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December 6, 2010

Mr. David Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Re: Comment Letter on Proposed Rulemaking: Requirements for Derivatives Clearing Organization, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR 63732 (October 18, 2010)

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 October 18, 2010 (Release). In the Release, the Commission seeks comments on the proposed rules to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) that would impose requirements on derivatives clearing organizations (DCOs), designated contract markets (DCMs), and swap execution facilities (SEFs) regarding the mitigation of conflicts of interest.

As introduction, Nodal Exchange is an exempt commercial market (ECM) that launched in April 2009 offering locational (nodal) cash settled contracts on energy to the North American power markets. All contracts are central counterparty cleared by LCH.Clearnet. Nodal Exchange is serving markets that include specialized markets with limited liquidity. Since Dodd-Frank eliminates ECMs, Nodal Exchange must transition to a DCM or SEF by no later than July 15, 2012 (Nodal Exchange filed a petition for grandfather relief). Accordingly, Nodal Exchange will present its comments as they relate to SEFs and/or DCMs.

#### Beneficial Ownership Requirements

Nodal Exchange supports the Commission's proposal for independent corporate governance with rules for both DCMs and SEFs. However, we also need to have rules that enable new competition to emerge and new products to be introduced. Ownership and governance rules that are appropriate for an existing DCM may be too prescriptive and difficult for nascent innovative markets to overcome. The Commission's proposed rules for DCM or SEF beneficial ownership would be limited to no more than 20% of the

voting equity. Niche markets, like that of Nodal Exchange, are typically established by a few market participants based on their innovation, expertise and ability to provide liquidity within such specialized market. Such stringent ownership restrictions could create a barrier to establishing new competitive or niche cleared markets, which would preclude the ability to create and sustain innovative cleared markets to serve less liquid markets. For example, limiting voting equity to 20% would likely be a barrier to initial investment if only 2 to 3 qualified investors are otherwise willing to contribute the financing and understandably need to address non-operational issues such as budget, financing or sale of the company. Nodal Exchange recommends the Commission permit a conditional alternative higher voting equity limit of up to 49%, in order to limit any one party from complete control. This higher limit would apply unless exchange trading volumes exceeded a certain level as measured in exchange net revenue from trading fees and/or similar appropriate measures of trading volume. The revenue threshold for when the 20% voting limit begins could, for example, be established based on measures similar to assessing if a company is large enough to consider going public, since an IPO is generally the point at which entrepreneurs can liquidate their initial investments and ownership becomes more diversified. In order to reduce barriers for new exchanges, Nodal Exchange also recommends the Commission permit new entrants to develop by waiving the 20% voting equity limit for the first five years of trading activity on the exchange, as appropriate, regardless of volume. The higher voting equity limit criteria noted above would ensure more flexibility in forming new DCMs and SEFs without enabling any single organization to exercise control.

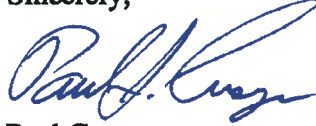
#### Governance – Public Director Requirements

The proposed governance rules would require at least 35%, and no less than two, public directors on the Board of a DCM or SEF, or their controlling entity. It is Nodal Exchange's view that, like the beneficial ownership restrictions described above, this requirement would compound the ability of an innovative niche market to attract investors and establish a qualified governing Board. Smaller entities typically have smaller Boards. The proposed rules create barriers to potential entrants seeking to create commodity trading markets where limited liquidity provides few transactional alternatives. Specialized commodity markets are inherently limited to a few qualified participants with the capacity to manage the market risks. Potential parties interested in establishing these types of specialized markets will be industry participants with day-to-day experience and qualifications to serve on the SEF or DCM's Board. Although knowledgeable about the business generally, public directors could not be actual participants. Accordingly, it would be disproportionately burdensome to maintain the requisite number of members on the Board of Directors including public directors that are appropriately experienced in these specialized markets to comply with the public director requirement. The proposed rules would create barriers and inefficiencies to specialized commodity markets with limited liquidity. Nodal Exchange would recommend that the Commission revise the public director requirements in a manner appropriate for the type and size of the trading market. We would suggest that new exchanges be allowed to operate without restriction on board membership during its first 5 years in order to reduce barriers for new entrants.

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Nodal Exchange appreciates the opportunity to comment on this rulemaking and welcomes any questions from the Commission.

Sincerely,



Paul Cusenza  
Chief Executive Officer