dcenergy

Dean L. Wilde II
Managing Director &
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VIA Email

December 6, 2010

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st 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:

DC Energy, LLC appreciates the opportunity to provide our perspective 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.

I am the Managing Director and CEO of DC Energy, LLC. DC Energy invests and trades in the electricity and gas markets, and, in particular, we provide hedge products and liquidity to physical and financial participants. In this context, we have been one of the leading proponents of exchanges and clearing for the power sector. To this end, we invested via our affiliate, LMP Exchange, LLC in the start-up and establishment of Nodal Exchange, LLC, which was designed to offer locational (nodal and zonal) contracts on energy to the North American power markets, which were unserved by exchanges or clearing at that time. As a result of these efforts, these markets are now served and an increasing percentage of power contracts are now transparently exchanged and reliably cleared.

While our efforts were merely coincidental to the Dodd Frank legislation (we were motivated by the efficiency, stability and economics of exchanges and clearing for the power industry and it's participants), I think the outcome is

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certainly something the legislation would endorse. This outcome was realized only because we introduced a new innovative competitor, Nodal Exchange. The established exchanges did not and were not going to adequately address the market. This, of course, is the virtue of competition. As one would expect, since the introduction of Nodal Exchange the established competition has slowly begun to respond with more competitive products. Our country's economic success is driven by the innovation and competitiveness of new companies. As one of these entrepreneurs, let me unambiguously state that with the ownership and governance rules the CFTC is proposing, we would not have started Nodal Exchange. Consequently, for the benefit of future new competitors and the innovation they will bring to the exchange and clearing marketplace, I ask that you consider modifying your proposal.

Let me be more specific, the rule to limit voting interest to no more than 20% may work for a large publically traded enterprise, but it is fatal for a new start-up. When we invested in what was the beginning of Nodal Exchange, no other investor or participant would join us. So we had to proceed with 100% of the investment (and ownership) throughout the most risky phases of the business development. In retrospect, there was a significant benefit to have this streamlined structure because we could quickly make decisions and implement. In terms of starting a business, the market will kill a bad idea, whereas striving for consensus with five equal partners will almost certainly kill both good and bad ideas. We were only able to attract other investors and reduce our voting influence below 50% (we preferred not to have control) just before launch, but we were, and had to be, prepared to launch the service without other investors if that was the outcome. Without this option to launch the service in either case, our upfront investments would have been foolhardy. Most start-ups have similarly concentrated ownership, with the liquidity event (and the resulting diversification of ownership) usually occurring after the company goes public or gets sold. I would recommend the CFTC adopt a similar path for the voting structure with exchanges (DCM or SEF), allowing concentration during the critical start-up period and at least five years of operation, and then once the enterprise achieves the ability to go public, a limit on voting percentage is possible.

With regard to governance, we initiated Nodal Exchange to introduce a novel range of financial products that were better designed for the physical participants, rather than the traders. Our knowledge of what was needed was drawn from DC Energy's hands-on experience in the markets. The viability or demand for new products is not a science that makes the answer self-evident, or obvious. Experience, risk-taking and creative problem solving are essential. As a start-up competitor, Nodal Exchange had to operate on a very slim budget, have a tactile intimacy with the market, and not be adverse to risk. We couldn't afford Board Members without market experience, and if those Board members also had a tendency to avoid risks of the unknown (not an uncommon trait for a public board member), they would have bottlenecked innovation. I should also emphasize that innovation doesn't end with the launch of the company and its first products, in fact, that is when it truly begins. I expect that over the next few years we will see a tremendous amount of innovation coming from Nodal Exchange as it experiments with new products. Consequently, I would encourage the CFTC to allow a new competitor at least five years of operation before adding the cost and overhead of public board members. When a start-up has the ability to go public, then it becomes more affordable and beneficial to have 35% of board members as public directors.

Thank you for taking my thoughts into consideration. My concern is not just for Nodal Exchange, but for the future of new competitors and innovation that the CFTC and the country need in order to establish a more robust and vibrant exchange traded market.

Sincerely yours,

Dean L. Wilde II
Chief Executive Officer, DC Energy, LLC
Board Member, Nodal Exchange, LLC