June 24, 2016

Via Website Submission

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

> **Re: RIN 3038-AD52; Proposed Regulation Automated Trading**

Dear Mr. Kirkpatrick:

Managed Funds Association[1] ("**MFA**") appreciates the opportunity to submit comments to the Commodity Futures Trading Commission (the "**CFTC**" or the "**Commission**") during its reopened comment period on its proposed rulemaking on Regulation AT ("**Regulation AT**") to address issues raised at the June 10, 2016 CFTC Roundtable on Regulation AT (the "**Roundtable**").[2] MFA is also submitting a more detailed joint letter with the Futures Industry Association ("**FIA**"), FIA Principal Traders Group, International Swaps and Derivatives Association and the Asset Management Group of the Securities Industry and Financial Markets Association ("**Joint Letter**")

MFA is pleased to hear, both from the CFTC Roundtable on Regulation AT and from remarks at other events, Chairman Timothy Massad's willingness to consider finalizing Regulation AT in phases.[3] As raised in the March 16, 2016 MFA letter to the Commission on Regulation AT (the "**MFA March 16 Letter**"), MFA expressed concern that Regulation AT is overly expansive in breadth and scope; and recommended that the Commission address the different Regulation AT

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[1]Managed Funds Association ("**MFA**") represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

[2]   81   Fed.   Reg   36484   (June   7,   2016),   available   at: http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-13385a.pdf.

[3] Keynote Remarks of Chairman Timothy Massad before the Global Exchange and Brokerage Conference, June 9, 2016, available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-47.

objectives in separate stages.[4] MFA continues to support the Commission's goal of modernizing regulatory oversight of automated trading. As we are cognizant of the Commission's goal of finalizing a portion of Regulation AT by the end of this year, we continue to urge the Commission to first focus on centralized marketplace risk controls.

Regulation AT Roundtable

We believe the Roundtable was informative with respect to understanding how certain elements of Regulation AT might impact the markets and market participants. In response to the issues raised at the Roundtable, MFA submits the following recommendations below.

1. Marketplace Risk Controls

Recognizing that all market participants, regardless of registration status or type of trader, have the potential to cause marketplace disruptions, we continue to believe the most effective way to mitigate marketplace risk is through marketplace risk controls (including pre-trade and other risk controls)—both at the designated contract market ("DCM") and through the futures commission merchant ("FCM") providing trading access. We would also support a regulatory framework where a market participant could choose to implement the Commission's required marketplace risk controls in lieu of going through an FCM's risk controls, and be subject to Commission oversight.

MFA's members are commodity pool operators ("CPOs") and commodity trading advisors ("CTAs"), and already subject to oversight by the CFTC and the National Futures Association. As discussed in the MFA March 16 Letter, we are concerned that Regulation AT defines "algorithmic trading" in an overly broad manner and imposes a one-size-fits-all regulatory framework on CPOs and CTAs that use computers to assist with any portion of their investment and/or execution strategies.[5] Instead, we believe the Commission should first focus on enhancing marketplace risk controls through Regulation AT as discussed in our Joint Letter.

2. Third Party Algorithms and Systems

Many FCM customers use third party algorithms or systems to execute their orders on DCMs. We continue to believe it would be unfeasible for CPOs and CTAs to comply with proposed § 1.81 regarding development, monitoring and compliance with respect to third party algorithms. FCMs and DCMs that sponsor the use of third party algorithms should have an

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[4] *See* letter to Christopher Kirkpatrick, Secretary, CFTC, from Stuart J. Kaswell, Executive Vice President and General Counsel, MFA, dated March 16, 2016, on Proposed Regulation Automated Trading, available at: https://www.managedfunds.org/wp-content/uploads/2016/03/MFA-RegAT-Letter-final.pdf.   MFA recommended that the CFTC address Regulation AT through five rulemakings with the following objectives: (1) a registration regime to capture previously unregistered market participants; (2) marketplace risk controls; (3) standards for the development, testing, reporting, and retention of trading software; (4) a self-trade prevention framework; and (5) a public disclosure framework with respect to market making and trading incentive programs.

[5] *See* MFA March 16 Letter *supra* regarding MFA's discussion of the Regulation AT definition of algorithmic trading and proposed risk controls.

obligation to test that the third party algorithms/systems function in accordance with their purpose prior to use.

3. Source Code Retention

As the CFTC and its staff are aware by now, market participants have strong concerns with the concept of a regulation that would allow regulators to inspect a registrant's source code for proprietary algorithms without limitation. MFA respectfully urges the Commission to abandon its proposed § 1.81(a)(vi), requiring an AT Person to maintain a source code repository, administered by the CFTC or a third party, and to make it available to regulators for inspection. To address the Commission's concern of being able to access a prior version of a market participant's source code to reconstruct events after a market event should it be warranted, MFA recommends that the Commission adopt a principles-based rule requiring that market participants adopt a mechanism to:

(a) Preserve source code utilized for algorithmic trading;

(b) Produce current and prior versions of such source code; and

(c) Track material changes to the source code.

We continue to urge the Commission to use the existing legal mechanism for obtaining and reviewing source code and other confidential, proprietary information. We believe the subpoena process is more efficient and effective than the Regulation AT source code inspection requirement, and that it offers significant additional protection for intellectual property without diminishing the Commission's effectiveness.

In addition, we are strongly concerned that should the Commission, a global leader in derivatives regulation, adopt a rule requiring unfettered access to the source code of registrants, then other countries that partner in trade with the United States will quickly adopt identical requirements as a precondition to trading in their financial markets. We are concerned that such precedent would be damaging to the protection of intellectual property of U.S. persons and corporations, and harm investors and shareholders.

4. Standards for the Development, Monitoring and Compliance of Algorithmic Trading Systems

MFA remains concerned that the Regulation AT proposed standards for the development, monitoring, and compliance of algorithmic trading systems are overly prescriptive and not appropriate or suitable across a broad and diverse industry. We are also concerned that adopting regulations prescribing development and testing standards will not allow industry development and testing standards to evolve and improve with new technologies. MFA believes that the Commission should hold a roundtable further to discuss and understand principles and practices for the development, monitoring and compliance of algorithmic trading systems. MFA recommends that the Commission address standards for the development, monitoring and

compliance of algorithmic trading systems as a secondary rulemaking after the adoption of marketplace risk controls.

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MFA appreciates the opportunity to provide comments in response to issues raised at the CFTC Roundtable on Regulation AT. We would welcome the opportunity to discuss further Regulation AT and the potential impact on CPOs and CTAs with the Commission or its staff. If the staff has any questions, please do not hesitate to contact Jennifer Han, Associate General Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President & Managing Director,
General Counsel
Managed Funds Association