

May 1, 2017

**Via Electronic Submission**

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

**Re: Supplemental Notice of Proposed Rulemaking on Regulation Automated Trading (“Regulation AT”)**

Dear Mr. Kirkpatrick:

I am submitting this letter on behalf of Trading Technologies International, Inc. (“TT”), to respond to certain issues raised in the Supplemental Notice of Proposed Rulemaking on Regulation Automated Trading (“Regulation AT”). Previously we submitted two comment letters; participated in the round table discussion hosted by the Commission; and testified before the House Agriculture Committee on the issues raised in the previously proposed Regulation AT. As a result, TT’s views are well documented and we will keep our comments in this letter short and specific to the proposed definition of “Algorithmic Trading Source Code;” the undefined term “Algorithmic Trading system;” the new “special call” process for obtaining source code from AT Persons; and the certification requirement of independent software vendors (ISVs).

1. The definition of Algorithmic Trading Source Code remains problematic because it is defined very broadly. In particular, including the term “Algorithmic Trading system” within the definition expands the potential spectrum of source code to virtually anything relating to a trading system. This would include functionality relating to order entry, risk management, price feeds, data routing and many other functions. The amount of potential source code that would fall under this definition is enormous--likely amounting to tens if not hundreds of millions of lines of code for even a simple system. In virtually every instance the code would also come from many different sources. Some may be written internally while much of it will likely come from third parties either through open source software or commercial software vendors.

The problem with such expansive terms is that such Source Code would have to be maintained and made available to the CFTC under the proposed rule. Simply maintaining such a morass of code would pose a significant burden on any AT Person and with respect to third party software, it would likely not be available to the AT Person. Additionally, the benefit to the CFTC would be minimal because it would be very difficult, if not impossible, to understand the code or how it works in a real time trading environment.

2. The definition of Algorithmic Trading system is overly broad and unworkable. While Algorithmic Trading is defined, the term “system” remains undefined and could include a broad array of functionality. This leaves the obligations of Sections 1.81 and 1.84 relating to testing and recording any changes to such systems very broad.

3. We appreciate the Commission’s acknowledgement that its access to a firm’s source code should not be allowed without careful consideration. However, the proposed special call procedure remains inadequate primarily because the property holder would not be part of that process, which is simply unfair and probably unconstitutional. There is no reason to establish a new procedure like this when the subpoena process already exists and allows the Commission to obtain any such source code by petitioning a court. The subpoena process provides the owner of the source code due process of law in a neutral judicial venue where it can seek to quash or narrow the scope of a subpoena in an attempt to protect its very valuable property. There is no valid reason to circumvent this existing legal procedure.

4. Proposed Section 1.85 would mandate certification from a third party, unregulated ISV that such ISV complies with Sections 1.81 and 1.84 of the proposed regulation. This is an extraordinary overreach of the regulatory authority of the Commission and there is simply no need to do so. Virtually every regulated entity in the financial services industry uses third party vendors and subcontractors to perform many ancillary functions on their behalf. The third party providers are able to focus on those products and services and provide them better and more cost effectively than if such products/services were developed in-house.

The vast majority of those vendors and subcontractors are not registered entities themselves nor are they forced to certify compliance with regulations. Instead of forcing unnecessary regulation on these third party entities, the commercial market should be allowed to address compliance through simple negotiation as it does today and has historically. Where the outsourced products or services affect a regulated entity’s compliance with regulations, the regulated entity typically performs due diligence of the vendor, its procedures and the software and services being considered. If, through the due diligence process, the third party provider proves reliable and provides the necessary functionality and services, then the parties agree to provide/pay for specified functionality and services. The parties are then subject to contractual remedies in the event the ISV fails to provide them as agreed.

There is no doubt that ISVs must be aware of the regulatory regime so that their products can facilitate customer compliance. The due diligence process described above addresses to what degree a trading or brokerage firm believes that the ISV will, in fact, help them to comply. But, mandating a certification of compliance would dramatically alter the economic relationship between the parties. ISVs would be forced to retain costly experts to insure compliance and would need to factor in such costs and the inherent risk of non-compliance into the pricing of its products and services. This would likely price out some ISVs from the market and would necessarily affect the prices that would be charged to customers. Moreover, it would disrupt the very essence of why outsourcing occurs. ISVs would no longer be able to focus on the software and services that they provide better and more cost effectively than the regulated entities. Too much focus would be diverted to unnecessary regulation. There is little benefit in the disruption certification would cause since the parties already address the issues through due diligence and the contracting process. In this way, the market for software and related services efficiently and effectively “regulate” ISVs already.

Passing the regulatory burden on the ISVs through the certification process is also inconsistent with the logic behind why certain people and entities are regulated in the first place. ISVs hold no customer

money and do nothing to actually affect any trade. ISVs merely provide the software and related services that facilitate traders' trading activities. Even those ISVs that offer algorithms as part of their product offering typically offer only the most simple and common algorithms (e.g., spread trades) and where they offer more sophisticated algorithms, whether and how the algorithms are used is under the control of the trading firm. ISVs often have no more impact on a trade than a telecommunications provider who provides the physical data lines through which trade data travels or a collocation facility provider that houses the servers and routers on which trading software is installed or a spreadsheet program used to develop a formula or algorithm (e.g., Microsoft Excel). In the supplemental proposal, the Commission went out of its way to exclude functionality like that found in Excel from the purview of the proposed regulations. Excluding Excel seems appropriate since traders (not Microsoft or the software) control the parameters of any algorithm that is devised or executed with Excel and risk parameters controlled by the traders, brokers and DCMs always safeguard against strategies that go awry. The same logic applies to all ISV software and services.

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TT remains concerned that, as drafted, Regulation AT will not positively enhance the existing regulatory regime for automated trading. At a minimum we suggest that the Commission engage the entire community, including the ISVs, to more thoroughly understand the breadth of the proposed regulations and the practical effect they will have on the industry. We remain willing to participate in any such discussions and will provide additional input about any matters within our expertise.

Please contact me at (312) 476-1081 if you have any questions or seek additional information.

Respectfully submitted,



Michael G. Ryan  
Executive Vice President and General Counsel