

BartChilton.com

June 24, 2016

VIA ELECTRONIC SUBMISSION

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)

Dear Mr. Kirkpatrick:

I write as an individual representing nobody other than myself.

During my seven years at the Commission, I was the most outspoken Commissioner calling for appropriate regulation of automated trading. When Commissioner O'Malia joined the CFTC, he became a thoughtful leader of the Technology Advisory Committee (TAC). I commend the Commission for putting forth Regulation AT (Reg AT or the Proposal). There are many worthy provisions in the Proposal, some of which I called for years ago. It is my view, however, that the Agency's Proposal has gone too far on the issue of source code. I have appended to this comment letter a recent CNBC opinion editorial which I penned on this matter for the record.

My suggestion to the Commission are three-fold and forthright:

1—Scrap the source code provision and finalize the less controversial portions of the Proposal. Other meritorious provisions of Reg AT should not be delayed or compromised by litigation that would likely result should the Agency's proposed source code provisions be finalized;

2—Convene a TAC meeting solely on the issue of source code to examine what it is and how it can be defined. This is a needed first step in promulgating any regulation related to such; and

3—Issue a concept release in the Federal Register and seek public comments that address how source code would be obtained using existing subpoena authority. How can it best be protected? Should it only be viewed in the confines of a firm's venue setting? Should there be post-employment restrictions on those who view source code at the Agency? These, and a host of other related questions, should be considered in such a concept release focusing *only* on source code, shared through the formal public comment process.

Finally, I again commend the Commission for addressing, absent the source code provision, these important issues. I am a big believer in thoughtful regulation as my record unmistakably indicates. I thank the Commissioners and the staff for their attention to my comments and for your work on these and other matters which continue to make our markets the best in the world.

The opinion editorial follows:

CNBC Opinion: New CFTC trading rule is "extreme overkill"

By: Bart Chilton

One would not expect Coca-Cola to divulge their secret recipe for the world-renowned soft drink...nor is it required by government. The same is true for other proprietary trade secrets and intellectual property. That, however, could all change by the end of the year if some at a little-known federal agency get their way.

The U.S. Commodity Futures Trading Commission (CFTC)—where I previously served as a commissioner for seven years—is seeking to obtain such secret formulas known as "source code" from traders and trading venue operators (exchanges). Comments on the proposal for new automated trading rules, known as "Reg AT," are being accepted through the end of this week.

The argument as to why the commission seeks this is that they believe there are certain risks to markets associated with unsuitable source code (namely the algorithmic formulas) and they want to better understand what is taking place. While that may seem like a noble cause, source code is

the secret sauce, the protected property, created in the private sector. It often takes years and millions of dollars to develop. It is the life-blood of innovation and invention. The proposal to make such highly-sensitive data obtainable to any member of the Commission as part of the available collection of books and records would be precedent-setting. If the proposal were to be approved, no subpoena or formal order would be required, as is currently the case. A mere CFTC shout-out seeking source code would compel complete acquiescence.

Establishing such a slapdash standard at one federal agency could impact tens of thousands of businesses should other agencies (federal, state or local) choose to emulate such a problematic precedent.

Moreover, given the government's history of shoddy supervision and mangled management of private information, individuals and business owners have every reason for apprehension related to data security. Simply said: submission to the government in this regard would place highly sensitive and very valuable data in great jeopardy.

Not many years ago, while I was there, the CFTC itself was hacked. We were informed all our personal data was at risk. Separately, researchers working with the CFTC's economist inappropriately released sensitive information, thus instigating a US Inspector General investigation. Even the U.S. Office of Personnel Management (OPM) computer system was hacked, compromising over 21 million personnel records. Moreover, in just the six months since the CFTC released this ill-omened proposal, hackers penetrated the Federal Reserve, Internal Revenue Service (IRS) and the Federal Deposit Insurance Corporation (FDIC). Government officials suggesting that sensitive intellectual property and trade secrets will be secure would be lavishly ludicrous if it weren't such a serious and significant issue. There is no way, no how, that government should be trusted in this regard.

Finally, this current proposal, according to the CFTC to "reduce potential risks" is extreme overkill. There has been no articulation of any specific risk that would have been avoided if this proposal had been in place. As to why officials continue to believe it is needed: that's a

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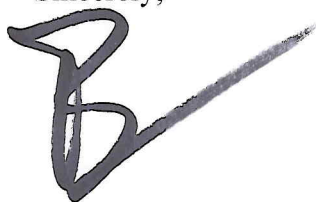
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perplexing puzzle. During my time at the Commission—and for over four decades—subpoenas have worked exceptionally well in obtaining information needed for investigations. To issue a subpoena, all that's required is an affirmative vote of the Commission. I cast dozens of such votes. It is not an onerous endeavor.

At the same time, the subpoena standard sustains needed due process protections for people and for firms. There are no real-world reasons why these safeguards should be compromised via haphazard—and truly extraordinary—regulatory fiat.

Throughout my 30-year career in government, I've been a supporter of thoughtful regulation, particularly in the financial sector. However, this proposal goes far beyond any reasonable request. If it were to be adopted, it would abuse the CFTC authority under the Commodity Exchange Act (CEA), but as important, it would set a dreadful and dangerous precedent for those concerned about intellectual property and trade secrets...and all for no respectable reason.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Bart Chilton', with a long, sweeping horizontal stroke extending to the right.

BART CHILTON