

March 15, 2016

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Proposed Rulemaking on Regulation Automated Trading (“Regulation AT”)
(RIN 3038-AD52)

Dear Mr. Kirkpatrick:

Hudson River Trading LLC (“Hudson River Trading”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (the “Commission”) proposed rulemaking on Regulation AT. Founded in 2002, Hudson River Trading is a global, multi-asset class quantitative trading firm that develops automated trading strategies that provide liquidity and facilitate price discovery on exchanges and alternative trading systems.

Hudson River Trading supports the Commission’s objective of updating regulations to recognize and adapt to modern, automated markets. If approved, Regulation AT will require automated trading firms to, among other things: (1) register with the Commission, (2) create and enforce written policies and procedures related to developing and testing automated trading systems and (3) implement pre-trade risk controls and automated kill switches. Although these requirements will pose an additional cost and staffing burden on automated trading firms, they will provide important safeguards for the market. We believe that by adapting regulations to market changes, the Commission will position itself to continue to ensure fair, transparent, efficient and well-regulated markets. Although we are broadly supportive of the Commission’s objectives, we are concerned about the requirement of proposed Regulation AT that AT Persons provide unfettered access to their Algorithmic Trading Systems (“ATS”) source code to both the Commission and the U.S. Department of Justice.

Over the past 14 years, Hudson River Trading has developed expertise that the firm uses to forecast the price of financial products using mathematical and statistical techniques, as well as technology that allows the firm to efficiently receive market data and send and manage orders on exchanges. The collective insight and hard work of the firm’s employees over the course of 14 years are reflected in its source code. This source code is the foundation of Hudson River Trading’s business and represents the firm’s intellectual property and trade secrets. We believe that our intellectual property and trade secrets are fundamental to the future of our business. Given the importance of the firm’s intellectual property and trade secrets, Hudson River Trading and other automated trading firms ensure that we vigorously protect our trade secrets and

intellectual property through various means, such as non-competition agreements, confidentiality agreements, intellectual property protection policies and cybersecurity measures.

As proposed, Regulation AT would require AT Persons to make source code available for inspection in accordance with Rule 1.31, the Commission's "Books and Records" rule. This would require that AT Persons make their source code available to a third party "technical consultant" at all times and to make source code available to the Commission upon request. While historical books and records often constitute confidential information such as business and trading records, these records generally have no commercial value and if disclosed, would be unlikely to harm a firm's business. A firm's source code, on the other hand, constitutes a significant portion of that firm's trade secrets and holds considerable commercial value. Disclosure of this intellectual property could cause irreparable harm to that firm's business. The Commission has stated that it routinely handles confidential information and takes its responsibility in doing so seriously. However, the Commission fails to differentiate between confidential information and intellectual property and trade secrets.

Respectfully, we fail to see the utility of ATS source code to the Commission in the vast majority of instances. For example, Hudson River Trading has millions of lines of source code and uses several programming languages, along with a multitude of configuration settings. The firm's developers can work for years to become fluent on a portion of our source code. Further, trading strategies are event driven; without the market data that the trading strategy used to determine its order placement, it would be difficult to determine why an order was placed or canceled. In addition, trading strategies for U.S. futures can rely on various data including futures, cash equities, cash treasuries, currencies and global exchanges. Even with experienced software developers reviewing a firm's source code, it would be extremely difficult and time-consuming for the Commission to find anything meaningful in a firm's source code.

The Commission's proposal for on-demand access to source code appears to lack precedent. As a global, multi-asset trading firm, Hudson River Trading is familiar with many regulatory regimes. We are not aware of any markets that operate under a regime that requires on-demand access to participant source code and we would have serious misgivings about participating in any such market. Other regulators have addressed issues related to automated trading to ensure that appropriate information is available to them if it believes it is required. For example, the European Securities and Markets Authority ("ESMA") recently considered including requirements around source code in the MiFID II draft regulatory technical standards ("RTS"), but omitted them from the final RTS due to concerns about cost and intellectual property infringement.¹ Instead, ESMA requires firms to keep high-level records of material changes to software.² Similarly, FINRA has provided guidance on supervising algorithmic trading in securities that recommends archiving code in a manner that is reasonable for firms. The FINRA guidance does not provide for on-demand access to a firm's source code.³

¹ See European Securities and Markets Authority MiFID II/MiFIR Consultation Paper, December 19, 2014.

² See European Securities and Markets Authority MiFID II/MiFIR Regulatory technical and implementing standards – Annex I, September 28, 2015.

³ See FINRA Regulatory Notice 15-09: Equity Trading Initiatives: Supervision and Control Practices for Algorithmic Trading Strategies, March 2015.

Hudson River Trading understands that in certain, likely rare, instances, the Commission may require access to source code. We believe that given its sensitivity, access to source code should require due process, including an obligation to obtain a subpoena. Further, we believe that safeguards to ensure that source code is not compromised should be adopted for those instances where access to source code is granted through a subpoena. For example, any review of source code should be in a secure environment that does not require the source code to leave the firm's premises. While we do not believe that source code should be subject to Rule 1.31, we believe it is preferable to require firms to create and enforce reasonable policies and procedures designed to ensure that AT Persons track development of material changes to ATS source code and ensure that these records are retained for a reasonable period of time in light of the firm's size and resources.

We appreciate the opportunity to provide comments on the proposed Regulation AT. Please do not hesitate to contact me if you have any questions or would like to discuss.

Sincerely,

/s/ Adam Nunes

Adam Nunes
Head of Business Development