

August 24, 2020

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

Re: Electronic Trading Risk Principles, RIN 3038–AF04; Regulation Automated Trading; Withdrawal, RIN 3038–AD52

Dear Mr. Kirkpatrick:

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ and Securities Industry and Financial Markets Association (“SIFMA”)² appreciate the opportunity to submit these comments on the Proposed Rule: Electronic Trading Risk Principles (“Proposal”)³ published by the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) in the Federal Register on July 15, 2020.

We fully support the Commission’s goals to prevent, detect, and mitigate market disruptions and system anomalies associated with electronic trading activities. As we have stated in the past, a principles-based approach to regulating electronic trading is more appropriate as it provides flexibility, particularly in terms of implementation and applicability, and takes into account future technological advances. We believe that the debate over principles-based versus rules-based regulation has largely focused on these two terms while overlooking the key regulatory objective underlying the Proposal; that is, whether the proposed regulatory regime is intended to

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 925 member institutions from 75 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s website: www.isda.org.

² SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

³ Electronic Trading Risk Principles, Notice of Proposed Rulemaking, 85 Fed. Reg. 42761 (July 15, 2020).

establish proper risk controls designed to mitigate potential market disruptions. In our opinion, the Proposal fulfills this objective.

The proposed principles-based approach, while currently in line with what has already been implemented by Designated Contract Markets, would expand and adjust as derivatives markets continue to experience rapid change and technological development. Unlike rule-based regulations, the proposed framework will keep up with such changes and developments, without the necessity of undergoing a lengthy rulemaking process once the regulations become outdated (and in the interim, potentially lacking proper regulatory oversight).

In this regard, we support the Commission’s intent to withdraw Regulation Automated Trading (“Reg AT”).⁴ We agree with Chairman Tarbert that a prescriptive approach to the regulation of electronic trading—such as the approach taken in Reg AT—would severely limit the ability of trading platforms and financial markets to evolve over time. Critically, Reg AT poses significant compliance challenges, including the proposed requirement to make source code available for inspection by the Commission without a subpoena.⁵

We commend the Commission’s decision to abandon the prescriptive approach of Reg AT and adopt a more flexible principles-based approach to regulating electronic trading. We support the Proposal’s intent to take into account the effectiveness of existing industry best practices and mechanisms that are intended to minimize the risk of market disruptions.

For these reasons, we hope that the Commission will finalize the Proposal in a timely manner.

ISDA and SIFMA are fully committed to the safety and efficiency of derivatives markets, and our support for the Proposal is informed by the extensive knowledge and experience of electronic trading professionals within our collective membership.

Sincerely,



Bella Rozenberg
Senior Counsel and Head of Legal and Regulatory Practice Group
ISDA

⁴ Regulation Automated Trading; Withdrawal, 85 Fed. Reg. 42755 (July 15, 2020)

⁵ See ISDA letter to the US Commodity Futures Trading Commission (CFTC) on the Supplemental Notice of Proposed Rulemaking for Regulation Automated Trading (May 1, 2017) available at <https://www.isda.org/2017/05/01/isda-comments-on-regulation-automated-trading-proposed-rule-17-cfr-parts-1-38-40-et-al-supplemental-notice-of-proposed-rulemaking-rin-3038-ad52/>.

A handwritten signature in black ink that reads "Kyle Brandon". The signature is written in a cursive, flowing style.

Kyle Brandon
Managing Director, Head of Derivatives Policy
SIFMA