May 1, 2017

Via Electronic Submission

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Comment Letter Regarding Proposed Regulation Automated Trading
Supplemental Notice of Proposed Rulemaking
RIN 3038-AD52, 81 FR 85334 (November 25, 2016)

Dear Mr. Kirkpatrick:

CBOE Futures Exchange, LLC ("CFE") appreciates the opportunity to provide its comments to the Commodity Futures Trading Commission ("Commission") regarding the above-referenced supplemental rule proposal ("Proposal") relating to proposed Regulation Automated Trading ("Regulation AT"). The Proposal seeks public comment regarding modifications to proposed Regulation AT. Because CFE is a Designated Contract Market ("DCM"), CFE's comments are focused on provisions of the Proposal that relate to DCMs.

CFE Reiterates Its Prior Comments Regarding Proposed Regulation AT

CFE submitted a comment letter to the Commission regarding proposed Regulation AT after it was initially proposed by the Commission.[1] CFE refers the Commission to that comment letter and reiterates the comments included in that comment letter in connection with the Commission's consideration of the Proposal. In particular, CFE continues to believe that effective DCM risk control mechanisms are already in place and that sufficient regulation of DCMs in relation to risk controls already exists. For example, DCMs are subject to Core Principles 4 (Prevention of Market Disruption) and 11 (Financial Integrity of Transactions) under Section 5 of the Commodity Exchange Act as well as to Commission Regulations §38.255 (Risk Controls for Trading) and §38.607 (Direct Access). Accordingly, CFE continues to question the need for further regulatory requirements in this area that would be applicable to DCMs. Additionally, even as modified, CFE continues to believe that proposed Regulation AT includes overly prescriptive requirements that do not allow for flexibility, innovation, and new and different risk control methods to come into practice as technology and markets evolve. That said, should the Commission determine to proceed with final adoption of proposed Regulation AT, CFE has the following comments regarding specific aspects of the Proposal which supplement and are in addition to the comments included in CFE's prior comment letter regarding proposed Regulation AT.

[1] See CFE Comment Letter to the Commission Regarding Proposed Regulation AT, dated March 16, 2016, submitted on behalf of CFE by CFE Managing Director Michael Mollet.

DCMs Should Not Be Required to Make Maximum Order Message Frequency Risk Control Available to Executing Futures Commission Merchants ("FCMs")

Under proposed §38.255(b)(1)(i), a DCM would be required to make available to executing FCMs a risk control within the DCM's systems that allows executing FCMs to set maximum levels for electronic trading order message frequency per unit of time. This risk control would be in addition to the risk control that a DCM would be required to set under proposed §40.20(a)(1)(i) to also establish maximum levels for electronic trading order message frequency per unit of time. Similar to CFE's prior comments in relation to order price parameters, CFE believes that this risk control is best set by the DCM and that a DCM should not be required to also provide executing FCMs with the ability to set this risk control within a DCM's systems. The purpose of a risk control setting within a DCM's systems for maximum order message frequency per unit of time is to protect the proper performance and integrity of the DCM's systems and to prevent disruption to the market. In particular, this risk control is intended to prevent a market participant with direct electronic access to the DCM from submitting an excessive number of order messages over a specified time interval that could slow down or otherwise detrimentally impact the normal functioning of a DCM's systems or the ability of other market participants to access and execute transactions on the DCM's market as they would normally be able to do. A DCM is the only party with the requisite knowledge of its systems and their operating capacity that is necessary to set this risk control in a meaningful way. Executing FCMs are not in a position to set this risk control in a meaningful way, and no purpose is served by requiring them to set this risk control within a DCM's systems. What is of interest to executing FCMs in this regard is being able to control the maximum number of contracts executed by a market participant with direct electronic access to the DCM, and an executing FCM would be able to control that exposure through the maximum order size limit and maximum execution frequency per unit of time risk control settings that a DCM would be required to make available to executing FCMs. As long as an executing FCM can control the number of contracts executed by a market participant with direct electronic access to the DCM, it should not matter to the executing FCM how many order messages that market participant may or may not be submitting to the DCM.

DCMs Should Have Discretion to Determine Level of Granularity of DCM and DCM Provided Risk Controls

A DCM should have the discretion to determine the level of granularity at which to set risk controls and at which to make available risk controls to executing FCMs. The levels of granularity for required risk controls that are listed in proposed §40.20(a)(2) and proposed §38.255(b)(1)(ii) should be a non-exclusive list of examples, and a DCM should have the discretion to determine the level or levels of granularity that are most appropriate for the DCM's own market. A DCM should have this same flexibility in relation to the granularity at which the DCM implements and makes available to executing FCMs order cancellation systems under proposed §40.20(b) and proposed §38.255(b)(2). The supplemental notice regarding the Proposal appears to imply that as levels of granularity become technologically feasible, DCMs should update the risk controls that they have in place and that they make available to executing FCMs. If that is what is intended, CFE disagrees with this expectation. Technological feasibility should be only one of many factors that a DCM should be able to take into consideration in determining the appropriate level of granularity to employ and make available to executing FCMs. For example, a DCM should be able to consider such factors as whether a more general level of granularity is sufficient to mitigate risk, difficulty of implementation of additional granularity, availability to the DCM of information necessary to implement additional granularity, ensuring ease of use of risk controls, avoiding undue complexity, executing FCM and market participant input, and predominant practices by other DCMs. Additionally, it is imperative that a DCM be permitted to engage in a cost-benefit analysis with respect to whether the incremental benefit to additional granularity justifies the cost to both the DCM and executing FCMs of implementing that additional granularity. Just because a level of granularity is technologically feasible should not dictate that a DCM is required to implement that level of granularity, particularly if the DCM concludes that the additional level of granularity will provide only marginal benefit and the cost of implementation would be high. Today CFE provides risk control granularity at the Trading Privilege Holder level (i.e., the level of those with direct electronic access to CFE's trading system) and at the product level. CFE should be permitted to retain this structure until such time that CFE determines based on factors like the ones noted above, among others that may be relevant and pertinent at the time, that providing additional or different levels of granularity is appropriate for its market.

<u>Proposed Requirement for DCM Review Programs Relating to Compliance with Regulation AT Requires Revision If Adopted</u>

CFE has three comments regarding the proposed requirement under proposed §40.22 that each DCM establish a program for periodic review and evaluation of the compliance by AT Persons and executing FCMs with Regulation AT.

First, CFE echoes the concern noted by Commission Chairman J. Christopher Giancarlo in his dissenting statement regarding the Proposal that it would be problematic if proposed Regulation AT were to place DCMs on the hook to identify and remediate any insufficient mechanisms, policies, and procedures of AT Persons and executing FCMs, including inadequate quantitative settings or calibrations of pre-trade risk controls. Consistent with this concern and with what other DCMs have noted in their comments regarding proposed Regulation AT, CFE agrees that DCMs are not practically in a position to assess whether or not the internal risk control policies, procedures, mechanisms, and quantitative settings and calibrations of AT Persons and executing FCMs are sufficient. DCMs do not have enough familiarity, information, and knowledge regarding the functionality and intricacies of the systems utilized by AT Persons and executing FCMs to meaningfully make this assessment. Accordingly, if the Commission were to proceed with the implementation of proposed §40.22, the Commission should clarify that the focus of DCM review programs would be to confirm that AT Persons and executing FCMs have policies and procedures in place to comply with Regulation AT and that DCMs would not be responsible for identifying and remediating risk control policies, procedures, mechanisms, and settings of AT Persons and executing FCMs which may turn out to be inadequate to prevent or reduce the potential of a disruption.

Second, it is redundant and inefficient to require each DCM as well as the National Futures Association ("NFA") to conduct review programs for AT Persons and executing FCMs relating to their compliance with risk control requirements as would be required under proposed §40.22 applicable to DCMs and proposed §170.19 applicable to NFA. This is particularly the case since it is likely that many AT Persons and executing FCMs are active on a number of DCMs and would be subject to multiple reviews from the various DCMs as well as from NFA that would cover the same content. Instead, if the Commission were to proceed with the implementation of proposed §40.22, CFE recommends that the Commission implement DCM oversight in a manner similar to the structure of the Joint Audit Committee ("JAC"). The JAC is made up of U.S. futures exchanges and NFA and oversees the implementation of the Joint Audit Agreement regarding the practices and procedures to be followed during regulatory examinations and financial reviews. The JAC enhances uniformity and lessens the regulatory burden of DCMs, as well as FCMs, by assigning a "lead regulator" to the common members (referred to as the

Designated Self-Regulatory Organization ("DSRO")) that is primarily responsible for the audits and financial reviews of FCMs. The JAC system or a system like the JAC system could be utilized in a similar manner to conduct the reviews envisioned under proposed §40.22 and proposed §170.19. DCMs could establish any review standards that would be distinctive to their own products, and NFA or the DSRO could apply those standards and generally applicable standards and perform a risk control compliance review applicable to activity on all of the DCMs. Establishing a DSRO or assigning NFA to conduct the compliance reviews would avoid duplication of efforts by multiple DCMs and NFA and make the compliance review process more effective, efficient, and less costly for all involved.

Third, should the Commission proceed with the adoption of proposed §40.22, a DCM should only have responsibility for conducting reviews for compliance with Regulation AT by AT Persons and executing FCMs that are either members of the DCM or have direct electronic access to the DCM (i.e., access which allows orders to be submitted to the DCM without passing through the systems of another market participant that is a member of the DCM). In the case of CFE, its Trading Privilege Holders are its members and only Trading Privilege Holders are able to have direct electronic access to CFE for order submission. CFE has no direct relationship with any other parties that trade CFE products, as those parties submit their orders to Trading Privilege Holders which in turn submit the orders to CFE. These orders are executed on CFE by the Trading Privilege Holder and not by the party that submits the order to the Trading Privilege Holder. Because CFE is only interacting with its Trading Privilege Holders in connection with the execution of orders on its market and has no interaction with other market participants for this purpose, CFE should only be required to conduct reviews of its Trading Privilege Holders and not of other parties that trade CFE products (regardless of whether these parties happen to be AT Persons). Additionally, as is discussed above, even when a DCM like CFE would have nominal responsibility for conducting a review because an AT Person or executing FCM is a member of, or has direct electronic access to, the DCM, a JAC-like system should be utilized so only one DSRO, or NFA, conducts that review.

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CFE is available to provide any further input desired by the Commission regarding the issues discussed in the Proposal and to work cooperatively with the Commission to address them. Please contact me at (312) 786-7180 or lowenthl@cboe.com if you have any questions regarding our comments.

Very truly yours,

/s/ Andrew Lowenthal

Andrew Lowenthal
Senior Managing Director
CBOE Futures Exchange, LLC