

VIA ELECTRONIC SUBMISSION

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

28 April 2017

**RE: Supplemental Notice of Proposed Rulemaking for Regulation Automated Trading
("Regulation AT"), RIN 3038-AD52**

Dear Mr. Kirkpatrick,

Fidessa appreciates this opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or "Commission") supplemental notice of proposed rulemaking regarding "Regulation Automated Trading" ("Regulation AT").

Fidessa was established in 1981 – originally 'Intercom Data System limited' (IDS) – and has over 35 years' experience in delivering leading-edge software. 85% of tier-one institutions currently use Fidessa's multi-asset trading platform as their solution of choice.

Fidessa is a global company with a broad reach of clients across major financial markets from global institutions, investment banks, FCMs and asset managers to niche brokers and hedge funds. Fidessa has 900 clients globally - 300 of them order management system customers - with more than 23000 end-users executing on 220 execution venues, including more than 60 derivatives exchanges. Our global network connects 5,500 buy-side and 715 sell-side firms and carries order flow to the value of \$1.7 trillion each month. Fidessa's commitment to this space is evident in its staff of 1700 – more than 80% of whom are engaged in development and research, delivery, support and operations – in its 26 data centers and 14 offices located in all the key financial centers around the world.

We pride ourselves on being a broker-neutral technology provider and partner.

I. Overview

Fidessa supports initiatives that seek to improve the stability and fairness of the derivatives marketplace and believes that a principles-based approach to the regulation of electronic trading can further those goals. Fidessa is limiting its comments to specific issues within the Supplemental Notice of Proposed Rulemaking of Regulation AT:

- the algorithmic trading source code retention and inspection requirements
- the testing, monitoring and record-keeping requirements in the context of third-party providers

II. Fidessa response to specific questions in the Supplemental Notice of Proposed Rulemaking ("SNPRM")

Question 17. Is the definition of “Algorithmic Trading Source Code” sufficiently clear to allow AT Persons to comply with the recordkeeping requirements in Supplemental proposed § 1.84? Which, if any, components of Algorithmic Trading systems should be added to the definition of Algorithmic Trading Source Code? Which, if any, should be excluded?

Fidessa does not agree with the Commission's focus on Source Code and its preference over a plain English explanation of what an algorithmic trading system does. But in regard to the wording, Fidessa understands what the Commission means by Source Code and how it differs from a plain English explanation.

Fidessa agrees with the Commission that not all Source Code employed by an AT Person for trading should be in scope of SNPRM. The Commission proposes to focus on the Source Code that is embedded into an Algorithmic Trading System. While Fidessa agrees with the intention of that restriction, we feel that the current wording is inadequate for the following reasons:

Firstly, unlike the Notice of Proposed Rulemaking ("NPRM"), the SNPRM does not contain a definition of algorithmic trading.

Secondly, even with a definition available, an AT Person still needs to separate its software into algorithmic trading and non-algorithmic trading in order to work out which Source Code is affected by the rule. While this sounds reasonable at first glance, we see substantial difficulties. There is rarely a one-to-one relationship between a section of Source Code and a specific order flow and/or algorithmic trading functionality. Instead, trading platforms consist of a large number of different modules interacting in various ways and fulfilling different roles. Some of those modules might be directly related to algorithmic trading, but most are not. By way of example, time is an important input factor for algorithmic trading, but does it imply that the employed time protocol should be part of the scope of Algorithmic Trading Source Code?

Thirdly, the Commission suggests that AT Persons not creating their own Source Code need to ensure that the third-party provider certifies compliance with the proposed rules. This might be a feasible approach for third-party providers that solely (or to a large degree) sell to AT Persons, but what if the software purchased has many different applications and algorithmic trading is just a small fraction of all the use cases where the software is employed? For example, Fidessa purchases software and hardware from other IT firms in order to route data from one server to another within a network. The specific software is not designed specifically for algorithmic trading and finds its applications across all sorts of industries outside of the financial markets in much the same way as your personal Wi-Fi router at home. Our providers of network technology do not know how their technology interacts with trading algorithms designed by Fidessa. It would therefore be extremely unlikely that they would be willing to certify its compliance with the proposed rules. The example given by the Commission regarding Microsoft Excel indicates that it is not the intention that Source Code for network routers is in scope. But with the lack of explicit wording, the interpretation remains uncertain.

In order to address these three points Fidessa would like to propose that the Commission implement the following amendments:

- Add a definition of Algorithmic Trading

- Explicitly limit the scope to Source Code that is directly relating to Algorithmic Trading. Source Code that prepares data for processing by the Algorithmic Trading Source Code should not be in scope.
- Explicitly limit the scope to Source Code that is exclusively used in the context of Algorithmic Trading by an AT Person. Any Source Code that also has alternative use cases (such as Microsoft Excel, network routers, and others) should not be in scope.

Question 18. Are log files described in sufficient detail in the Supplemental NPRM? Please explain why or why not.

The definition of log files appears appropriate, in particular as the Commission limits it to log files that are created "in the ordinary course of business". Fidessa believes that this restriction is crucial in finding an appropriate balance between implementation costs and the Commission's responsibility to oversee markets.

Question 23. The Commission invites comment on all aspects of Supplemental proposed § 1.85.

Fidessa is not able to support or reject the Commission's proposal on certification because there is insufficient detail to assess. Please see below examples of those areas which we think need further clarification and where we would like the Commission to provide further guidance:

- What is the precise certification requirement to be? Under the current proposal, third-party providers are at risk of having to issue many different certifications based on different interpretations by different AT Persons. This could add cost and inconsistencies to the process.
- What are the implications of having provided certification? Please consider a case where the Commission fines an AT Person for non-compliance with Regulation AT and a third-party provider is involved. What are the potential implications if that third-party provider has issued a certificate to the AT Person? How is this consistent with the AT Person remaining responsible for regulatory compliance?
- If issuing certificates leads to additional legal risks for a third-party provider, has the Commission considered the cost implications where the risk profile for third-party providers increases?
- Are firms required to conduct due diligence in areas where a certificate has been issued? If yes, why does the Commission believe that relying on the levels of due diligence applicable in other areas is insufficient? If not, could the Commission elaborate on what it thinks is so different about those areas that lead it to suggest that due diligence is replaced by certification? If firms are required to conduct due diligence is there a risk that this exercise will be minimized if a certificate is available?
- Has the Commission considered external certification standards, i.e. requiring third-party vendors to obtain certification from another entity rather than self-certifying?
- How does the Commission envisage the future relationship between an AT Person and its third-party providers? Currently, regulated firms own the interpretation of the regulations because it is their responsibility to comply. Issuing a certificate requires interpretation of regulation by the third-party providers themselves. Does the Commission expect that some of the requirement to be compliant to shift from registered firms to third-party providers?

Question 24. Should the requirements for AT Persons who develop their own systems and code differ from requirements imposed on AT Persons that use systems or components provided by a third-party? If so, how should the requirements be different, while continuing to ensure a consistent baseline of effectiveness in the development and testing of ATs?

No. Fidessa believes that all AT Persons should have the same requirements.

Fidessa would welcome the opportunity to discuss its comments further and would be happy to provide any additional information should the Commission require it.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Justin Llewellyn-Jones', with a long horizontal flourish extending to the right.

Justin Llewellyn-Jones
Global Head of Derivatives and Chief Operating Officer
Fidessa Inc.