Client Update
CFTC Proposes Rules Regulating Automated Trading

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On November 24, 2015, the Commodity Futures Trading Commission (the "CFTC") proposed "Regulation Automated Trading" or "Regulation AT" (the "Proposed Rules")[1] to implement a comprehensive regulatory framework for algorithmic trading activity (also referred to as "automated trading"). The Proposed Rules follow a multilevel approach by requiring certain risk controls and by imposing a range of registration, reporting, recordkeeping and other compliance obligations with respect to automated trading on (1) market participants that engage in algorithmic trading ("AT Persons"), (2) clearing member futures commission merchants ("FCMs") with respect to their AT Person customers and (3) designated contract markets ("DCMs") executing AT Person orders.

The Proposed Rules would codify certain existing norms and best practices of trading firms, clearing member FCMs and DCMs, based on the CFTC's 2013 Concept Release (the "Concept Release"),[2] which provided a comprehensive discussion of industry practices, CFTC regulations and various concerns with respect to automated trading and solicited public comments on possible measures to address automated trading.

In the proposing release (the "Proposing Release"), the CFTC stresses that, consistent with the preference expressed by most commenters on the Concept Release, the Proposed Rules relating to risk controls and other measures are principles-based, as opposed to prescriptive, regulations, and are designed to provide market participants with discretion in the design, calibration and

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1 The text of the Proposed Rules is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7283-15.

2 Concept Release on Risk Controls and System Safeguards for Automated Trading Environments, 78 Fed. Reg. 56542 (Sep. 12, 2013), available at: http://www.cftc.gov/PressRoom/PressReleases/pr6683-13.

implementation of such controls, policies and procedures and other compliance measures.

The requirements in the Proposed Rules do not vary based on whether a market participant engages in or facilitates high-frequency trading or based on the connectivity method; rather, the same requirements apply to all "algorithmic trading" regardless of the trading strategy employed or the speed of such trading.

Comments on the Proposed Rules are due 90 days after publication of the Proposed Rules in the Federal Register.

REGULATORY BACKGROUND

In the Proposing Release, the CFTC notes that it has already responded to the development of automated trading through a number of regulatory measures that address risk controls within various categories of registrants, including DCMs, swap execution facilities ("SEFs"), FCMs, swap dealers ("SDs") and major swap participants ("MSPs").

In 2012 and 2013, the CFTC adopted regulations setting forth certain "core principles" and other requirements for DCMs and SEFs, respectively, including requirements to implement risk control mechanisms to prevent price distortions and market disruptions (including restrictions that pause or halt trading in prescribed market conditions), as well as a requirement on DCMs providing direct electronic access[3] to customers of FCMs to have in place effective systems controls to facilitate FCMs' management of financial risk (such as automated pre-trade controls that enable FCMs to implement appropriate financial risk limits).[4] These regulations apply to DCMs and SEFs in general; they are not specific to automated trading. In adopting these regulations, the CFTC noted their application to high-frequency and automated trading (in addition to all other trading on such facilities), but chose not to adopt additional regulations specific to automated trading, noting that the agency was "encouraged" by

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3 The Proposed Rules define "direct electronic access" as "an arrangement where a person electronically transmits an order to a [DCM], without the order first being routed through a . . . [clearing] member of a derivatives clearing organization to which the [DCM] submits transactions for clearing."

4 Core Principles and Other Requirements for Designated Contract Markets, 77 Fed. Reg. 36612 (June 19, 2012); Core Principles and Other Requirements for Swap Execution Facilities; 78 Fed. Reg. 33476 (June 4, 2013). See specifically CFTC Regulations 37.405, 38.255 and 38.607.

ongoing efforts by a number of regulators to develop approaches to better monitor such trading.[5]

The CFTC also recently adopted regulations requiring FCMs, SDs and MSPs that are clearing members to establish risk-based limits based on position size, order size, margin requirements or similar factors for all proprietary accounts and customer accounts, and to screen orders for compliance with risk limits (using automated means for transactions subject to automated execution).[6] In addition, the CFTC regulations require FCMs to have automated controls to prevent erroneous orders and require FCMs, SDs and MSPs to have policies and procedures governing the use, supervision, maintenance, testing and inspection of trading programs (including automated trading programs).[7] Finally, the CFTC has adopted regulations prohibiting manipulative and deceptive devices and price manipulation,[8] and has provided guidance on the prohibition in the Commodity Exchange Act (the "CEA") against trading or other conduct that violates bids or offers, demonstrates intentional or reckless disregard for orderly execution or constitutes "spoofing."[9]

The Proposed Rules are intended to supplement this existing regulatory framework.[10]

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5 See 77 Fed. Reg. at 36635 and 78 Fed. Reg. at 33528.

6 See CFTC Regulations 1.73(a) and 23.609(a).

7 See CFTC Regulations 1.11(e)(3)(ii) and 23.600(d)(9).

8 See CFTC Regulations 180.1 and 180.2.

9 See 78 Fed. Reg. 31890 (May 28, 2013).

10 The CFTC also notes in the Proposing Release that other regulators and self-regulatory organizations have recently undertaken initiatives focused on automated trading and increasing transparency and preventing instability in the equities markets. For instance, in 2010, the Securities and Exchange Commission (the "SEC") adopted a regulation requiring brokers and dealers to have risk controls in place before providing their customers with access to the market, including controls to prevent the entry of erroneous orders and orders exceeding preset credit or capital thresholds. In 2014, the SEC adopted regulations requiring clearing agencies and alternative trading systems, among others, to adopt policies and procedures for their technological systems. In addition, the Financial Industry Regulatory Authority ("FINRA") has proposed rules requiring registration by, and imposing minimum competency standards on, persons responsible for the design, development or modification of an algorithmic trading strategy (and persons supervising such functions).

ALGORITHMIC TRADING

The Proposed Rules define "algorithmic trading" as trading in any commodity interest[11] on or subject to the rules of a DCM, where:

- One or more computer algorithms or systems determines whether to initiate, modify or cancel an order, or otherwise makes determinations with respect to an order, including but not limited to: the product to be traded, the venue where the order will be placed, the type of order to be placed, the timing of the order, whether to place the order, the sequencing of the order in relation to other orders, the price of the order, the quantity of the order, the partition of the order into smaller components for submission, the number of orders to be placed or how to manage the order after submission; and
- Such order, modification or order cancellation is electronically submitted for processing on or subject to the rules of a DCM.

The Proposed Rules exclude from the definition of "algorithmic trading" any order, modification or order cancellation every parameter or attribute of which is manually entered into a front-end system by a natural person, with no further discretion by any computer system or algorithm, prior to its electronic submission for processing on or subject to the rules of a DCM.

AT PERSONS

The Proposed Rules would impose a number of compliance obligations on "AT Persons," defined as any FCM, SD, MSP, commodity pool operator, commodity trading advisor, introducing broker or floor broker that engages in "algorithmic trading" on or subject to the rules of a DCM and any person that is a "floor trader" under the expanded definition set forth in the Proposed Rules. The Proposed Rules expand the definition of "floor trader" in the CFTC regulations to require registration as such by any market participant that engages in algorithmic trading using direct electronic access (where such market participant is not otherwise registered with the CFTC in some other capacity).[12]

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11 The term "commodity interest" is defined in CFTC regulation 1.3(yy) to include swaps, futures, options on futures, commodity options, retail forex transactions and certain other derivative instruments.

12 The Proposed Rules would amend the definition of "floor trader" in CFTC regulation 1.3(x) to include any person who purchases or sells futures or swaps solely for such person's own account in any other place provided by a DCM for the meeting of persons similarly engaged where such person accesses such place for algorithmic trading in whole or in part through direct electronic access.

The Proposed Rules would require AT Persons to (1) implement pre-trade risk controls (including message throttles, order price parameters, maximum order size limits and order cancellation systems); (2) comply with certain system connectivity, notification and self-trade prevention requirements; (3) implement policies and procedures for the development, testing and monitoring of their algorithmic trading systems ("ATSs") and for the designation and training of staff responsible for algorithmic trading; (4) submit an annual compliance report to all DCMs on which it engages in algorithmic trading; and (5) keep books and records regarding their compliance with Regulation AT, and provide such books and records to such DCMs, upon request.

The Proposed Rules require that these risk controls and other measures be reasonably designed to prevent an "Algorithmic Trading Compliance Issue" and an "Algorithmic Trading Disruption" (collectively, an "Algorithmic Trading Event").

An "Algorithmic Trading Compliance Issue" is as an event that causes an AT Person's algorithmic trading to violate the CEA, the CFTC regulations or the rules of any DCM to which the AT Person submits orders through algorithmic trading, the rules of any registered futures association of which such person is a member (*i.e.*, the NFA), the AT Person's own internal requirements or the requirements of the AT Person's clearing member.

An "Algorithmic Trading Disruption" is an event originating with an AT Person that disrupts or materially degrades the AT Person's algorithmic trading, the operation of a DCM on which the AT Person is trading or the ability of other market participants to trade on such DCM.

Pre-Trade Risk Controls

Pre-Trade Risk Controls: The Proposed Rules would require AT Persons to implement the following (collectively, the "Pre-Trade Risk Controls"):[13] (1) limits on algorithmic trading order messages ("AT order messages")[14] and execution frequency for a set period of time (*i.e.*, message throttles), and (2) order price parameters and maximum order size limits. The Proposed Rules

[13] The Proposed Rules provide AT Persons discretion to set these pre-trade risk controls at the level of each AT Person or at a more granular level, as the AT Person may determine (including by product, account or one or more identifiers of natural persons associated with an order message).

[14] These AT order message limits would apply to each new order or quote submitted through algorithmic trading to a DCM and each change or deletion submitted with respect to such order or quote.

would require an AT Person's pre-trade control system to promptly alert individuals responsible for monitoring at the AT Person when these limits are breached.

Order Cancellation Systems: The Proposed Rules would require AT Persons to implement systems that have the ability to (1) immediately disengage algorithmic trading, (2) cancel selected (or all) resting orders when system or market conditions require and (3) prevent submission of new AT order messages or orders. An AT Person would be required to notify a DCM, prior to its initial use of algorithmic trading to submit an order or message to the DCM's trading platform, as to whether all of its resting orders should be cancelled or suspended if the AT Person's algorithmic trading system disconnects with the trading platform.

System Connectivity Requirement: The Proposed Rules would require an AT Person with direct electronic access to a DCM to implement systems to indicate on an ongoing basis whether they have proper connectivity with a DCM's trading platform and any systems used by a DCM to provide the AT Person with market data.

Notification of Algorithmic Trading: The Proposed Rules would require that prior to an AT Person's initial use of algorithmic trading to submit a message or order to a DCM's trading platform, the AT Person must notify its clearing member and the DCM that it will engage in algorithmic trading.

Self-Trade Prevention Tools: The Proposed Rules would require AT Persons to calibrate, if appropriate, or take such other action as is necessary to implement a DCM's self-trade prevention tools, which are controls designed to prevent the matching of orders for accounts that have common beneficial ownership or are under common control. (The Proposed Rules would require DCMs to implement self-trade prevention tools.)

The Proposed Rules would require an AT Person to periodically review its compliance with the foregoing requirements to determine whether it has effectively implemented sufficient measures reasonably designed to prevent an Algorithmic Trading Event, and to take prompt action to remedy any deficiencies it identifies.

Standards for Algorithmic Trading Systems and Staff

The Proposed Rules would establish certain standards regarding the development, testing, monitoring and compliance of algorithmic trading systems and for the designation and training of algorithmic trading staff. These standards require AT Persons to implement certain policies and procedures (described below) and to periodically review the effectiveness of such policies and procedures and to take prompt action to document and remedy any deficiencies.

Development and Testing of Algorithmic Trading Systems

The Proposed Rules would require AT Persons to implement written policies and procedures for the development and testing of their algorithmic trading systems. These policies and procedures would need to include the following (at a minimum):

- Maintaining a "development environment" (for developing and testing the system) that is adequately isolated from the "production trading environment" (*i.e.*, the actual trading conditions);[15]
- Testing all algorithmic trading software code and related systems and any changes to such code and systems prior to their implementation, including testing to identify circumstances that may contribute to future Algorithmic Trading Events;[16]
- Regular back-testing of algorithmic trading by using historical transaction, order and message data to identify circumstances that may contribute to future Algorithmic Trading Events;
- Regular stress testing of algorithmic trading systems to verify their ability to operate in the manner intended under a variety of market conditions;
- Procedures for documenting the strategy and design of the proprietary algorithmic trading software used by AT Persons, as well as any changes to the software if the changes are implemented in a production environment; and
- Maintaining a source code repository to manage source code access, persistence, copies of all code used in the production environment and changes to such code. An AT Person would be required to include in such source code repository an audit trail of material changes to source code that

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15 The Proposed Rules provide that the development environment may include computers, networks and databases, and should be used by software engineers while developing, modifying and testing source code.

16 The Proposed Rules would require AT Persons to conduct such testing both internally and on each DCM on which they will engage in algorithmic trading.

would allow it to determine, for each material change, who made it, when it was made and the coding purpose of the change. AT Persons would be required to keep the source code repository for five years and make it available for inspection by the CFTC or the Department of Justice in accordance with CFTC regulation 1.31.[17]

Monitoring of Algorithmic Trading Systems

The Proposed Rules would require AT Persons to implement written policies and procedures reasonably designed to ensure that their algorithmic trading systems are subject to continuous real-time monitoring by knowledgeable and qualified staff (while such trading systems are engaged in trading). These policies and procedures would need to include the following (at a minimum):

- Continuous real-time monitoring of algorithmic trading to identify potential Algorithmic Trading Events;
- Automated alerts when an algorithmic trading system's AT order message breaches design parameters, upon loss of network connectivity or data feeds or when market conditions approach the boundaries within which the trading system is intended to operate, to the extent applicable;
- Monitoring staff with the ability and authority to disengage an algorithmic trading system and to cancel resting orders (using dashboards and control panels) when required by the system or market conditions, including the ability to contact staff of the applicable DCM and clearing firm, as applicable, to seek information and cancel orders; and
- Procedures to enable AT Persons to track which monitoring staff is responsible for an algorithmic trading system during trading hours.

Compliance of Algorithmic Trading Systems

The Proposed Rules would require AT Persons to implement written policies and procedures reasonably designed to ensure that their algorithmic trading systems operate in a manner that complies with the CEA and the CFTC regulations. These policies and procedures would need to require:

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17 While the CFTC has historically asked market participants to produce trading source code and other similar types of highly confidential records for inspection when relevant in the context of certain investigations, the inspection of AT Persons' source code repository raises certain intellectual property, cybersecurity and other concerns related to confidentiality.

- Staff of the AT Person to review algorithmic trading systems to detect potential Algorithmic Trading Compliance Issues (by requiring that certain staff members be familiar with the CEA and the CFTC regulations, the rules of any DCM to which such AT Person submits AT order messages, the rules of any registered futures association of which the AT Person is a member (*i.e.*, the National Futures Association or "NFA"), the AT Person's own internal requirements and the requirements of its clearing member, in each case as applicable; and
- A plan of internal coordination and communication between compliance staff and staff responsible for algorithmic trading regarding the design, changes, testing and controls of algorithm trading, which plan should be designed to detect and prevent Algorithmic Trading Compliance Issues.

Designation and Training of Algorithmic Trading Staff

The Proposed Rules would require AT Persons to implement written policies and procedures to designate and train their staff responsible for algorithmic trading. These policies and procedures would need to include the following (at a minimum):

- Procedures for designating and training all staff involved in designating, testing and monitoring algorithmic trading, and documenting training events;
- Training policies reasonably designed to ensure that natural person monitors are adequately trained for each algorithmic trading system or strategy (or material change to such system or strategy) for which such monitors are responsible; and
- Escalation procedures to inform senior staff of the AT Person as soon as Algorithmic Trading Events are identified.

The Proposed Rules would require that training cover, at a minimum, the trading strategy for the algorithmic trading, the automated and nonautomated risk controls applicable to the algorithmic trading, design and testing standards, Algorithmic Trading Event communication procedures and requirements for notifying DCM staff when Algorithmic Trading Events occur.

Reporting and Recordkeeping Requirements

The Proposed Rules would require AT Persons to annually prepare and submit a report by June 30 to each DCM on which it engaged in algorithmic trading. The report must cover the period from May 1 of the prior year to April 30 of the year for which the report is submitted, and must include the following:

- A description of the Pre-Trade Risk Controls required by Regulation AT (including a description of each such control), and a description of all parameters and the specific quantitative settings used by the AT Person for such Pre-Trade Risk Controls; and
- A certification by the chief executive officer ("CEO") or chief compliance officer ("CCO") of the AT Person that, to the best of his or her knowledge and reasonable belief, the information contained in the report is accurate and complete.

In addition, the Proposed Rules would require an AT Person to keep, and provide upon request to each DCM on which it engages in algorithmic trading, books and records regarding the AT Person's compliance with all applicable requirements of Regulation AT (other than the annual reporting requirement described above).

CLEARING MEMBER FCM

The Proposed Rules would impose a number of compliance obligations on clearing member FCMs similar to those imposed on AT Persons. Specifically, the Proposed Rules would require clearing member FCMs to (1) implement pre-trade risk controls and order cancellation systems for their AT Person customers' trades, and (2) submit an annual compliance report to all DCMs on which any of its AT Person customers engages in algorithmic trading.

Risk Controls

The Proposed Rules would require the AT Person's clearing member FCM to implement pre-trade risk controls for all of their AT Person customers' trades reasonably designed to prevent or mitigate an Algorithmic Trading Disruption (including, at a minimum, the Pre-Trade Risk Controls described above for AT Persons). As with AT Persons, a clearing member FCM would have discretion to set these pre-trade risk controls at the level of each AT Person or at a more granular level (including by product, account or one or more identifiers of natural persons associated with the AT order message) and would be required to implement policies and procedures reasonably designed to ensure that its monitoring personnel are promptly alerted when these parameters are breached.

The Proposed Rules would also require AT Persons to implement the same order cancellation systems described above for all of their AT Person customers' trades.

For an AT Person customer's trades submitted to a DCM's trading platform through direct electronic access, the clearing member FCM would be permitted to comply with these requirements (other than the requirement to ensure that monitoring personnel are promptly alerted of breaches) by implementing pre-trade risk controls and order cancellation systems provided by DCMs pursuant to the requirements in the Proposed Rules (as described below). For an AT Person customer's trades that are not submitted through direct electronic access, the clearing member FCM itself would be required to establish and maintain these pre-trade risk controls and order cancellation systems.

Reporting and Recordkeeping Requirements

The Proposed Rules would require FCMs that act as clearing member for one or more AT Persons to annually prepare and submit a report by June 30 to each DCM on which any of its AT Person customers engaged in algorithmic trading. The clearing member FCM's annual report, like the AT Person annual report, must cover the period from May 1 of the prior year to April 30 of the year for which the report is submitted, and must include the following:

- A description of the clearing member FCM's program for establishing and maintaining the required pre-trade risk controls for its AT Persons at the DCM; and
- A certification by the CEO or CCO of the clearing member FCM that, to the best of his or her knowledge and reasonable belief, the information in the report is accurate and complete.

In addition, such clearing member FCMs would be required to keep, and provide upon request to each DCM on which any of its AT Person customers engages in algorithmic trading, books and records regarding the clearing member FCM's compliance with the applicable requirements of Regulation AT (other than the annual reporting requirement described above).

DESIGNATED CONTRACT MARKETS

The Proposed Rules would require DCMs to (1) implement risk control mechanisms for both algorithmic trading and manually submitted orders (including controls designed for AT order messages submitted by AT Persons using direct electronic access), (2) review and evaluate the annual compliance reports and books and records of AT Persons and their clearing member FCMs required under Regulation AT, (3) provide test environments to enable AT Persons to test their algorithmic trading systems by simulating production trading, and (4) implement rules reasonably designed to prevent self-trading by market participants (subject to certain exceptions).

The Proposed Rules would also require DCMs to (1) take steps to ensure the public dissemination of information regarding new product listings, new rules, rule amendments and rules pertaining to the operation of, and known attributes of, its electronic matching platform or trade execution facility; (2) provide certain disclosures in public rule filings regarding a market maker or trading incentive programs; and (3) provide certain information and data to the CFTC upon request regarding participation in such programs.

Risk Controls

For both algorithmic trading and manually submitted orders, the Proposed Rules would require DCMs to implement pre-trade and other risk controls reasonably designed to prevent an Algorithmic Trading Disruption, any similar disruption resulting from manually submitted orders and any Algorithmic Trading Compliance Issue, as well as to prevent and reduce the potential risk of price distortions and market disruptions generally.

The Proposed Rules would require a DCM's pre-trade risk controls to include, at a minimum, the Pre-Trade Risk Controls required for AT Persons and clearing member FCMs. Unlike AT Persons and clearing member FCMs, DCMs would be required to set these pre-trade risk controls at the level of each AT Person and to evaluate whether to also establish such pre-trade risk controls at a more granular level.[18] DCMs would also be required to implement order cancellation systems (for orders from AT Persons) capable of the same actions described above (for AT Persons' order cancellation systems) and to cancel or suspend all resting orders from AT Persons in the event of disconnection from the DCM's trading platform.

For manually submitted orders, the Proposed Rules would require DCMs to implement similar pre-trade risk controls and order cancellation systems (after making appropriate adjustments to the mechanisms applicable to algorithmic trading orders).[19]

In addition to the risk controls required for all orders, the Proposed Rules would also require DCMs to implement certain controls specific to algorithmic trading by AT Persons with direct electronic access. DCMs would be required to implement systems that enable the systems of an AT Person with direct

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18 The Proposed Rules would require DCMs, like AT Persons and clearing member FCMs, to implement policies and procedures reasonably designed to ensure their monitoring personnel are promptly alerted when these parameters are breached.

19 The order cancellation systems for manually submitted orders would not need to provide for the cancellation or suspension of resting orders from AT Persons in the event of disconnection from the trading platform.

electronic access to indicate to the AT Person whether it has proper connectivity with (1) the DCM's trading platform and (2) any systems used by the DCM to provide the AT Person with market data.

For AT order messages that originate with an AT Person and that are submitted to a DCM through direct electronic access, the DCM would be required to make available to the clearing member FCM for such AT Person effective systems and controls (including, at a minimum, the Pre-Trade Risk Controls for AT Persons). These systems and controls would need to be reasonably designed to facilitate (1) the clearing member FCM's management of the risks that may arise from such algorithmic trading,[20] and (2) the clearing member FCM's ability to make use of the order cancellation systems described above.

DCMs that permit direct electronic access would need to require their clearing member FCMs to use the foregoing systems and controls with respect to all AT order messages that originate with AT Person customers and that are submitted through direct electronic access.

Reviewing Annual Reports of AT Persons and Clearing Member FCMs

The Proposed Rules would require DCMs to implement rules requiring AT Persons that trade on the DCM and their clearing member FCMs to submit the compliance reports described above by June 30 of each year. DCMs would also be required to establish a program for effective periodic review and evaluation of these reports, including measures reasonably designed to identify and remediate any insufficient mechanisms, policies and procedures described in these reports, including inadequate quantitative settings or calibrations of pre-trade risk controls required of AT Persons.

The Proposed Rules would also require DCMs to implement rules requiring AT Persons and clearing member FCMs to keep books and records regarding their compliance with the requirements of Regulation AT and to provide them to the DCM. A DCM would be required to review these records and to establish measures to identify and remediate insufficient compliance mechanisms, policies and procedures.

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20 The Proposed Rules would require that such systems enable the clearing member FCM to set the pre-trade risk controls at the level of each such AT Person, product, account and one or more identifiers of natural persons associated with an AT order message; however, the Proposed Rules state that DCM rules should permit clearing member FCMs to choose the level at which they place control.

Test Environments

The Proposed Rules would require a DCM to provide a test environment enabling AT Persons to simulate production trading. The test environment must provide access to historical transaction, order and message data and must enable AT Persons to conduct testing to verify whether their algorithmic trading systems comply with the requirements of Regulation AT.

Self-Trade Prevention

Regulation AT would require DCMs to implement rules and tools reasonably designed to prevent self-trading by market participants (e.g., “wash trades”) and to either apply these tools themselves or provide the tools to market participants and require the use of such tools in connection with all orders on its electronic trade-matching platform.

The Proposed Rules would, however, permit a DCM to implement rules to permit (1) trading between accounts with common beneficial ownership when the orders are initiated by independent decision makers, and (2) trading between accounts with common control where the orders comply with the DCM’s cross-trade, minimum exposure requirements or similar rules, and are for accounts that are not under common beneficial ownership, in each case provided certain other conditions are met.

In addition, the Proposed Rules would require a DCM to provide quarterly disclosures on its website, including the percentage of trades and volume of trading that represents self-trading approved by the DCM and the ratio of orders for which matching was prevented by the self-trade prevention tools required under Regulation AT (by product and expiration month).

Other DCM Requirements

The Proposed Rules would require DCMs to include in their public rule filings certain disclosures regarding their market maker or trading incentive program (including its purpose, scope, eligibility criteria and how market participants may apply to participate in the program, among other information). DCMs would also be required to notify the CFTC upon an early termination of such a program and to submit a new rule filing for any extension or renewal of such a program.

The Proposed Rules would also require DCMs to disclose information regarding their rules and specifications pertaining to the operation of, and any other known attributes of, their electronic matching platforms that materially affect order execution, the ability to cancel, modify or limit display of orders or the dissemination of real-time or other market data.

REGISTERED FUTURES ASSOCIATIONS

The Proposed Rules would also impose new requirements on any registered futures association (*i.e.*, the NFA) to adopt membership rules for firms engaged in algorithmic trading and would require an AT Person to become a member of at least one registered futures association. A registered futures association would also be required to establish and maintain an anti-fraud and anti-manipulation program for algorithmic trading and to adopt certain algorithmic trading rules for each category of DCM members.

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Please do not hesitate to contact us with any questions.