



## DSG SUMMARY OF INDUSTRY COMMENT LETTERS ON CFTC PROPOSED REGULATION AUTOMATED TRADING (REG AT)

### SUMMARY OF COMMENT LETTERS FOLLOWING THE JUNE 2016 STAFF ROUNDTABLE<sup>1</sup>

TOPIC	SUB-TOPIC	VIEWPOINT	ORGANIZATION(S)	DESCRIPTION
<b>Reg AT</b>	Generally	Rulemaking should be separated	FIA, FIA PTG, MFA, ISDA, SIFMA AMG (Group) <sup>2</sup> ; ICE <sup>3</sup> ; Chilton <sup>4</sup> ; MGEX <sup>5</sup>	<ul style="list-style-type: none"> <li>-Focus on implementing appropriate risk controls (pre-trade risk and other controls) and address other important areas in a separate rulemaking. (Group; MGEX)</li> <li>-Requirements specific to AT Persons or persons engaged in algorithmic (algo) trading should be considered in a separate rulemaking from the requirements applicable to all market participants. (ICE)</li> <li>-Scrap the source code provision and finalize the less controversial portions of Reg AT. Hold a Technology Advisory Committee meeting and issue a concept release solely on the source code issue. (Chilton)</li> </ul>
<b>Registration</b>	Registration	Registration is unnecessary	Group; ICE; CEWG, CMC, EPSA (Commercials) <sup>6</sup>	<ul style="list-style-type: none"> <li>-Focus on implementing pre-trade risk controls to minimize market disruptions instead of imposing a poorly defined registration category with unintended consequences. (Group)</li> <li>-Registration is unnecessary, but if implemented, finalize in a separate rulemaking. (ICE; Group)</li> <li>-A registration framework will not achieve the Commission's goals of mitigating systemic risk to markets created by the use of AT, but will impose significant cost burdens to market participants and cause unintended consequences – i.e. mandatory margin, enhanced recordkeeping. (Commercials)</li> <li>-Reject the expanded definition of floor trader (FT) and registration framework. Instead, adopt a principles-based approach aimed at ensuring proper controls exist to mitigate a potential AT event. (Commercials)</li> </ul>
		Supports alternative registration regime	Hartree <sup>7</sup>	<ul style="list-style-type: none"> <li>-Generally, AT Persons (under Hartree's proposed definition) would not register. However, AT Persons that meet both the conduct test and risk test are found to pose enhanced AT risks, and thus would be required to register as FTs and be subject to more rigorous risk controls. (Hartree)</li> </ul>
		Supports registration	BM <sup>8</sup>	<ul style="list-style-type: none"> <li>-FCMs should monitor proposed metrics on registration and communicate them to the CFTC - as the FCM's know your customer (KYC) obligations make them the most fit to monitor these metrics. (BM)</li> </ul>
<b>Source Code</b>	Access	Should not be available to the CFTC or DOJ under a routine inspection process	Group; CME <sup>9</sup> ; ICE; MFA <sup>10</sup> ; MMI <sup>11</sup> ; QIM <sup>12</sup> ; AIMA <sup>13</sup> ; TT <sup>14</sup> ; Chamber, ITI, BSA, ISDA, FIA, FIA PTG, MMI, SIIA (Coalition) <sup>15</sup> ; KCG <sup>16</sup> ; Chilton; HRT <sup>17</sup> ; MGEX	<ul style="list-style-type: none"> <li>-Source code should be obtained via the subpoena process with appropriate confidentiality protections. Unfettered access is unprecedented and threatens valuable IP and proprietary trading strategies without measurable benefits. (Group; CME; ICE; MFA; MMI; QIM; AIMA; TT; Coalition; KCG; Chilton; HRT; MGEX)</li> <li>-Absent a valid exception to the Fourth Amendment, requiring firms to provide source code without the protections of a subpoena constitute an unlawful seizure of protected IP. (MMI; Coalition)</li> <li>-The CFTC has not demonstrated any need or benefit for making source code readily available. On demand access is inefficient and will not assist the CFTC in market surveillance and investigative activities. (CME; MMI; AIMA; Coalition; KCG)</li> <li>-The unfettered access requirement, if adopted by the CFTC, may encourage and trigger adoption in other industries (U.S.) and in other countries – setting undesirable precedent. (MFA; Coalition)</li> <li>-Increases the potential for cyberattacks and threatens the security of proprietary source code. (Coalition)</li> </ul>
		Source codes are books and records	BM	<ul style="list-style-type: none"> <li>-Inappropriate to require the Commission to obtain a subpoena. Many types of predatory or manipulative behavior may not be identifiable using the most conventional reported market data. Real-time source code access would facilitate investigation of market anomalies as well as potential misconduct – enabling the CFTC to make informed, data-driven decisions about appropriate regulation. (BM)</li> </ul>
	Definition	What should be retained must be clearly defined	Group; MMI; QIM	<ul style="list-style-type: none"> <li>-Proposed definition: “a collection of computer instructions as they are originally written in plain text comprising executable software capable of exercising discretion over an order on the production environment of a DCM without</li> </ul>



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				human intervention.” Definition should not extend to software used in any other capacities, and to third-party source code. Existing industry best practices should be incorporated for tracking changes. (Group) -Source code, viewed by itself, does not provide a thorough interpretation of any potential market interactions since an exponential number of variables inform and continuously steer the source code. There are different stages or levels of programming, and our concern is defining what modules, subsystems, utilities, databases, and operation systems would be included as part of source code. (MMI) -Clearly distinguish between investment decision algos versus execution algos. (QIM)
	Retention	Supports retention	Group; AIMA; KCG; HRT	-Retention policies should be principled-based. Allow organizations to select source code management tools that best meet their needs while satisfying best practices. (Group) -Preferable to require firms to create and enforce reasonable policies and procedures designed to ensure that AT Persons track development of material changes to algorithmic trading systems (ATSs) source code and ensure these records are retained for a reasonable period of time. (KCG; HRT)
		Should formulate prescriptive source code retention standards	MMI	-The CFTC and firms should work to formulate prescriptive retention standards enabling firms to continue housing code on their own premises while ensuring it is readily accessible when validly requested by the Commission subject to a subpoena. (MMI)
<b>Definitions</b>	AT Person	Unworkable, revise	Group; CME; Commercials; Milliman <sup>18</sup> ; MGEX; Hartree	-Instead of focusing on the definition, the Commission should focus on all electronic orders being subject to pre-trade risk controls. (Group) -Proposed definition: “a person engaged in algorithmic trading through DEA.” This definition avoids disparate treatment of AT Persons (administrative law issues) by ensuring that all algo traders using DEA, whether registered or unregistered, are subject to the same standards. (CME) -Proposed definition: “any person (1) who purchases or sells solely for such person’s own account – (i) any commodity for future delivery, security futures product, or swap; or (ii) any commodity option authorized under section 4c of the Act; and (2) who uses DEA as defined in paragraph (yyyy) of this section, in whole or in part, to access a DCM for algo trading.” (Commercials) -Determining the population of AT Persons should be principles-based. (Milliman) -Definition should be used to capture a limited segment of market participants that have exceptional risk profiles that would not be properly mitigated by DCM or FCM provided controls. (MGEX) -Include anyone who accesses a DCM directly via DEA and uses algo trading as its method of execution. Risk controls should be set based on the risk the AT Person poses. (Hartree)
		Opposes quantitative measures	Group; Commercials; AIMA; Milliman; MGEX	-Quantitative measures are ineffective as they are market specific and dependent on highly variable factors such as length of observation period, overall market activity during that period, and relative concentration or fragmentation of market activity. (ICE; Commercials; Group) -One-size-fits-all quantitative measures are not workable for establishing the population of AT Persons. Quantification could capture a significant number of participants whose use of automated trading functionality does not present systemic risk or allow participants using automated trading in a manner that presents systemic risk to avoid CFTC oversight. (Commercials)



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				-Quantitative measures create a path for market participants to eschew regulation by altering their algos and trading – also, markets and contracts are dynamic. (Milliman)
		Supports quantitative threshold	BM	-Adopt a threshold using a metric that sets limits on volume and frequency, calibrated across to market activity across products and across DCMs, and all trades should be weighed equally regardless of whether a firm sends the messages on an agency or principal basis. (BM)
	Algo Trading	Overly broad	ICE; MFA; Commercials; AIMA; Hartree	-Focus on algo trading activity that may pose a risk to the derivatives markets. Definition should exclude simple automated tools commonly used by persons who have not developed automated execution systems: automated order routing systems (AORS), order processing systems, order confirmation or post-trade processing tools, smart order functionality, iceberg orders, and simple order management tools. (ICE; Commercials; Hartree) -Proposed definition 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 controls. (MFA) -Pure investment decision algos should not constitute AT unless also accompanied by automated execution with limited or no human intervention. AORS that function merely to route orders to particular venues without amending their particular parameters should fall outside Reg AT. (AIMA)
	Direct Electronic Access (DEA)	Unworkable, revise or remove	CME; ICE; QIM; Commercials; Milliman; Nadex <sup>19</sup> ; MGEX; Hartree	-Revise to focus on the application of market risk controls at the clearing member level – DEA should focus on whether a person’s order passes through market risk controls administered by the gatekeeper clearing member. Proposed definition: “an arrangement where a person electronically transmits an order to a DCM without the order first passing through market risk controls administered pursuant to 1.82 [as revised] by the member of a DCO granting such person electronic access to the DCM.” (CME; QIM) -Remove the DEA component from the AT Person definition, as it may unnecessarily exclude certain market participants that engage in algo trading but would not otherwise be subject to registration. DEA is not an appropriate filter for determining an AT person. (ICE) -Only the person or agent directly placing trades on a DCM should be considered to possess DEA. Participants using FCM gateways and pass through an additional risk layer to access the market should be exempt from DEA, Reg AT registration, and other requirements. (QIM) -For automated trading transactions utilizing independent software vendors (ISV) or DCM routing infrastructure, different layers of risk and operational controls exist throughout the transaction chain from the point an order exits a participant’s order management system to the point it is accepted into a DCM’s matching engine. (Commercials) -Limit the population of AT Persons to market participants whose automated trading orders are routed to a DCM through their own proprietary application programming interface (API) and whose orders are not subject to pre-trade risk and other controls administered by a separate person who is an FCM or clearing member of a DCO. Proposed definition: “an arrangement where a person uses its own, proprietary API to electronically transmit an order to a DCM’s API without the order first being routed through an order routing system that includes risk and operational controls under the administrative control of a separate person who is an FCM or clearing member of a DCO.” (Commercials; MGEX; Hartree) -Modify 1.3(yyyy) to clarify when risk control infrastructure is applied – reference the executing party rather than a



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				clearing member. Proposed definition: “an arrangement where a person electronically transmits an order to a DCM, without the order first being routed through a separate person who is an executing agent.” (Milliman) -The proposed definition does not take into account retail traders who are both DCM and DCO members. Supports using 38.607 or amending 1.3(yyyy). (Nadex)
		Definition is workable	BM	-Add footnote 202 in the DEA definition to clarify the Commission’s analysis of categorizing DEA. The Commission should explicitly define the term <i>routed</i> to provide regulatory certainty for market participants and to prevent regulatory arbitrage. (BM)
	Algo Trading Compliance Issues (ATCI), Algo Trading Disruptions (ATD), Algo Trading Events (ATE)	Clarification needed	Group; CME; MGEX; Hartree	-Standard used to measure compliance should be that pre-trade risk controls <i>mitigate</i> the risks associated with electronic trading – rather than <i>prevent</i> them. (Group; CME; MGEX) -Reg AT should focus on deterring ATDs, not preventing or mitigating ATCIs – remove the requirement that DCMs prevent ATCIs. (CME) -AT Risk definitions (proposed by Hartree) should be used to differentiate between the levels of risk an AT Person would pose to the marketplace and the risk controls that would apply. (Hartree)
<b>Risk Controls</b>	Generally	Overly prescriptive	Group; MGEX	-Types of controls should be principles-based, providing flexibility to permit innovation and technological advances that could improve future controls. Identical pre-trade risk controls need not be applied at all points in the order flow. (Group; MGEX)
		Stronger defenses are needed	BM	-Minimum resting periods should be placed on all registered platforms for at least one second. (BM)
	Application	Appropriate pre-trade controls should be applied to all electronic trading	Group; CME; ICE; MFA; AIMA; MGEX	-Each market participant’s orders should be subject to pre-trade and other risk controls appropriate to the nature of the activity. (Group; ICE; MFA; MGEX) -Two layers of market risk controls should apply to all algo trading orders: 1) administered by the AT Person or gatekeeper clearing member; and 2) administered and developed by the DCM. (CME; MFA)
	Market Participant (or AT Person) Risk Controls	Should implement when accessing the DCM directly	Group; CME; MFA; MGEX	-Registration status is an inappropriate trigger for risk controls. Market participant’s not using software that includes FCM-administered risk controls should be responsible for applying risk controls to their own orders. (Group; MFA) -If the trader does not send its algo trading orders through market risk controls administered by the gatekeeper clearing member, the trader has DEA, and would be an AT Person. (CME)
		Avoid duplicative controls	Commercials; MGEX	-AT Person should not be required to develop and apply a duplicative set of pre-trade risk and other controls when using automated trading functionality or routing infrastructure of a third-party, given the third-party already applies such controls and does not permit its customers to alter its infrastructure or software. (Commercials)
	FCM Risk Controls	Should implement controls when facilitating electronic access to a DCM	Group; CME; AIMA; MGEX	-FCM should provide risk controls when facilitating electronic access to the DCM. Controls should mitigate potential for sending orders too large a size to the DCM, sending orders for a clearly erroneous price to the DCM, and sending too many messages to the DCM. FCM should perform due diligence on any customer to which it grants electronic access to the DCM without going through its risk controls. (Group) -All gatekeeper clearing members should make risk controls available for traders to mitigate risk. (CME; AIMA)



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				-FCMs may be in an optimal position to calibrate controls for a market participant because the FCM has an understanding through KYC obligations. (MGEX) -There is no reason to limit the rules to clearing FCMs – any intermediary that provides DEA should have appropriate operational and technical capabilities to manage risks to the DCM of their service provision. (AIMA)
	DCM Risk Controls	Supports minimum, basic, market-wide principles-based risk controls	Group; CME; ICE; Commercials; AIMA; MGEX	-DCMs should apply certain market-wide risk controls. (Group; CME; Commercials) -DCMs should implement market protections related to order throttling, price collars, and certain implementations of STP functionality – these controls are more appropriate for DCM. (ICE) -DCM should be granted discretion in determining the appropriate pre-trade risk and other control requirements that should apply to an AT Person trading on its market. (Commercials)
<b>Self-Trade Prevention (STP)</b>	Generally	Current DCM controls are effective	Group	-Incidences of self-trading are statistically insignificant and do not justify the creation of an entirely new, costly, and burdensome federal regulatory regime on STP. (Group)
<b>Annual Reports</b>	Generally	Ineffective, unnecessary, unworkable, and/or redundant	Group; CME	-Objectives of 1.83 can be met less onerously and more practically by requiring affected parties solely to certify that they materially comply, and make certifications available to a DCM or the CFTC upon request. (Group) -Remove the requirement for AT Persons and clearing FCMs prepare and submit extensive annual compliance reports to DCMs. The clearing member who granted DEA (gatekeeper) to the AT Person is better positioned to accept a compliance certification as a condition precedent to granting DEA. (CME)
<b>Software, Development, Testing, Deployment, and Monitoring (1.81)</b>	1.81 Generally	Overly prescriptive	Group; CME; MFA; QIM; AIMA; TT; Milliman; MGEX	-Proposal does not differentiate between ATSs designed by a market participant versus a third-party, and indiscriminately imposes the same obligations for both systems. Consider policies and procedures in a separate rulemaking or address the unique issues related to third-party software. A market participant is only able to confirm that its operation of a third-party software ATS is tested and documented. (Group) -Extremely difficult to adhere to 1.81 requirements when using an algo provided or operated by an ISV - ISVs should bear regulatory responsibility if their algos engage in DEA. (QIM; Milliman) -AT Persons have no control over ATSs developed and licensed by a third-party software provider and could only confirm its operation of third-party ATSs had been subject to appropriate testing and documentation. Revise proposal to incorporate a reasonability standard requiring policies and procedures commensurate with the source, size, and complexity of an AT Person's systems. (CME) -Unfeasible for CPOs and CTAs to comply with 1.81 with respect to third-party algos. FCMs and DCMs that sponsor the use of third-party algos should be obligated to test its function prior to use. (MFA) -Impossible for an AT Person using third-party algos to provide access to source code information or conform to 1.81 requirements. (AIMA; Milliman) -Testing should focus on output of an ATS or software rather than the source code underlying such system or software. Only testing of the finished product is relevant to Reg AT. (TT)
<b>Swap Execution Facilities (SEFs)</b>	Generally	SEFs should be included in Reg AT	BM	-The Commission should revisit the SEF exclusion from Reg AT. Trades executed on SEFs should be subject to Reg AT. (BM)



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<sup>1</sup> The following summary reflects [comment letters submitted](#) in response to the Commission's June 10, 2016, staff roundtable on Reg AT. The second comment period on Reg AT was open for two weeks following the staff roundtable - from June 10, 2016 to June 24, 2016. Delta Strategy Group's summary from the initial comment period can be found [here](#).

<sup>2</sup> [FIA, FIA PTG, MFA, ISDA, SIFMA AMG - \(Group\)](#)

<sup>3</sup> [Intercontinental Exchange \(ICE\)](#)

<sup>4</sup> [Bartchilton.com \(Chilton\)](#)

<sup>5</sup> [Minneapolis Grain Exchange, Inc. \(MGEX\)](#)

<sup>6</sup> [Sutherland Asbill & Brennan LLP on behalf of The Commercial Energy Working Group \(CEWG\), the Commodity Markets Council \(CMC\), and the Electric Power Supply Association \(EPSA\) – \(Commercials\)](#)

<sup>7</sup> [Hartree Partners, LP \(Hartree\)](#)

<sup>8</sup> [Better Markets, Inc. \(BM\)](#)

<sup>9</sup> [CME Group, Inc. \(CME\)](#)

<sup>10</sup> [Managed Funds Association \(MFA\)](#)

<sup>11</sup> [Modern Markets Initiative \(MMI\)](#)

<sup>12</sup> [Quantitative Investment Management, LLC \(QIM\)](#)

<sup>13</sup> [Alternative Investment Management Association \(AIMA\)](#)

<sup>14</sup> [Trading Technologies International, Inc. \(TT\)](#)

<sup>15</sup> [U.S. Chamber of Commerce \(Chamber\), Information Technology Industry Council \(ITI\), Business Software Alliance \(BSA\), ISDA, FIA, FIA PTG, MMI, Software & Information Industry Association \(SIIA\) – \(Coalition\)](#)

<sup>16</sup> [KCG Holdings, Inc. \(KCG\)](#)

<sup>17</sup> [Hudson River Trading LLC \(HRT\)](#)

<sup>18</sup> [Milliman Financial Risk Management, LLC \(Milliman\)](#)

<sup>19</sup> [North American Derivatives Exchange, Inc. \(Nadex\)](#)