



May 1, 2017

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 for Regulation Automated Trading – 81
Fed. Reg. 85334 (November 25, 2016) (RIN 3038-AD52)**

Dear Mr. Kirkpatrick,

CTC Trading Group, LLC and its subsidiaries acting as liquidity providers in the regulated futures market, CTC Investments, LLC and CTC Energy LLC, (collectively, “**CTC**”) welcome the opportunity to comment on the supplemental notice of proposed rulemaking (“**Supplemental NPRM**” or “**Supplement**”) ¹ of the Commodity Futures Trading Commission (“**Commission**” or “**CFTC**”) regarding proposed risk controls, transparency measures, and other safeguards to enhance the safety and soundness of automated trading on all U.S. designated contract markets (“**DCMs**” or “**Exchanges**”) (collectively, “**Regulation AT**”).

CTC is a proprietary trading firm that trades futures as a liquidity provider on various Exchanges. CTC has “**Direct Electronic Access**” (“**DEA**”) to Exchanges in order to serve its liquidity provider function. CTC is a Member Firm, or an affiliate of a Member Firm, at the Chicago Mercantile Exchange, the Chicago Board of Trade, the New York Mercantile Exchange, the Commodity Exchange, Inc., and ICE Futures U.S. CTC provides the perspective of a market participant that must use a futures commission merchant (“**FCM**”) to clear trades and uses DEA to execute transactions on Exchanges. CTC submitted a comprehensive response to the Notice of Proposed Rulemaking on Regulation Automated Trading on March 15, 2016 (“**Proposal**”).²

CTC continues to support the overall goal of Regulation AT, namely of “reducing risk and increasing transparency in automated trading.”³ CTC also generally supports principles-based rules which will encourage, rather than stifle, the evolution of industry best practices in response to ever-evolving technology. However, Regulation AT, as currently constructed, continues to be too prescriptive and introduces obligations that not only stifle innovation but are also commercially impractical.

¹ CTC Trading Group, LLC. Comment Letter (Mar 15, 2016). <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60730&SearchText=chern>

² CTC has never been registered in any capacity with the CFTC or National Futures Association (“**NFA**”).

³ Notice of Proposed Rulemaking, Regulation Automated Trading, 80 Fed. Reg. 78824, 78824 (proposed Dec. 17, 2015) (hereinafter, “**NPRM**”).

I. Source code retention and inspection requirements

As explained in our initial comment letter with regard to Regulation AT, the extraordinary care with which trade secret information is treated by courts and litigants stems from the fact that **once a trade secret is no longer confidential, its value is lost forever.**⁴ Therefore, it is vital that access to and treatment of such information be crafted to protect these rights of property owners like CTC.

In the Supplemental NPRM, the CFTC revised Regulation AT so that access to source code is accessible via a “special call” supported by a Commission majority vote, and not merely at the request of a Commission staff member. However, practical application of the special call requires the Director of the Division of Market Oversight to take only a minor additional procedural step when requesting records. We believe that any ability to request trade secret information without a subpoena does not adequately protect property owners. We agree with Commissioner Giancarlo that “abrogating the rights of property owners is not assuaged by imposing a few additional procedural burdens on the government agency seizing the property.”⁵ That is, any benefit gained by the Commission in easing its ability to access the source code of property owners is outweighed by the reality that the Commission is compromising due process provided by use of a subpoena. Use of a subpoena “protects owners of property – not the government that already has abundant power.” We respectfully request that the Commission provide detail as to the perceived compelling need to reduce property owners’ rights to protect their intellectual property. Otherwise, we ask that the Commission’s access to source code be limited to the subpoena process.

Further, we respectfully request that the Commission modify Regulation AT to include superior and specific confidentiality protections to property owners in the event that source code is accessed and reviewed. We support Commissioner Giancarlo’s recommendations that “the CFTC could provide that it will only review source code on a property owner’s premises or on computers not connected to the Internet. The CFTC could also state that it will return all source code to the property owner once its review is finalized.”⁶ These safeguards will help to protect the rights of property owners such as CTC and help to assuage any security concerns associated with such disclosures.⁷

The Supplemental NPRM expands the source code recordkeeping and maintenance obligation to include third-party applications. As proposed, AT Persons would need to obtain certifications from all third-party application providers that are included in the scope of the AT Person’s Algorithmic Trading activity attesting to the third-party applications’ compliance with Regulation AT. In addition, AT Persons must secure the ability for the third-party application’s source code to be delivered to the CFTC in the event that it is requested pursuant to a subpoena or special call. We agree with Commissioner Giancarlo that “[t]hese requirements are infeasible

⁴ See, footnote 1.

⁵ Giancarlo Dissent, Source Code Retention and Inspection Requirements, <http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement110416>

⁶ Id., Giancarlo Dissent, No Specific Source Code Protections.

⁷ Id., Giancarlo Dissent, Footnote 11, “Federal, state and local government agencies rank last in cybersecurity when compared against 17 major private industries, including transportation, retail and healthcare.”

and could harm innovation and intellectual property rights.”⁸ In fact, these requirements are so far outside of the norm of what is commercially reasonable that they are either unattainable or prohibitively expensive. The net effect of such a requirement may either push participants out of the market or harm the business of the third-party application providers as it may be easier for AT Persons to develop the code internally than secure the terms proposed by the Commission. Therefore, we request that the Commission eliminate this additional, unreasonable, and harmful requirement.

II. Registration

The requirement for proprietary trading firms such as CTC to register as Floor Traders with the NFA is duplicative of established DCM oversight. The Supplement fails to explain the regulatory need for an additional layer of oversight and why the benefits outweigh the substantial additional costs and burdens this registration would create for proprietary trading firms. This is especially troubling as the DCMs already have the authority and technical expertise to appropriately oversee and manage risk of their member firms, rendering the proposed registration requirement entirely redundant.

While we oppose any registration for the reasons stated above, we further note that the particular standard for registration established in the Supplement is arbitrary and not supported by regulatory justification. Specifically, the Supplement introduces a volume threshold test to determine which market participants must register as Floor Traders with the NFA. Under this test, firms that maintain an average daily volume of 20,000 contracts will be considered Floor Traders under the Supplement.⁹ The Supplement also requires a firm to aggregate its own trading volume with that of any other firm controlling, controlled by, or under common control with such firm.¹⁰ We believe this language will arbitrarily and unnecessarily capture firms that do not introduce the type of market risk that the Commission is attempting to manage. We respectfully request that the Commission revisit the definition of Floor Trader with the goal of capturing only those market participants that most threaten the safety and integrity of the U.S. Markets.

III. The Supplemental NPRM remains too prescriptive in form and function

CTC supports a principles-based approach to risk controls and testing that builds upon ongoing efforts already in place. Regulation AT as modified in the Supplemental NPRM remains too prescriptive. We agree with Commissioner Giancarlo’s assertion that “Reg AT’s approach is a one-size fits all model that does not take into account individual circumstances.”¹¹ This is especially true in light of the fact that Regulation AT is, by the Commission’s own admission, codifying “well-established risk controls and other practices among market participants.”¹² We therefore submit that the Commission should allow market participants the flexibility to

⁸ Id. Giancarlo Dissent at Third-Party Software Providers.

⁹ Id. Giancarlo Dissent at Prescriptive Nature of Risk Controls and Development and Testing Requirements.

¹⁰ Id. Giancarlo Dissent at Still Burdensome Reporting Requirements.

¹¹ NPRM at 78,937 (to be codified at 17 C.F.R. §1.3(x)(e)(3)).

¹² NPRM at 78,847.

determine which risk controls are needed and how those controls should be applied and administered based on the DCM requirements.

IV. Conclusion

CTC recognizes that appropriate regulation of automated and algorithmic trading is essential to the safety and soundness of the market. At the same time, the CFTC must recognize that the industry has already adopted risk control measures that have been successful in mitigating the risks posed by such trading. In addition, the CFTC must become mindful of the destruction to confidentiality and businesses that Regulation AT poses in its current form. Further, any efforts to introduce additional regulation should ultimately seek to improve the safe, healthy, robust functioning of the markets, which requires a balance between the regulations market participants must follow, the costs of complying with those regulations, and the flexibility to innovate for the benefit of all market participants in the future. Accordingly, any regulations the CFTC adopts should be designed to allow space for market participants to continue the success which has already been achieved in this area, rather than burdening and threatening the livelihood of market participants with onerous new requirements that will upset the successful functioning of the markets. We respectfully request that the Commission reconsider Regulation AT and re-draft the regulation in a more principals-based, narrowly-tailored manner to directly address any identified threats to the safety and integrity of the U.S. Markets.

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If you have any questions concerning our comments, please feel free to contact the undersigned. CTC welcomes the opportunity to discuss these issues further with the Commission and its staff.

Respectfully submitted,



Steve Crutchfield
Head of Market Structure

cc: Honorable Sharon Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner