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May 30, 2012

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Comment Letter on Proposed Rulemaking: General Effective Date for Swap Regulation, 77
FR 28819 (May 16, 2012) (CFTC Proposed Rulemaking)

Dear Mr. Stawick:

Nodal Exchange, LLC (Nodal Exchange or Exchange) appreciates the opportunity to submit comments with respect to the Commodity Futures Trading Commission's (CFTC or Commission) proposed rulemaking published in the Federal Register on May 16, 2012, which proposes to remove any reference to the ECM/EBOT Grandfather Order, which expires on July 16, 2012, and instead provide extended relief to exempt commercial markets (ECMs) in accordance with the Second Amended July 14 Order. The Second Amended July 14 Order includes language noting that if the ECM applies as a designated contract market (DCM) or swap execution facility (SEF) on or before the effective date of the DCM or SEF final rules, the relief proposed in the rules would extend relief to such ECM during the pendency of the application.

Nodal Exchange appreciates the Commission's efforts to provide legal certainty to swap market participants. Nodal Exchange¹ is currently an ECM that filed for grandfather relief under section 723(c)(1)-(2) of the Dodd-Frank Act (ECM/EBOT Grandfather Order) which allows petitioners to continue to operate pursuant to the pre-Dodd-Frank Act section 2(h) of the CEA until July 16, 2012. In anticipation of the imminent expiration date of the ECM/EBOT Grandfather Order, the CFTC Proposed Rulemaking extends the ECM/EBOT exemption until the earlier of December 31, 2012 or the effective date of the DCM or SEF final rules, whichever is later, unless the ECM/EBOT applies as a DCM or SEF on or before the effective date of the DCM or SEF final rules, in which case the relief shall remain in place during the pendency of the application. This provision will provide clarity and permit markets, like Nodal Exchange, to continue to operate without disruption while the rules and definitions are being finalized. However, we want to be sure there is no ambiguity that the relief will remain in place if an ECM applies to be a DCM after the effective date of the DCM rules, yet still on or before the effective date of the SEF rules.

¹ Nodal Exchange launched in April 2009 to serve the energy markets by offering cash settled contracts for power and natural gas in North America with all contracts cleared with LCH.Clearnet.

To remove any potential ambiguity, we believe the phrase at the end of Section (3) of the draft order that reads:

“or (ii) the effective date of the designated contract market (“DCM”) or swap execution facility (“SEF”) final rules, whichever is later, unless the ECM, EBOT, or 2(d)(2) Market files a DCM or SEF registration application on or before the effective date of the DCM or SEF final rules, in which case the relief shall remain in place during the pendency of the application”

should be replaced with the following which adds clarifying text of “whichever is later” in a second instance:

“or (ii) the effective date of the designated contract market (“DCM”) or swap execution facility (“SEF”) final rules, whichever is later, unless the ECM, EBOT, or 2(d)(2) Market files a DCM or SEF registration application on or before the effective date of the DCM or SEF final rules, whichever is later, in which case the relief shall remain in place during the pendency of the application”

In accordance with the CFTC Proposed Rulemaking, Nodal Exchange must file a DCM or SEF registration application on or before the effective date of the DCM or SEF final rules. To date, the final rules for DCMs that defer implementation of Core Principle 9 and the proposed rules for SEFs would significantly impact Nodal Exchange such that a determination of which registration will be most appropriate is not possible until both the DCM and SEF final rules are published. Before submitting the appropriate application, Nodal Exchange will need to assess (1) how the final regulations implement DCM Core Principle 9 and (2) the finalized rules for SEFs, especially with regard to how the Commission addresses the SEF rules regarding “pre-trade price transparency.”

The proposed rules for DCM Core Principle 9 had established a minimum trading threshold that 85 percent of trading must be executed on the exchange. In its comment letters to the Commission,² Nodal Exchange explained how it achieves the purpose of Core Principle 9 consistent with Dodd-Frank by protecting “the price discovery process of trading in the centralized market of the board of trade.” In summary, Nodal Exchange provides multiple-to-multiple auction trading and also permits participants to submit negotiated transactions to accomplish participants’ unique hedging needs that are usually significantly larger transactions than the auction trades. Just a few block trades for most contracts offered would likely cause Nodal Exchange to violate any minimum on-exchange trading threshold and extinguish a viable DCM market. Accordingly, the Commission’s final rulemaking regarding any minimum trading threshold in DCM Core Principle 9 will be critical information to Nodal Exchange’s registration decision as a DCM or SEF.

Currently, the Commission’s proposed rules implementing the Dodd-Frank Act’s “pre-trade price transparency” requirement for SEFs do not recognize auction platforms. Nodal Exchange

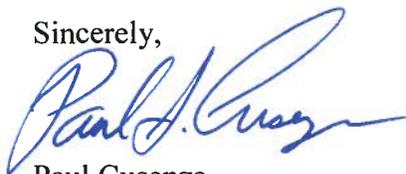
² See Nodal Exchange comment letters to the Commission dated February 22, 2011 (Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572 (December 22, 2010)) and dated June 30, 2011 (General Effective Date for Swap Regulation, 76 FR 35372 (June 17, 2011)).

operates a blind auction trading platform by accepting bids and offers made by multiple participants on the trading venue. As explained in its comment letters to the Commission,³ Nodal Exchange operates an auction trading platform that is consistent with the rules proposed by the Securities and Exchange Commission (SEC) establishing baseline principles for securities based (SB) SEFs in accordance with 3(a)(77) of the Securities Exchange Act of 1934 as amended by Dodd-Frank. The SEC criteria requires that the trading venue⁴ provide for multiple participants to have the ability to execute SB swaps by accepting bids and offers made by multiple participants on the trading venue, which is consistent with the Nodal Exchange blind auction trading platform. Based on this “multiple participant to multiple participant” requirement, the SEC concludes that an auction platform that enables multiple participants to trade with each other in an auction that executes the trades pursuant to a pre-determined algorithm could meet this definition of SB SEF.⁵ Nodal Exchange needs clarity that the Commission will also recognize the blind auction model of execution for SEFs before determining that a SEF registration is viable.

In addition, regarding Appendix 2 and the Statement by Commissioner Scott D. O’Malia, we would like to note that we support greater clarity on the timing and sequencing of rulemaking as noted. We also note that given the critical importance of DCM Core Principle 9 to our decision to becoming either a DCM or SEF, it would be very much appreciated if the SEF and DCM Core Principle 9 final rules are determined at the same time as proposed in the Draft CFTC 2012 Rulemaking Schedule provided in Appendix 2. In addition, while the DCM final rules are effective 60 days after being published in the Federal Register, we would suggest 90 days rather than 60 days for the SEF final rules given this is a new type of entity and it will take time for ECMs to assemble their applications consistent with the SEF final rules which are unknown today.

Nodal Exchange supports the CFTC Proposed Rulemaking extending relief to ECMs and seeks clarity that relief will be extended during the pendency of either a DCM or SEF application submitted on or before the effective date of DCM or SEF final rules, whichever is later. Such clarity will provide ECM entities like Nodal Exchange with the ability to assess the decision whether a DCM or SEF registration is appropriate. Nodal Exchange appreciates the opportunity to comment on this rulemaking and welcomes any questions from the Commission.

Sincerely,



Paul Cusenza
Chief Executive Officer

cc: Division of Market Oversight: Richard Shilts, Riva Adriance, David Van Wagner

³ See Nodal Exchange comment letters to the Commission dated June 3, 2011 (Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214 (January 7, 2011)) and dated June 30, 2011 (General Effective Date for Swap Regulation, 76 FR 35372 (June 17, 2011)).

⁴ Excluding a national securities exchange

⁵ See 76 FR 10948 at 10954.