

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
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- **17 CFR Parts 1, 38, 40 and 170**
- **RIN Number 3038-AD52**
- **Regulation Automated Trading**

Dear Mr. Kirkpatrick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking on: Regulation Automated Trading.

You are proposing a series of risk controls, transparency measures, and other safeguards to enhance the regulatory regime for automated trading on U.S. designated contract markets (DCMs) (collectively, Regulation AT). These proposals build on efforts by numerous entities in recent years to promote best practices and regulatory standards for automated trading, including standards and best practices for algorithmic trading systems (ATs), electronic trade matching engines, and new connectivity methods that characterize modern financial markets. In 2012 you adopted rules requiring futures commission merchants (FCMs), swap dealers (SDs), and major swap participants (MSPs) to use automated means to screen orders for compliance with certain risk-based limits. You also adopted rules requiring certain financial risk control requirements for DCMs offering direct market access to their customers. Furthermore, in 2013 you published an extensive Concept Release on Risk Controls and System Safeguards for Automated Trading Environments. Now, you propose to update CFTC rules in response to the evolution from pit trading to electronic trading. In particular, you are proposing to adopt a comprehensive approach to reducing risk and increasing transparency in automated trading. Proposed Regulation AT is designed to consolidate previous work by industry participants, the CFTC, and fellow regulators into a unified body of law addressing automation in order placement and execution in U.S. derivatives markets.

Please note that the comments expressed herein are solely my personal views

I strongly support these proposals. The pre-trade risk controls and risk management proposals will reduce operational risk and improve general market efficiency and the market transparency proposals will improve transparency and competition in electronic markets. Together, these proposals will promote market integrity and increase market confidence with positive effects on liquidity and price discovery.

In response to your specific question 15, I would apply a look-through principle (substance over form), so that when a CPO use Algorithmic Trading to enter orders on behalf of a commodity pool which it operates, the CFTC should consider the CPO that operates the commodity pool as “engaged in Algorithmic Trading” pursuant to the definition of AT Person. This would improve efficiency and is more consistent with existing regulations.

Concerning proposed § 1.81 on Standards for the development, monitoring, and compliance of Algorithmic Trading systems, I would say that most of this should be (and is) current market practice. However, proposed § 1.81(a)(vi) states that each AT person shall implement written policies and procedures for the development and testing of its Algorithmic Trading systems including: “Maintaining a source code repository to manage source code access, persistence, copies of all code used in the production environment, and changes to such code. Such source code repository must include an audit trail of material changes to source code that would allow the AT Person to determine, for each such material change: who made it; when they made it; and the coding purpose of the change. Each AT Person shall keep such source code repository, and make it available for inspection, in accordance with § 1.31.” This would mean that in accordance with CFTC Regulation 1.31 (17 CFR 1.31), AT Persons would have to make their source code repository available at any time for inspection to any representative of the CFTC, in addition to the U.S. Department of Justice. I do not support this wording that requires AT Persons to maintain the source code repository in accordance with CFTC Rule 1.31, and thus allowing such open access. This would be inconsistent with current regulations and international standards. Currently the federal government may only obtain such information through a subpoena, which is entirely just and appropriate.

Yours sincerely

C.R.B.

Chris Barnard