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VIA ELECTRONIC SUBMISSION

March 16, 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:

NASDAQ Futures, Inc. (“NFX”) respectfully submits this letter in response to the request for public comment set forth in the Commission’s Proposed Rulemaking on Regulation Automated Trading (“Regulation AT”) with regard to automated trading of futures and options on futures on U.S. designated contract markets (“DCMs”).

NFX is a DCM listing key energy benchmarks of futures and options on oil, gas, and U.S. power that allow market participants to diversify their portfolios while providing a valuable hedging tool. All NFX trades are cleared by the The Options Clearing Corporation. NFX is a wholly owned subsidiary of Nasdaq (Nasdaq: NDAQ), a leading provider of trading, clearing, exchange technology, listing, information and public company services across six continents. As the creator of the world’s first electronic stock market, its technology powers more than 70 marketplaces in 50 countries and 1 in 10 of the world’s securities transactions. Nasdaq is home to more than 3,500 listed companies with a market value of over \$9.1 trillion and more than 10,000 corporate clients.

Introduction

As market participants have harnessed powerful new technology, market access has expanded rapidly and assumed multiple new forms. Electronic trading and automated market making is an integral part of today’s commodities markets. NFX applauds the Commission’s efforts to establish additional principles, guidance and direction to manage systemic risk and other challenges presented by automated trading with which Nasdaq exchanges have significant experience. Our comments below are limited to the Commission’s definition of Algorithmic Trading, the proposed source code repository, the proposed DCM disclosure requirements

associated with market making and trading incentive programs, and the proposed rules concerning a DCM's compliance oversight program. As a general matter, NFX cautions the Commission against adopting proposals that would impose costs that outweigh any associated benefits.

I. Definition of Algorithmic Trading – Proposed Rule 1.3(zzzz)

NFX agrees with the Commission that testing, resilience and adequacy of controls to protect trading systems are vital. However, the Exchange believes that the Commission is defining "Algorithmic Trading" in proposed Rule 1.3(zzzz) too broadly. As Commissioner Giancarlo observed in his statement accompanying the proposing release, the definition of Algorithmic Trading would appear to capture market participants using off-the-shelf type automated systems or simple excel spreadsheets to automate trading. Thus, Regulation AT could capture the activity of, for example, a small commodity trading advisor, energy merchant or commercial end user that uses simple automation for risk management and execution. NFX questions the necessity or desirability of imposing extensive new compliance requirements on these kinds of market participants. Imposing Regulation AT's rules regarding development, testing, monitoring and compliance of Algorithmic Trading systems in this context seems unduly burdensome.

II. Source Code Repository

Under the proposal AT Persons would be required to make their source code repository available for inspection to any representative of the Commission, in addition to the U.S. Department of Justice in accordance with Commission Rule 1.31. While NFX is in favor of reasonable transparency to regulators, we understand that market participants are extremely concerned with maintaining the confidentiality of source code which reflects their business strategies and which is valuable intellectual property. Since this type of highly sensitive information is already available to regulators through subpoena if the need exists, NFX questions the necessity and desirability of the source code repository requirement which would treat source code in the same manner as other routine business books and records.

III. Market Maker and Trading Incentive Programs – Proposed Rule 40.25

The Commission has proposed certain requirements relating to market making and other incentive programs designed by DCMs to encourage liquidity provisioning and order flow to their electronic trading platforms. The Commission noted in the proposing release that the rules proposed in Regulation AT primarily address operational risk issues. NFX believes that the Commission's DCM disclosure requirements relating to market maker and trading incentive programs as proposed in Rule 40.25, though they may be related to automated trading in some sense, would be more appropriately addressed in separate rulemaking. Proposed rules intended to foster transparency with respect to DCM programs and activities, including market maker and trading incentive programs, should not influence the development of unrelated proposals designed to deal with operational risks presented by various trading strategies.

If the Commission nonetheless decides to proceed with the market maker and trading incentive program requirements, it should conclude that ordinary commercial arrangements between a DCM and its participants should not be required to be disclosed publicly. Proposed Rule 40.25 requires such programs to be filed with the Commission and to include a description of any payments, incentives, discounts, considerations, inducements or other benefits that program participants may receive, including any non-financial incentives (non-financial incentives may include, for example, enhanced trading priorities or preferential access to market data, including order and trade data). NFX does not object to providing a description of payments, incentives, discounts, considerations, or other non-trading related inducements to the Commission, provided this confidential commercial information may be protected by a confidentiality request under FOIA as it is today. On the other hand, NFX supports requiring public disclosure of enhanced trading priorities or preferential access to market data that a DCM may extend to a liquidity provider or market participant participating in a trading incentive program. These advantages could include proximity to or preferred queue access to the match engine in addition to trading information advantages. The Commission notes in the release that the proposed rule is largely similar to the existing rule filing requirements in Part 40. DCMs have in the past been able to rely on FOIA confidentiality requests while filing pursuant to those requirements, and should be able to continue to do so under any new rules. Any requirement that DCMs publicly disclose confidential commercial information could significantly diminish a DCM's ability to compete with incumbents or build liquidity in a new product by using market maker or trading incentive programs, thus hindering innovation. Any requirement that results in disclosure of the identity of participants in market making or trading incentive programs will negatively impact the firms' willingness to support new products if they believe such disclosure could jeopardize their relationships with other DCMs listing similar products. The costs of such public disclosure requirements could in that sense outweigh any potential benefits. Finally, the Exchange believes that the information proposed to be collected in Rule 40.25 would be sufficient for the Commission to determine whether a DCM's market maker or trading incentive program complies with the impartial access requirements of Rule 38.151(b).

IV. Compliance Oversight by DCMs – Proposed Rule 40.22

Proposed Rule 40.22 requires DCMs to implement a review program for compliance reports regarding Algorithmic Trading submitted by AT Persons and clearing member FCMs, to require that certain books and records be maintained by such persons, and to review such books and records as necessary. Specifically, the rule would require a DCM to require each AT Person that trades on the DCM, and each FCM that is a clearing member for such AT Person, to submit the reports described in Rules 1.83(a) and (b) annually. Further, it would require each DCM to establish a program for effective review of such reports and remediation of any deficiencies found. It would also require DCMs to review and evaluate, as necessary, books and records maintained by AT Persons and clearing member FCMs regarding their compliance with proposed Rules 1.80 and 1.81 (for AT Persons) and 1.82 (for clearing member FCMs), and to identify and remediate any insufficient mechanisms, policies and procedures therein. While acknowledging that the proposal would impose costs on DCMs, the Commission stated it believes that Regulation AT must include a mechanism to ensure that AT Persons and clearing member FCMs are complying with the requirement to implement certain pre-trade and other risk controls and that DCMs are best positioned to assess the measures taken by market participants

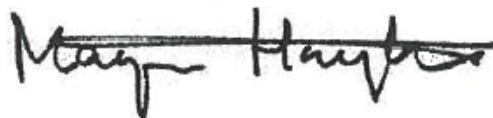
on their exchange, and to identify outliers that may not have implemented adequate measures as compared to other market participants.

The Commission stated that the reports and the review program proposed by Rule 40.22 would enable DCMs to have a clearer understanding of the pre-trade risk controls and compliance procedures of all AT Persons that are engaged in Algorithmic Trading on such DCM, and of the program for establishing and maintaining the pre-trade risk controls used by any FCM of an AT Person that is engaged in Algorithmic Trading on the DCM. NFX believes, however, that the Rule 40.22 requirements are unduly burdensome for small DCMs which in any event already surveil trading and provide various risk controls for trading on their markets. As the Commission acknowledged in the proposing release, the compliance requirements on DCMs in Regulation AT could have adverse effects on smaller DCMs, and compliance costs that go beyond existing industry practice could potentially cause some DCMs to cease or scale back operation, and impact the entry of new DCMs. Such costs could therefore negatively impact a new or smaller DCM's ability to compete against the established exchanges and thus outweigh any potential benefits of these requirements.

NFX believes that DCMs should be permitted, but not required, to conduct periodic review and evaluation of AT Person and clearing member FCM reports. If the Commission nevertheless adopts such a requirement, DCMs should be permitted to rely on the CEO or CCO representations required by proposed Rule 1.83(a)(2) in lieu of undertaking an actual investigation. Further, the rule should not provide specific requirements that would trigger an obligation on the part of a DCM to review and evaluate the books and records of AT Persons and clearing member FCMs. Requesting books and records should be done at the discretion of the DCM and should be prompted by activity specific to the market or as a result of notifications of activity exceeding the controls established by the DCM under proposed Rule 1.83. Finally, NFX believes there is merit in Commissioner Giancarlo's suggestion that the Commission could require AT Persons and their clearing member FCMs to conduct self-assessments (like FINRA requires) and only require submission to DCMs upon request.

NFX appreciates the opportunity to comment on proposed Regulation AT.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Magnus Haglind". The signature is written in a cursive, somewhat stylized font.

Magnus Haglind
Chief Executive Officer