

June 23, 2016

Judicial Watch  
425 Third Street SW, Suite 800  
Washington DC 20024  
Attention: Federal Government Watchdogs

RE: CFTC Regulation AT: Potential Seizure of Proprietary Data without Subpoena

Dear Watchdogs,

Proposed CFTC Regulation AT (Automated Trading) is designed to regulate commodities market participants who perform algorithmic trading. If an algorithm would have a glitch it may cause a market instability or a flash crash. Regulation AT would give the right to the CFTC and the Department of Justice to look at proprietary trading code without requiring the standard subpoena.

The CFTC's contention that proprietary source code embodying instructions for future commercial strategy is equivalent to books and records of past trading activity obtainable without a subpoena. The source code alone is technically not the equivalent of books and records as historical market data would need to be ran against the source code to determine the result. This would take hours to days to perform after a flash crash so it begs the question: Why bypass the subpoena process?

One strong advocate against the use of source code is actually a Commissioner of the CFTC J. Christopher Giancarlo who had stated: *"As a lawyer, I am aware of no legal foundation on which to haphazardly set aside long-established, due process protections afforded by agency subpoena practice. Of all the components of the Commission's proposal, the extraordinary requirement that proprietary source code be accessible to the government without a subpoena is the most unsettling. It disrupts the traditional relationship between the CFTC and market participants and the Constitutional relationship between American citizens and the federal government, the authority of which is both limited and specifically enumerated in law. It is for the people's representatives in Congress, and not an unelected agency, to decide whether valuable private property may be taken without specific authority arising from a legal proceeding"*.

The question for Judicial Watch is does an unelected agency have the power to unilaterally make such interpretations of equivalence to bypass the subpoena process? There has been a backlash or market participants expressed on the CFTC's comments for Regulation AT against the oppressive nature of his potential regulation. All of whom would likely support Judicial Watch in defending the privacy of proprietary information.

My intent is to protect market participants through a real-time system which would block trading if trading would force net capital to fall below minimum requirements. The patented system is consistent with the CFTC and SEC's objectives of protecting investors and avoiding systemic risk. If a flash crash is prevented, then there is no need to examine source code in the first place.

Please read the complete opening statement of CFTC Commissioner J. Christopher Giancarlo before the CFTC Staff Roundtable on Regulation Automated Trading. The courageous statement which stands up for the constitutional rights of Americans should make you proud of there is some decency in DC.

If one regulatory agency can shift the protected rights of citizens, then it may lead to a precedent with no actual legal foundation. As the public need to be made aware of this I look forward to bringing the matter to the attention of Judge Janine Pirro who will likely bring the CFTC onto her show on FOX news by its little ear and make the CFTC understand the parameters of their legal authority.

Sincerely,

Peter Schwartz  
Regulatory Revolutionary

[www.systemicriskregulation.com](http://www.systemicriskregulation.com)