

**NIBA - The Association for Derivatives Professionals**  
**Celebrating our 25th Anniversary Year**  
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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 ("Reg AT")  
RIN 3038-AD52**

**VIA ELECTRONIC SUBMISSION**

Mr. Kirkpatrick:

NIBA appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission" or "CFTC") proposed rulemaking on Regulation Automated Trading ("Reg AT"). Founded in 1991, NIBA is a trade association of registered derivatives professionals whose members include Introducing Brokers ("IBs"), Commodity Trading Advisors ("CTAs") and Associated Persons. Our members handle transactions for customers in the futures, options, forex and swaps markets. The mission of the NIBA is to provide education which helps our members grow their businesses while staying in compliance, and to provide a forum for their opinions. We have the support of ten futures commission merchants ("FCMs"), various exchanges and trading platforms, and a solid, long-term tradition of open communication with our regulators.

NIBA supports the Commission's objective of updating regulation to adapt to modern, automated markets and reduce the possibility of disruptive events by requiring risk controls imposed on various types of market participants. We believe, like many other commenters on this proposal, that several aspects of the proposed rule should be more closely examined. Specifically: (i) the inflexibility of the proposed rule including increased cost of implementation, regardless of the firm's size, role in the market, trading strategies and practices, as well as other relevant characteristics; and (ii) the requirement that AT Persons make Algorithmic Trading Systems ("ATS") source code available for inspection on demand by the Commission. Our comments are limited to those two issues.

**Rule Flexibility**

Inflexibility with regard to the definition and registration of AT Persons puts additional financial and human resources burdens on small companies already struggling to comply with existing regulatory requirements. NIBA believes the Commission should require registration based on metrics such as volume traded or ATS-generated messages, which are related to that firm's potential to cause a material impact on the marketplace.

Rather than impose a one-size fits all approach to the adoption of risk controls across different market entities such as the IB or CTA, we think implementing a more flexible

structure would be more appropriate. For example, risk control filters should be implemented with respect to order size, position and margin controls relied upon by the broker in concert with the FCM.

Additionally, NIBA believes that compliance reports to Designated Contract Markets ("DCMs") should be imposed only on large market participants, not on the IB. This would serve to avoid additional compliance costs for smaller market participants, as well as the duplicity of documents filed.

NIBA suggests that to ensure that the Commission's approach to AT regulation is a flexible, principles-based framework, it should permit each market participant to adopt risk-control measures which reflect the degree of risk that it poses to an orderly market and which are proportional with its role in the marketplace as a whole.

### **Source Code Repository and Discretionary Inspection**

NIBA counts among its members IBs and CTAs already registered with the Commission and members of the National Futures Association ("NFA"). As NFA members, these IBs and CTAs are subject to periodic review of books and records, including trading strategies. This review helps to ensure transparency of the firm's trading activity.

A firm's records may contain confidential information, including trading and business records. But these "books and records" may have no commercial value compared to that firm's source code. A firm's source code holds considerable commercial value; it is essentially the firm's "secret sauce." A disclosure of the firm's intellectual property will cause irreparable harm to its business. As other commentators have pointed out, the source code of a quantitative trading company contains trade secrets, which are important competitive advantages to a firm. The creation of a repository of this intellectual property creates serious cybersecurity risk. NIBA suggests the better guidance is found with the Financial Industry Regulatory Authority ("FINRA"), which contemplates that the AT firm retains records of source code and changes thereto for a period of time that is reasonable in light of the firm's size and complexity of its trading practices.

Finally, the Commission acknowledges that Regulation AT would have a significant impact on some entities such as IBs and CTAs. But it should be further noted that this financial burden will not be limited to implementing measures for pre-trade and other risk controls, or to standards relating to the design of ATS. AT firms will be subjected to additional compliance costs to generate and distribute required reports, and the supervision of such. Those expenses will drive up the costs associated with running these firms, hindering their ability to grow, and to provide service and value to marketplace participants.

Thank you for this opportunity to submit our members opinions and suggestions regarding Automated Trading Regulation. Please contact us for further discussions.

Sincerely,

Melinda Schramm, Founder & Chairman  
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