it reflects positive collaboration, and we continue to review and develop our views on its substance.

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CONCLUSION

On behalf of MFA, I appreciate the Committee's focus on reauthorization of the CFTC. As discussed, we believe the Congress should adopt some refinements to the CEA in reauthorizing the CFTC. These amendments should take the form of amending the Bankruptcy Code to protect customer collateral, improvements to and streamlining of CPO and CTA oversight, and stronger protections for confidential information. In addition, we respectfully request that the Committee, in its oversight role of the CFTC, encourage data-driven regulations concerning position limits and greater international cooperation and coordination.

MFA is committed to working with Members and staff of the Committee and regulators to enhance our regulatory system and strengthen our nation's economy. Thank you for the opportunity to appear before you today. I would be happy to answer any questions that you may have.

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