

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 38, 40, and 170

RIN [REDACTED]

Regulation Automated Trading

AGENCY: Commodity Futures Trading Commission.

ACTION: Withdrawal of proposed rulemakings.

SUMMARY: On December 17, 2015, the Commodity Futures Trading Commission (“CFTC” or the “Commission”) published a notice of proposed rulemaking, Regulation Automated Trading (“Regulation AT NPRM”). On November 25, 2016, the Commission issued a supplemental notice of proposed rulemaking to modify certain rules in the Regulation AT NPRM (“Supplemental Regulation AT NPRM”). In light of feedback the Commission received in response to the Regulation AT NPRM and Supplemental Regulation AT NPRM (together, the “Regulation AT NPRMs”), the Commission has determined to withdraw the Regulation AT NPRMs and reject certain policy approaches relating to the regulation of automated trading contained therein.

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SUPPLEMENTARY INFORMATION:

On December 17, 2015, the Commission issued the Regulation AT NPRM, which proposed pre-trade risk controls at three levels in the life-cycle of an order executed on a

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designated contract market (“DCM”), including: (i) certain trading firms designated as automated traders (“AT Persons”); (ii) futures commission merchants (“FCMs”); and (iii) designated contract markets (“DCMs”).¹ In response to the Regulation AT NPRM, the Commission received 54 comment letters from exchanges, industry trade associations, public interest organizations, and others. The views expressed in the comment letters included, among other things, (i) opposition to the proposed three-level risk control framework; (ii) opposition to identification and registration of AT Persons; (iii) opposition to provisions relating to source code preservation and accessibility to the Commission without a subpoena; and (iv) opposition to prescriptive, one-sized fits all rules. On June 10, 2016, Commission staff held a public roundtable to discuss elements of the Regulation AT NPRM. In connection with the roundtable, the Commission reopened the Regulation AT NPRM comment period and received 19 additional comment letters, all of which also expressed concern with Regulation AT.

On November 25, 2016, following the conclusion of the reopened comment period, the Commission issued the Supplemental Regulation AT NPRM.² The Supplemental Regulation AT NPRM proposed a revised framework with pre-trade risk controls at two levels (instead of the initially proposed three levels) in the life-cycle of an order, including: (1) the AT Person *or* the FCM; and (2) the DCM. In addition, the Supplemental Regulation AT NPRM proposed to some modifications to the risk control framework, trading firm registration criteria, reporting requirements, source code provisions, and compliance options for trading firms that use third-party algorithmic trading systems. The Commission received 27 comment letters during the comment period for the Supplemental Regulation AT NPRM. Commenters asserted, among other things, that (i) the proposed rules were overly prescriptive and, if the Commission was

¹ Regulation Automated Trading, 80 FR 78824 (Dec. 17, 2015).

² Regulation Automated Trading, 81 FR 85334 (Nov. 25, 2016).

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intent on proceeding with a rulemaking, should be principles-based; (ii) the proposed rules could result in redundant or overlapping risk controls; and (iii) the benefits of the proposed rules were not commensurate with the costs.

The Commission had proposed the Regulation AT NPRM and Supplemental Regulation AT NPRM based on certain assumptions about the relative risk associated with automated trading or algorithmic trading relative to other forms of electronic trading. In addition, the Regulation AT NPRMs included provisions that would have:

- (1) Required certain types of market participants, based on their trading functionality, strategies, or market access methods, to register with the Commission notwithstanding that they did not hold customer funds or otherwise intermediate futures markets.
- (2) Compelled those registrants, including participants not currently registered with the Commission, to produce source code to the Commission without a subpoena; and
- (3) Applied prescriptive requirements for the types of risk controls that exchanges, futures commission merchants, and others would be required to implement.

In light of feedback the Commission received in response to the Regulation AT NPRMs, and upon further consideration, the Commission has determined to withdraw the pending Regulation AT NPRMs, to specifically reject the policy responses listed above as means of addressing the perceived risk underlying the Regulation AT NPRMs. Furthermore, the Commission has determined not to proceed with detailed, prescriptive requirements such as those contained within the Regulation AT NPRMs. Finally, the Commission has decided not to pursue regulatory proposals that would require additional classes of market participants to

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become registrants or compel market participants to divulge their source code and other intellectual property absent a subpoena.

Issued by the Commission this [], 2020, in Washington, DC.

Christopher Kirkpatrick,

Secretary of the Commission.