

VIA ELECTRONIC SUBMISSION

May 1, 2017

Mr. Christopher J. 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”) Trading - RIN 3038-AD52

Dear Mr. Kirkpatrick:

NASDAQ Futures, Inc. (“NFX”) respectfully submits this letter in response to the request for public comment set forth in the Commission’s Supplemental Notice of Proposed Rulemaking on Regulation AT (“Supplemental Proposal”) with regard to automated trading of futures and options on futures on U.S. designated contract markets (“DCMs”).

NFX is a DCM listing key energy benchmarks of futures and options on oil, gas, and U.S. power that allow market participants to diversify their portfolios while providing a valuable hedging tool. All NFX trades are cleared by The Options Clearing Corporation. NFX is a wholly owned subsidiary of Nasdaq (Nasdaq: NDAQ), a leading provider of trading, clearing, exchange technology, listing, information and public company services across six continents. As the creator of the world's first electronic stock market, its technology powers more than 70 marketplaces in 50 countries and 1 in 10 of the world's securities transactions. Nasdaq is home to more than 3,500 listed companies with a market value of over \$9.1 trillion and more than 10,000 corporate clients.

NFX has previously commented¹ on the original Notice of Proposed Rulemaking on Regulation Automated Trading (“Regulation AT”), and would like to comment on two aspects of the Supplemental Notice.

¹ See Letter dated March 16, 2016, from Magnus Haglind, Chief Executive Officer, NFX, to Christopher J. Kirkpatrick, Secretary, Commodity Futures Trading Commission.

DCM Compliance Oversight Program

First, NFX remains concerned about the proposed rules concerning a DCM's compliance oversight program. As a general matter, NFX continues to caution the Commission against adopting proposals that would impose costs that outweigh any associated benefits. As originally proposed Rule 40.22 would have required DCMs to implement a review program for compliance reports regarding Algorithmic Trading submitted by AT Persons and clearing member FCMs, to require that certain books and records be maintained by such persons, and to review such books and records as necessary. In its comment letter on the original Regulation AT proposal, NFX expressed the view that the Rule 40.22 requirements were unduly burdensome for small DCMs which in any event already surveil trading and provide various risk controls for trading on their markets. It stated that the compliance requirements on DCMs in Regulation AT could have adverse effects on smaller DCMs, and compliance costs that go beyond existing industry practice could potentially cause some DCMs to cease or scale back operation, and impact the entry of new DCMs. Such costs could therefore negatively impact a new or smaller DCM's ability to compete against the established exchanges and thus outweigh any potential benefits of these requirements.

As Commissioner Giancarlo has pointed out in his statement of dissent regarding the Supplemental Proposal, the Supplemental Proposal replaces the requirement in proposed Regulation AT that AT Persons and clearing member FCMs prepare the annual reports. It replaces this requirement with an annual certification requirement. The Supplemental Notice, however, also requires DCMs to establish a program for effective periodic review and evaluation of AT Persons' and FCMs' compliance with risk controls and other requirements. It retains proposed Regulation AT's requirement that the DCM must identify and remediate any insufficient mechanisms, policies and procedures, including identification and remediation of any inadequate quantitative settings or calibrations of pre-trade risk controls required of AT Persons.

NFX continues to believe that DCMs should be permitted, but not required, to conduct periodic review and evaluation of AT Person and FCM reports. NFX believes the costs associated with the DCM program to evaluate AT Persons' and FCMs' risk controls and other requirements for compliance would significantly outweigh any benefit it might produce, to the particular detriment of smaller or new DCMs.

Special Call Process for Source Code

Separately, under the original Regulation AT proposal, AT Persons would be required to make their source code repository available for inspection to any representative of the Commission, in addition to the U.S. Department of Justice in accordance with Commission Rule 1.31. In its original comment letter, NFX stated that it is in favor of reasonable transparency to regulators but that market participants are extremely concerned with maintaining the confidentiality of source code which reflects their business strategies and which is valuable intellectual property.

The Supplemental Proposal would provide for access to the source code of an AT Person through a subpoena or by a majority vote of the Commission and a special call executed by the Director of the Division of Market Oversight. Since this type of highly sensitive information is already available to regulators through subpoena if the need exists, and given the concerns of market participants regarding the Commission's ability to maintain the confidentiality of source code, NFX questions the necessity and desirability of access to source code through the "special call" process.

NFX appreciates this opportunity to comment on the Supplemental Proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick Beaman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rick Beaman
Chief Executive Officer