



8065 Leesburg Pike, 7th Floor
Vienna, VA 22182
Phone (703) 962 9800
Fax (703) 962 9850
www.nodalexchange.com

June 3, 2011

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

Re: Follow-up Comment Letter on Proposed Rulemaking: Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214 (January 7, 2011) (CFTC Proposed Rulemaking)

Dear Mr. Stawick:

Pursuant to the Commission's decision to re-open and extend the comment periods for rules that have been proposed to date, Nodal Exchange, LLC (Nodal Exchange or Exchange) seeks to supplement its previously submitted comments in the Nodal Exchange letter dated March 8, 2011 to the Commodity Futures Trading Commission (CFTC or Commission) regarding the above-mentioned CFTC Proposed Rulemaking to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which proposed new rules and acceptable practices on swap execution facilities (SEFs). In light of the subsequently published proposed rulemaking by the Securities and Exchange Commission (SEC): Registration and Regulation of Securities-Based Swap Execution Facilities (SB SEFs), 76 FR 10948 (February 28, 2011), Nodal Exchange notes that the SEC's proposed rules are consistent with Nodal Exchange's previously submitted comments regarding the acceptability of auctions and appreciates the opportunity to submit the following comments.

To summarize, Nodal Exchange is currently an exempt commercial market (ECM) that launched in April 2009 to serve the electricity markets by offering cash settled contracts for power and natural gas in North America. All Nodal Exchange contracts (Nodal Contracts) are for monthly terms and are central counterparty cleared by LCH.Clearnet. Nodal Contracts enable market participants to hedge their risks with central counterparty clearing at over 1,800 locations at the hubs, zones, and generation nodes. Nodal Exchange has become a vital market distinguished by its granularity and is the only cleared market for over 1,750 locations in the United States. Nodal Exchange has two platforms: 1) a multiple to multiple trading platform that conducts a "blind" auction during a set time each trading day and 2) an over-the-counter platform that permits participants and voice brokers to submit negotiated transactions, or block trades, for clearing. The two platforms complement each other in that the auction platform

provides price discovery information on the large number of Nodal Contracts available for trading while the over-the-counter platform permits many complex hedging deals using standardized Nodal Contracts to be submitted for central counterparty clearing. Participants are then margined based on their open positions as one portfolio, regardless of the platform source.

Part 37.9 – Pre-trade price transparency

The CFTC Proposed Rulemaking seeks to promote “pre-trade price transparency” pursuant to Dodd-Frank by requiring that SEFs offer trading services by displaying executable bids and offers on a centralized electronic system that is accessible by the entire market, which limits swaps trading to screen based trading formats. However, the CFTC Proposed Rulemaking does not recognize auction platforms that do not post bids and offers on a pre-trade basis even though such auctions will promote the trading of swaps by offering market participants the “ability to execute or trade swaps by accepting bids and offers made by multiple participants”¹ and provide nondiscriminatory pricing.

In contrast to the CFTC Proposed Rulemaking, the proposed SEC rules seek to establish baseline principles to allow flexibility to various types of trading venues that may register as an SB SEF in order to promote the organized trading of securities based (SB) swaps as intended by Dodd-Frank. To this end, the SEC identifies the criteria necessary to meet the definition of SB SEF in accordance with Section 3(a)(77) of the Securities Exchange Act of 1934 as amended by Dodd-Frank. The SB SEF definition requires that the trading venue² 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. Based on this “multiple participant to multiple participant” requirement, the SEC concludes that an auction platform, with auctions to be held at a prescribed time, 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.³ Therefore, Nodal Exchange hereby re-iterates its previous recommendation that the Commission explicitly include the blind auction model of execution for SEFs that will be subject to CFTC jurisdiction.

Nodal Exchange supports Congress’ goal “to promote the trading of swaps on SEFs and to promote pre-trade price transparency in the swaps market”⁴ and agrees with the SEC’s view that fostering pre-trade price transparency encourages greater price competition. However, as discussed by the SEC in its proposed rules, pre-trade price transparency may negatively impact the market in certain circumstances.⁵ Nodal

¹ See 76 FR 1214 at 1219 under Commission staff’s discussion of the SEF definition and registration requirements.

² Excluding a national securities exchange

³ See 76 FR 10948 at 10954.

⁴ See CEA Section 5h(e).

⁵ See 76 FR 10948 at 10972.

Exchange supports this view based on its own experience with its markets. In certain industries like energy, the terms of certain bids or offers may be sufficient to disclose the bidder's identity, which can be detrimental to the bidder and consequently destroy the price efficiency of the transaction. To promote greater price competition, SEC's proposed Rule 811(d) provides SB SEFs with flexibility to determine the best manner to disseminate information regarding trading interest and requires SB SEFs to clearly disclose to its participants how the information regarding such trading interest will be disseminated.

Nodal Exchange recommends that the Commission revise the CFTC Proposed Rulemaking to establish baseline principles that interpret the definition of a SEF in a manner that is consistent with the objectives as provided in the Dodd-Frank Act,⁶ while recognizing that various types of trading platforms, including blind auctions, may fall within the definition of a SEF. To facilitate competition and more efficient trading on regulated trading platforms, a principles based approach should balance the dual Dodd-Frank goals of SEFs: to encourage trading of swaps on SEFs (or designated contract markets (DCMs)) and to promote pre-trade price transparency to the extent required to support fair pricing in the swaps market. Since pre-trade price transparency can be important to efficient pricing, the baseline principles should allow the applicant to demonstrate how the overall goals of Dodd-Frank are achieved despite lack of pre-trade price transparency. As noted above, Nodal Exchange believes that competitive pricing in certain markets can be achieved on auction platforms that provide access to a wide group of market participants, while promoting the trading of swaps on SEFs, consistent with Congress' goals.

2(h)(3) Grandfather Relief: Parts 37.3 and 38.3 – Requirements for registration

Recognizing that the Commission is assessing "grandfathering" provisions in light of the upcoming effective date of certain provisions in Dodd-Frank without corresponding regulations and Commissioner O'Malia's request for comment on the proposed sequencing of final rules, Nodal Exchange would like to recommend that the Commodity Exchange Act (CEA) Section 2(h)(3) grandfathering provision for exempt commercial markets (ECMs) provide relief for one year after the rules for both SEFs and DCMs are effective. Nodal Exchange reasserts that its petitioned grandfather relief provided for continued operations as an ECM for one year.

The Dodd-Frank Act permitted ECMs to petition the Commission for grandfather relief to continue to operate as an ECM for one year after the day before the effective date of the Dodd-Frank Act, i.e., July 15, 2012. The Commission's order grants relief subject to conditions including the requirement that the ECM file a formal application for registration as a DCM or SEF within 60 days after the effective date of final regulations

⁶ See Dodd-Frank Section 733(e) that describes the goal of establishing SEFs.

implementing the DCM or SEF regulations, whichever is applicable.⁷ ECM entities like Nodal Exchange must examine the impact of both DCM and SEF final rules before making a determination. Unless the rules for DCMs and SEFs become effective simultaneously, the 60 day decision window will be curtailed, resulting in less than optimal decision making. A hasty decision at this time will likely impede an efficient application review and registration process. Nodal Exchange recommends that the Commission extend the DCM/SEF application window from 60 days to 90 days after the publication of the latter of the DCM or SEF regulations.

In addition to the process of assessing the appropriate registrant status, an ECM applying for registration as either a DCM or SEF must demonstrate compliance with the applicable core principles. However, since sixty days after the rules are effective is insufficient time to achieve such compliance, Congress authorized the Commission to allow ECMs to continue to operate as such for up to a year. Even assuming that the DCM and SEF rules are finalized simultaneously, a 60 day application deadline is an unnecessarily harsh timeframe for an existing business like Nodal Exchange to transform its own operations and demand changes from its support providers. Besides the implementation of the regulatory requirements at Nodal Exchange, there are also entities that support Nodal Exchange's operations with certain services that may now require registration pursuant to Dodd-Frank, such as clearing members.⁸ The function of clearing members is crucial to the operations of Nodal Exchange because Nodal Exchange clears all transactions using LCH.Clearnet through their clearing members who are not otherwise required to be registered as futures commission merchants. These clearing members are typically large financial institutions. While addressing the more immediate requirements of Dodd-Frank compliance and the demands of institutional registrants, these clearing members are extremely unlikely to be able to fulfill the regulatory needs of Nodal Exchange within 60 days. Nodal Exchange, as a smaller new exchange, will be particularly disadvantaged by short compliance time frames because its supporting external parties are also facing numerous other compliance requirements and will likely prioritize compliance obligations in order to be responsive to the largest exchanges first.

In addition, the Dodd-Frank Act in Section 723(c)(2)(B) states the Commission: "may allow a person to continue operating subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act) for not longer than a 1-year period." Given the regulations for DCMs and SEFs are not effective until 60 days after their final publications and that the DCM and/or the SEF

⁷ Pursuant to Dodd-Frank Act Section 723(c), ECMs could petition the Commission to continue to operate as an ECM for a "grandfather period" of up to one year after the July 15, 2011 effective date of the Dodd-Frank Act subject to applicable conditions set forth in the Commission's order. See 75 FR 56513 at 56515 (September 16, 2010).

Currently, the proposed DCM rules do not address how a DCM applicant that is an ECM remains compliant while operating as an ECM pursuant to petitioned grandfather relief.

⁸ See Section 724(a) of Dodd-Frank requiring registration as futures commission merchants.

rules are not expected to be published until after the July 15th effective date, it would seem to be permissible to allow ECMs to continue to operate under section 2(h) for up to one year and 60 days after the final publication of SEF and DCM rules.

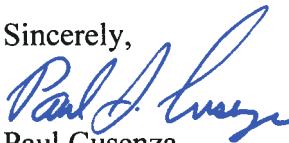
Based on the foregoing, Nodal Exchange recommends that the Commission:

- (A) Revise Part 38.3 and Part 37.3 to address the DCM and SEF registration processes for ECMs subject to petitioned grandfather relief as follows:
- (1) requires the ECM to apply for registration as a DCM or SEF within 90 days after the effective date of final regulations implementing the regulations for DCM or SEF, whichever is later, and
 - (2) defers DCM or SEF compliance, whichever is applicable, until registration requirements may be fulfilled but not later than the date of expiration of the grandfather relief.
- (B) Allow ECMs to continue to operate under section 2(h)(3), which encompasses the activities of DCOs, clearing members, participants and other entities associated with trading on the ECM, until one year and 60 days after the final publication of SEF and DCM rules whichever is later.

We propose that the Commission readdress its Order on grandfathering as soon as possible, consistent with the comments by Commissioner Sommers on April 27th, 2011 to provide sufficient certainty for market participants as to the status of ECMs and EBOTs on July 15th, 2011 and thereafter.

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

Sincerely,



Paul Cusenza
Chief Executive Officer

cc: Chairman Gensler
Commissioner O'Malia
Commissioner Chilton
Commissioner Sommers
Commissioner Dunn
Division of Market Oversight: Richard Shilts, Riva Adriance, Mauricio Melara
United States Senate Committee on Agriculture, Nutrition and Forestry:
Cory Claussen
United States Senate Committee on Banking, Housing and Urban Affairs:
Jeffrey Siegel, Hester Pierce, Mike Piwowar, William Fields