NODAL EXCHANGE

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

June 30, 2011

Mr. David Stawick
Secretary
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, 76 FR 35372 (June 17, 2011) (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 June 17, 2011, which proposes to extend the effective date of self-effectuating provisions of the Dodd-Frank Act for transactions under "Category 2" that refer to terms that the Dodd-Frank Act requires to be "further defined" such as "swap," "swap dealer," "major swap participant," or "eligible contract participant" and for certain transactions under "Category 3" that are proposed to be granted relief pursuant to the Commission's authority under section 4(c) of the Commodity Exchange Act ("CEA") including transactions that may be executed on a trading facility for standard contracts that are cleared. The Commission is proposing to temporarily exempt persons or entities from complying with such self-effectuating provisions until the effective date of the dependent rulemaking defining such terms or December 31, 2011, whichever is earlier.

Nodal Exchange applauds the Commission's effort to provide legal certainty to swaps market participants and supports the extension, with some comments regarding "Category 4" provisions that are not included in the proposed extension. The extension will enable a more orderly transition to a regulated market for swaps. Nodal Exchange is currently an exempt commercial market (ECM) that 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 as the central counterparty. Nodal Exchange filed for grandfather relief under section 723(c)(1)-(2) of the Dodd-Frank Act which allows petitioners to continue to operate pursuant to the pre-Dodd-Frank Act section 2(h) of the CEA for one year; however, even though Nodal Exchange is subject to the grandfather relief provisions, it is important that legal certainty exist for Nodal Exchange's trading community. The proposed relief will provide clarity and permit markets, like Nodal Exchange, to continue to operate without disruption while the rules and definitions are being finalized.

As noted in the CFTC Proposed Rulemaking, the implementation of only certain self-effectuating provisions of the Dodd-Frank Act under Category 2 or Category 3 will be extended such that the proposed relief does not obviate implementation of other Dodd-Frank provisions in Category 4. Amongst the noted self-effectuating Dodd-Frank provisions that are listed under Category 4 as not subject to the proposed extension relief is section 735(b) regarding the new Core Principles for designated contract markets (DCMs), which will therefore become effective on July 16, 2011. However, implementation of the SEF Core Principles per section 733 of the Dodd-Frank Act requires the Commission to issue rules and definitions, so the SEF Core Principles will be effective after the DCM Core Principles. Despite the disparate effective dates for the SEF and DCM Core Principles, Nodal Exchange recommends that the Commission issue final rules regarding the DCM and SEF Core Principles simultaneously.

Since the Dodd-Frank Act eliminates ECMs, Nodal Exchange must apply to be registered as a DCM or SEF within 60 days of the final regulations implementing the appropriate DCM or SEF provisions of the Dodd-Frank Act pursuant to the terms of the Commission's grandfather relief. To date, the proposed rules for both DCMs and SEFs would significantly impact Nodal Exchange such that a determination of which registration will be most appropriate is not yet possible. Accordingly, Nodal Exchange will need to assess the finalized rules for both DCMs and SEFs regarding how the Commission addresses the issues explained below before submitting the appropriate registration application.

DCM Core Principle 9 – Minimum Centralized Market Requirement

Proposed rules for Core Principle 9 establish a minimum trading threshold that 85 percent of trading must be executed on the exchange. However, a minimum centralized market trading percentage requirement is neither required in Dodd-Frank nor was it the intent of Congress to create a one–size-fits-all required mechanism "that protects the price discovery process of trading in the centralized market of the board of trade." To the contrary, Dodd-Frank explicitly permits DCMs to authorize off exchange transactions, i.e., block trades, for bona fide business purposes, and contains no provision calling for volume limitations in off-exchange trading.

In its comment letter to the Commission dated February 22, 2011 (Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572 (December 22, 2010)), Nodal Exchange explains how it is currently achieving the purpose of Core Principle 9 to protect "the price discovery process of trading in the centralized market of the board of trade." The Nodal Exchange blind auction is a multiple participant to multiple participant trading platform that is critical to determining settlement prices required by LCH.Clearnet to clear all trades. Nodal Exchange also permits participants to submit block trades on Nodal Contracts. These transactions are usually significantly larger than the auction trades because the participants negotiate these transactions to accomplish their unique hedging needs. Just a few bilateral transactions would cause Nodal Exchange to violate the 85% minimum on-exchange trading threshold and extinguish a viable DCM market. Nodal Exchange has been urging the Commission to establish a process for permitting DCM markets that protect "the price discovery process of trading" consistent with the Dodd-Frank Act to exist without established minimum block trading thresholds. Instead of protecting the price discovery process, the inflexibility of threshold requirements may precipitate failures during market disruptions when unforeseen circumstances alter the trading environment within a given industry. The Commission's finalized DCM rulemaking will be critical to Nodal Exchange's registration decision as a DCM or SEF.

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

Part 37.9 – Pre-trade price transparency for SEFs

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 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] without the posting of bids and offers on a pre-trade basis, while still providing nondiscriminatory pricing.

In its comment letter to the Commission dated June 3, 2011 (Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214 (January 7, 2011)), Nodal Exchange described how the rules proposed by the Securities and Exchange Commission (SEC) seek to establish baseline principles to allow flexibility to various types of trading venues that may register as a securities based (SB) SEF in order to promote the organized trading of 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 venue[2] 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.[3] Nodal Exchange has been urging 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. Based on its own experience with energy markets, Nodal Exchange supports the SEC's view that pre-trade price transparency may negatively impact the market in certain circumstances.[5] 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. The degree to which the Commission's finalized rules for SEFs share the SEC's view that auction platforms may comply as trading facilities will impact Nodal Exchange's decision between registering as a DCM or SEF.

---

[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.

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

Conclusion

Nodal Exchange supports the Commission's extension of certain self-effectuating provisions of the Dodd-Frank Act. However, we caution that the Category 4 self-effectuating section 735(b) of the Dodd-Frank Act regarding the DCM Core Principles, which would become effective before section 733 of the Dodd-Frank Act regarding SEF Core Principles, may lead to their respective regulations being issued and finalized at different times. ECM entities like Nodal Exchange must examine the impact of both DCM and SEF final rules before deciding whether to apply for registration as a DCM or SEF. In addition, unless the final rules for DCMs and SEFs become effective simultaneously, the current 60 day decision window (which Nodal Exchange has previously suggested be extended to 90 days after the effective date of the final DCM or SEF rules) will be curtailed and potentially eliminated, which will result in less than optimal decision making. A required hasty decision by ECMs will likely impede an efficient registration process for applicants and Commission staff, and be disruptive to the market.

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,

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