

## OFFICE OF THRIFT SUPERVISION

### Approval of Rebuttals of Control and Concerted Action

**Order No.:** 2008-01  
**Date:** January 15, 2008  
**Docket No.:** H-3483

The Citadel Investment Group, L.L.C., Chicago, Illinois (Acquiror), its controlling member, Kenneth C. Griffin (Controlling Member), and certain of its affiliated entities (Rebutting Subsidiaries) listed in Attachment I (collectively, the Citadel Group), have filed a Rebuttal of Control, pursuant to 12 C.F.R. § 574.4(e) regarding E\*TRADE Financial Corporation, New York, New York (ETRADE). The Controlling Member has filed a rebuttal of concerted action, pursuant to 12 C.F.R. § 574.4(e), to rebut the presumption that he is acting in concert with immediate family members, and Matthew Andresen, a management official of the Acquiror (Management Official) has filed a rebuttal of concerted action to rebut the presumption that he is acting in concert with the Citadel Group.

#### The Proposed Transaction

The Citadel Group seeks to acquire up to 25 percent of ETRADE's common stock, which would result in the Citadel Group becoming one of the two largest shareholders of ETRADE. The Rebuttal of Control asserts that the Citadel Group will not directly or indirectly acquire control of ETRADE, as a result of the Citadel Group acquiring securities solely for investment purposes. In support of the Rebuttal of Control, the Citadel Group has submitted a draft Rebuttal of Control Agreement.

In addition, the Controlling Member and the Management Official have filed concerted action rebuttals pursuant to 12 C.F.R. § 574.4(e), as described above.

#### Rebuttal of Control Submission

The Control Regulations state that an acquiror is deemed, subject to rebuttal, to have acquired control of a savings association<sup>1</sup> if the acquiror, directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies, acquires more than 10 percent of any class of voting stock of a savings association and is subject to any control factor, as described in 12 C.F.R. § 574.4(c).<sup>2</sup>

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<sup>1</sup> The definition of "savings association" includes savings and loan holding companies. See 12 C.F.R. § 574.2(p) (2007).

<sup>2</sup> 12 C.F.R. § 574.4(b)(1)(i) and 574.4(c) (2007).

Parties attempting to rebut control are required to file a submission setting forth facts and circumstances supporting their contention that no control relationship would exist after the proposed acquisition. In addition, such parties must file a rebuttal of control agreement.

The Office of Thrift Supervision (OTS) may reject any control rebuttal that is inconsistent with the facts and circumstances known to it, or which does not clearly and convincingly rebut the presumption of control. If OTS concludes that it would be injudicious to rely on an acquiror's representations, based on past activities of the acquiror, or other concerns, OTS may conclude that the acquiror has not clearly and convincingly rebutted a determination of control. In addition, an acquiror that is in conclusive control of a savings association may not rebut control.

The Citadel Group has filed a written submission setting forth facts and circumstances in support of its contention that no control relationship exists between the Citadel Group and ETRADE. The Citadel Group represents that it will acquire ETRADE shares for investment purposes only, and not for the purpose, or with the effect, of changing or influencing control of ETRADE, ETRADE's board of directors, management or policies. The Citadel Group would not acquire more than 25 percent of any class of ETRADE's voting securities.

The standard rebuttal agreement, set forth at 12 C.F.R. § 574.100, provides that a rebutting party will not engage in any intercompany transactions with the entity for which it is rebutting control, or any of that entity's affiliates, or be a party to any agreements with that entity or its affiliates. The Citadel Group has requested that OTS accept a rebuttal agreement that provides that the Citadel Group (or affiliates) would engage in certain transactions with ETRADE or its affiliates and be party to certain agreements with ETRADE or its affiliates. OTS has reviewed the specific transactions and agreements, and has concluded, based on the nature and extent of those transactions and agreements, and the representations made in the Rebuttal of Control, that the proposed transactions and agreements do not provide the Citadel Group with the ability to influence or control ETRADE, and therefore, do not contravene the purposes of a rebuttal of control.

In addition, the standard rebuttal agreement provides that an acquiror may not seek or accept non-public information from the subject of the rebuttal of control agreement. The Citadel Group has requested that OTS accept a rebuttal agreement that provides that the Citadel Group will not seek or accept "material" non-public information. The Citadel Group has filed materials indicating that in the business of investment advising, it is customary to have contacts with companies in which clients invest, and that in the course of such contacts, immaterial non-public information is occasionally exchanged. The Citadel Group would seek contacts in the same manner as

other investment advisers and, provided the information is not material, it should not enable the Citadel Group to influence or control ETRADE. Accordingly, OTS concludes that this modification does not contravene the purposes of the rebuttal agreement.

Based on the foregoing, OTS concludes that the Rebuttal of Control meets the applicable approval standards.

### **Rebuttal of Concerted Action Submissions**

The Control Regulations state, *inter alia*, that a person will be presumed to be acting in concert with members of the person's immediate family, and that a company is acting in concert with a management official of such company, if both the company and the person own stock in the savings association or savings and loan holding company.<sup>3</sup>

Section 574.4(e)(2) requires parties seeking to rebut concerted action to file a submission setting forth facts and circumstances supporting the parties' contention that no action in concert exists. The Controlling Member and the Management Official have filed such submissions.

The Controlling Member, and his wife and children, do not personally own any voting stock of ETRADE. In addition, the Controlling Member asserts that he will not directly or indirectly act in concert with any immediate family members with respect to ETRADE, and he has executed an affidavit representing that during the term of the rebuttal agreement: (i) he will not, directly or indirectly, acquire ETRADE voting stock, or any right to obtain ETRADE voting stock, in his individual capacity, and (ii) he will not directly, or through the Citadel Group or its affiliates, act in concert with any immediate family members with respect to ETRADE voting stock.

The Management Official personally owns a de minimis amount of ETRADE common stock. Thus, both he and the Acquiror own stock in ETRADE, and are, under the Control Regulations, presumed to be acting in concert with each other. The Management Official has executed an affidavit representing that he will not act in concert with the Citadel Group.

On the basis of the facts presented, OTS concludes that the Concerted Action Rebuttals meet the applicable approval standards.

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<sup>3</sup> 12 C.F.R. § 574.4(d)(1) and (2) (2007).

**Conclusion**

Based on the foregoing analysis, the Rebuttal of Control and Concerted Action Rebuttals are hereby accepted.

By order of the Director of the Office of Thrift Supervision, or his designee,  
effective JANUARY 15, 2008



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Lori J. Quigley  
Managing Director  
Examination and Supervision - Operations

Attachment 1

**Rebutting Subsidiaries**

Citadel Derivatives Group LLC  
Citadel Derivatives Trading Ltd.  
Citadel AC Investments Ltd.  
Citadel Equity Fund Ltd.  
Citadel Holdings Ltd.  
Citadel Wellington LLC  
Citadel Kensington Global Strategies Fund Ltd.  
Citadel Limited Partnership  
Citadel Derivatives Group Investors LLC  
CLP Holdings LLC  
Citadel Tactical Trading LLC  
Citadel Tactical Trading Ltd.  
Citadel Advisors LLC  
KGFT Holdings LLC  
Citadel Holdings II LP  
Red Admiral U-A-D 12-20-07  
Citadel Holdings I LP  
GFH Limited Partnership  
GFH Family Office, Inc.  
Citadel Investment Group II, L.L.C.  
Wingate Capital, Ltd.