Chevron

Chevron Supply and Trading, a
division of Chevron U.S.A. Inc.
1500 Louisiana Street
Houston, TX 77002

May 1, 2017

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

Re: **Comments on Supplemental Notice of Proposed Rulemaking: Regulation
Automated Trading, 81 Fed. Reg. 85334, published on November 25, 2016 (RIN
3038-AD52)**

Dear Mr. Kirkpatrick:

Chevron Supply and Trading, a division of Chevron U.S.A. Inc. ("Chevron Supply and
Trading"), appreciates the opportunity to submit written comments to the Commodity Futures
Trading Commission's ("CFTC") Supplemental Notice of Proposed Rulemaking on Regulation
Automated Trading ("Supplemental Notice").[1]

Chevron Supply and Trading provides a critical link between the market and Chevron's
upstream, downstream, and chemicals companies, providing commercial support to crude oil and
natural gas production operations and to Chevron's refining network. It is headquartered in
Houston, Texas, with offices worldwide, including trading hubs in Houston, London, Singapore
and San Ramon, California, and manages commodity transactions averaging 5 million barrels of
liquids and 5 billion cubic feet of natural gas each day.

As a user of futures and energy commodity derivatives, Chevron Supply and Trading
depends on well-functioning markets to provide sound and orderly trading, and supports efforts
to ensure the integrity of such markets.   Chevron Supply and Trading supports the
implementation of appropriately-tailored rules designed to protect against malfunctioning or
improperly deployed automated trading systems, but we are concerned that the Supplemental

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[1]   *Regulation Automated Trading*, Supplemental Notice of Proposed Rulemaking, 81 Fed. Reg. 85,334 (Nov.
25, 2016); *see also Regulation Automated Trading*, Notice of Proposed Rulemaking, 80 Fed. Reg. 78,824 (Dec. 17,
2015) ("Original Notice") (collectively, "Regulation AT").

Notice places unnecessary compliance burdens on commercial market participants. We have limited our comments to focus on the following areas: (1) appropriate framework for regulating automated trading, (2) placement of regulatory burden; (3) the proposed volumetric threshold; and (4) floor trader registration.

Appropriate Framework for Regulating Automated Trading. As it evaluates comments addressing the Supplemental Notice, the Commission should reconsider its approach to regulating automated trading. Specifically, rather than adopting the Supplemental Notice as part of any final rule issued in this proceeding, the Commission should issue a reproposal of Regulation AT implementing an alternative, principles-based approach for regulating automated trading that does not incorporate any form of registration requirement and, instead, utilizes Designated Contract Markets ("DCMs"), in their role as self-regulating organizations. DCMs are particularly well equipped to identify the controls needed to mitigate risks on their markets and ensure that all entities (i) directly interconnecting with a DCM, or (ii) submitting orders to a DCM, have adopted appropriate controls. Importantly, DCMs and commercial market participants have aligned incentives with respect to ensuring markets operate efficiently without disruption and that trading is fair and orderly.

Placement of Regulatory Burden. It is Chevron Supply and Trading's opinion that the regulatory compliance requirements with respect to automated trading should be placed on those entities that bring technology to bear on the market and not the individual end-users that utilize commercially available software. Entities like Chevron Supply and Trading use basic automated electronic order management functionality created and deployed by others, not sophisticated automated algorithmic systems that trade on our behalf, and as such, would not have access to the source code or the ability to make system changes.

If the CFTC's concern is with respect to the technology itself and the continuous technological advances over time, the CFTC's compliance focus should be on the technology creators and providers; not those entities that solely use the software without modification. Numerous comments filed in response to the CFTC's Original Notice provided various suggestions on recommended changes to the definitions of "Algorithmic Trading", "AT Person" and "Direct Electronic Access" that if adopted, would more closely impose the regulatory compliance burden on the technology providers that are best suited to address the CFTC's concerns with automated trading.

We will not repeat or summarize those suggestions in our comments but generally reiterate that entities using basic order management functionality of commercially available software connected to DCMs or that are provided by independent software vendors ("ISVs") should not be in scope for registration. The Original Notice, as modified by the Supplemental Notice, does not delineate between algorithmic trading and electronic trading, which are two different concepts. All electronic trading is not necessarily algorithmic trading while all algorithmic trading is a form of electronic trading. The proposal appears to use a one size fits all approach, subject to a volumetric limit, and assumes all firms engaged in electronic trading above a certain volumetric threshold pose the same risk level to the market. Chevron Supply and Trading respectfully suggests that this should not be the view adopted.

Volumetric Threshold. Chevron Supply and Trading believes the CFTC's volumetric threshold is inappropriately low, overly inclusive, and should not be adopted. However, should the CFTC decide to implement a volumetric threshold as a "bright line" test to determine whether an entity falls within or outside the scope of the proposed automated trading regulation (assuming the other criteria are met), Chevron Supply and Trading recommends that the volumetric threshold be based on a per contract type calculation and not on an aggregated daily volume of all futures activity. We believe that the per contract type calculation would more accurately identify potential system risk.

For example, assume a commercial end-user, on average, transacts 24,000 futures contracts per day over a 6-month period. Based on the current Supplemental Notice, this entity would satisfy the criteria for registration as a floor trader if it had one trade on a DCM executed by algorithmic trading through direct electronic access. Upon further examination, however, the actual activity is broken out over eight (8) different futures contracts, each used to hedge different commodities. Transacting in each different futures contract is approximately 3,000 contracts per day, yet based on the aggregate, this entity would be subject to the compliance requirements of the automated trading regulation and required to register as a floor trader.

Assume, instead an entity had 18,500 futures contracts all in one futures contract type. In this second example, the entity would not be required to register but in our opinion represents a risk profile more concerning than the commercial end-user described in the first example. While Chevron Supply and Trading continues to urge the CFTC to exempt those entities that are users and not technology providers, thus negating the need for a volumetric threshold, if the CFTC does include the commercial user within the rule, we recommend the CFTC adopt a per contract type volumetric threshold rather than an aggregate daily calculation across all futures contract types.

Floor Trader Registration. Chevron Supply and Trading is concerned about the proposed registration requirement and does not understand the need or benefit for commercial end-users to register as a floor trader. The registration of otherwise unregistered market participants who transact large volumes of DCM-listed contracts as "floor traders" is not necessary to achieve the objectives of Regulation AT which is to (i) promote the safety and soundness of trading on all contract markets and (ii) keep pace with evolving technologies.[2] In addition, it would impose substantial burdens and have potentially significant unintended regulatory consequences on such market participants. If the Commission is contemplating whether it will extend the jurisdiction granted to it under the CEA over otherwise unregistered market participants, it should address this issue on its own merits in a separately-docketed rulemaking unrelated to automated trading.

The floor trader requirements would be difficult for Chevron Supply and Trading to implement, such as back testing and stress testing the electronic tools provided by third parties, automated alerts and access to source code. These requirements are better suited to the entities providing the electronic tools that are paid for by market participants. While the Supplemental

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[2]   *See* Supplemental NPRM at 85,335.

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Notice allows end-users to delegate to ISVs or futures commission merchant the AT Person requirements, Chevron Supply and Trading would incur additional costs incrementally to what is already paid to ensure the provider is adhering to the requirements.

Furthermore, it would be impossible for Chevron Supply and Trading to completely protect itself and its employees against regulatory enforcement actions related to the third-party provider's failure to fulfill the requirements, even if the third-party provider is contractually obligated to do so. It is not possible to contractually shift the ultimate regulatory compliance requirement if placed on the end-user by regulation. The likely result of requiring commercial end-users who hedge that are not in the business of making markets to register as floor traders, is to push those end-users back to using brokers and away from the electronic platforms. This has the inverse effect of increasing transparency and results in increased costs to the end-users, which will ultimately need to be absorbed by customers.

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Chevron Supply and Trading appreciates the opportunity to provide comments on the Supplemental Notice. We support the CFTC's goal of reducing risk in the financial markets that may result from automated trading but urge the CFTC to reconsider placing compliance burdens on the commercial end-user of software solutions provided by third-party providers.

Sincerely,

Lisa A. DiNorscia
Counsel for Chevron Supply and Trading,
a division of Chevron U.S.A. Inc.