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January 21, 2013

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Comment Letter on Proposed Rulemaking: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 77 FR 67866 (November 14, 2012) – RIN 3038-AD88

Dear Ms. Jurgens:

Nodal Exchange, LLC (Nodal Exchange or Exchange) appreciates the opportunity to submit comments with respect to the Commodity Futures Trading Commission's (Commission) proposed rulemaking published in the Federal Register on November 14, 2012 (Release). In the Release, the Commission seeks comments on the proposed rules regarding the protection of customer funds deposited to margin futures contracts, options on futures contracts, and swaps. Nodal Exchange fully supports the Commission's goals of enhancing the protections of customer segregated funds and secured amounts held by futures commission merchants (FCMs) and derivatives clearing organizations (DCOs) to margin futures contracts, swaps, and the options on futures and swaps.

Nodal Exchange filed an application with the Commission on October 11, 2012 to be designated as a contract market (DCM) and continues to operate as a pre-Dodd Frank exempt commercial market during the pendency of its application.¹ The Exchange offers futures contracts for power and natural gas in North America (Nodal Contracts) that are cleared by LCH.Clearnet Ltd., a registered DCO, through its clearing members.

Given that Nodal Exchange is not yet a DCM, customer funds to margin Nodal Contracts may not be held in customer segregated funds accounts in accordance with Section 4d(a) of the Act. As a result, and consistent with longstanding Commission guidance, the funds held to margin Nodal Contracts are permitted to be maintained in foreign futures and foreign options secured amount accounts established pursuant to Regulation 30.7 (30.7 Accounts).²

¹ See Second Amendment to July 14, 2011 Order for Swap Regulation, 77 FR 41260 (July 13, 2012).

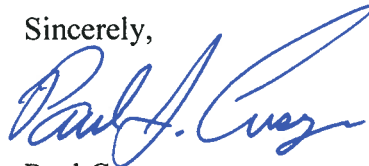
² As the Commission is aware, FCMs have historically been permitted to hold margin for products other than futures and options on futures traded on a DCM in a 30.7 Account. See 77

Proposed Commission Regulation 30.7(e)(3), however, would now prohibit the commingling of funds in 30.7 Accounts with funds unrelated to trading foreign futures or foreign options. The Exchange supports that proposal in principle, but believes that it would be inappropriate to impose such a limitation during the pendency of its transition from an exempt commercial market to a registered DCM.³

In this regard, the Commission's proposal would permit commingling in 30.7 Accounts pursuant to the terms of a Commission regulation or order authorizing such commingling. Nodal Exchange supports this proposal and anticipates the need for such an order from the Commission if the Release becomes effective before Nodal Exchange is designated as a contract market. In view of the fact that the need for such an order would be limited to the treatment of customer funds of DCM applicants under current staff review, the Exchange recommends that the Commission provide in the Federal Register notice accompanying the adoption of these amendments that 30.7 Accounts may continue to hold customer funds to margin contracts traded on markets pending designation as a contact market at the time the rules become effective until such market is registered as a DCM or upon the withdrawal or denial of the DCM application. This would make the issuance of a special Commission order unnecessary.

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

Sincerely,



Paul Cusenza
Chief Executive Officer

cc: Aaron Brodsky, DMO
Jasmine Lee, DMO
Jennifer Bauer, DSIO
Joshua Beale, DSIO
Adam Cohen, DCR
Nadia Zakir, DCR

FR 67866, 67896 (November 14, 2012) (“Commission staff previously issued guidance to FCMs stating that an FCM could carry positions other than foreign futures and foreign option positions in foreign futures or foreign options customers’ accounts.”)

³ While FCMs could, in theory, hold customer margin for Nodal Contracts in a “non-regulated” account, the practical reality is that the back-office bookkeeping systems that are used by almost all FCMs would not support such an arrangement. Power generators, electric utilities and other Nodal customers who trade Nodal Contracts to hedge their cash market exposures, therefore, would be forced to discontinue their use of the Exchange market until such time as Nodal is registered as a DCM.

Nodal Exchange, LLC
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