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March 16, 2016

<u>VIA ELECTRONIC SUBMISSION</u>
Commodity Futures Trading Commission
Attention: Chris Kirkpatrick, Secretary
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Proposed Rulemaking on Regulation Automated Trading (Regulation AT) – 80 FR 78824 (December 17, 2015)

Dear Mr. Kirkpatrick:

Nodal Exchange, LLC ("Nodal Exchange" or "Exchange") respectfully submits this letter in response to the request for public comment set forth in the Commodity Futures Trading Commission's (the "CFTC" or "Commission") Notice of Proposed Rulemaking on Regulation Automated Trading (the "Regulation AT" or "Proposal"). Nodal Exchange appreciates the Commission's efforts related to Regulation AT but has concerns with the Proposal in its current state. Nodal Exchange believes the Proposal is too broadly written and in turn imposes substantial requirements that could inadvertently be placed upon persons and organizations who are not the intended parties of Regulation AT. In order to ensure that Regulation AT does reach its intended audience, Nodal Exchange recommends the Commission consider amendments to the definitions of 1) Direct Electronic Access, 2) Algorithmic Trading, and (3) Floor Trader.

Introduction

Nodal Exchange operates a designated contract market ("DCM") for the trading of energy futures contracts, including (1) locational marginal pricing (energy, loss and congestion) or any component of locational marginal pricing of electricity at hubs, zones and nodes in the United States and Canada and (2) natural gas at Henry Hub. All trades are cleared by Nodal Clear, a derivatives clearing organization ("DCO"). Most traders on Nodal Exchange ("Participants") have agreements with futures commission merchants ("FCM") that are clearing members of Nodal Clear for clearing purposes, except for a few Participants that are also clearing members of Nodal Clear for the purpose of clearing their own house accounts.

Market surveillance is a very important responsibility of Nodal Exchange's self-regulatory role. Nodal Exchange admits each Participant individually who must meet specific criteria that include minimum financial requirements to maintain the financial integrity of the Exchange. Trading on the Exchange is not trade intermediated. Without the use of front end/routing systems, all Participants enter orders directly on the Exchange that surveillance staff monitor at the trader level. The Exchange has procedures and controls to enable FCM clearing members to actively manage the financial risks of Participants' trading activities. Surveillance staff coordinate with the FCM clearing members and enforce the risk limits set by the FCM clearing members establishing the maximum position risk that the Participant is allowed to assume on the Exchange. Through market surveillance, Nodal Exchange ensures that the Exchange protects both its market and market participants from abuse and promotes fair and equitable trading on the market.

The Exchange's surveillance and compliance staff are responsible for daily monitoring of trade practice, market and financial violations. Surveillance staff monitor overall activity on the Exchange on a real-time and post-trade basis including: orders, screen trades, and block trades. Surveillance staff track the activity of specific traders, monitor price and volume information and is alerted to any trades that vary from prior marks by more than 5% for outright trades or 10% for spreads with the authority to bust trades when necessary. The Exchange's automated trade practice surveillance system monitors trading activity on a trade day plus one (T+1) basis. Since trades are not entered through a front-end/routing system, the Exchange maintains all audit trail data that compliance staff use to support its enforcement efforts. In addition, surveillance staff have access to information related to the Exchange's contracts, including other relevant market contracts at other exchanges, news events and economic reports, and historical price and volume information.

Direct Electronic Access

The proposed rule defines "Direct Electronic Access" as an arrangement where a person electronically transmits an order to a DCM, without the order first being routed through a separate person who is a member of a DCO to which the DCM submits transactions for clearing. Nodal Exchange believes that the requirement to "route" orders through a separate FCM clearing member is too limiting. Routing orders through an FCM clearing member will weaken the role the DCM that directly monitors trading activity and maintains audit trail information for each order in real-time. As defined in CFTC Regulation 38.607, the ability to enter orders directly on the DCM is an accurate definition of Direct Electronic Access that does not need revision.

For Direct Electronic Access, CFTC Regulation 38.607 accomplishes the objective of implementing trade controls and managing financial risks by the DCM and FCM clearing members. To exclude from the definition of Direct Electronic Access all orders routed through a separate clearing member does not add any protection to the market and limits the DCM's role in complying with CFTC Regulation 38.607. Currently, DCMs that permit Direct Electronic Access must coordinate the enforcement of systems and controls for FCM clearing members to manage financial risks in accordance with CFTC Regulation 38.607. Where orders must be routed through an FCM clearing member the DCM becomes removed from directly monitoring such trading activities. Therefore, whether or not an order is first routed through a clearing member FCM should have no bearing on the definition of Direct Electronic Access.

Algorithmic Trading

The Proposal's definition of "Algorithmic Trading" excludes any orders, modifications, or cancellations that are manually entered into a *front-end system* by a natural person with no further discretion by any computer system or algorithm, prior to their electronic submission to a DCM. Nodal Exchange believes the inclusion of the term "front-end system" makes the exclusion more restrictive than the Commission intended. The Exchange believes that any orders, modifications, or cancellations that are manually entered with no further discretion by any computer system or algorithm should not be included in the definition of Algorithmic Trading. Accordingly, the exclusion should not be limited to orders entered through a front-end system because manually entered orders do not meet the definition of Algorithmic Trading. Therefore, the definition of algorithmic trading should exclude any order manually entered by a natural person because no further discretion by any computer system or algorithm would exist.

Floor Trader

The Proposal's definition of "Floor Trader" would require any person using Direct Electronic Access for Algorithmic Trading to be registered as a Floor Trader. Based on the Proposal's definitions of Direct Electronic Access and Algorithmic Trading, many of the Exchange's Participants could be required to register as Floor Traders because the Exchange does not utilize front-end/routing systems.

Accordingly, the Proposal's required registration of Floor Traders would not provide market protections beyond what already exist on DCMs. As previously discussed, DCMs permitting Direct Electronic Access must implement and enforce procedures to monitor all users in compliance with CFTC Regulation 38.607. In order to comply with Part 38, Nodal Exchange maintains procedures to oversee its Participants including (1) the use of individual user identification numbers, (2) maintain audit trail information on all orders submitted to the DCM, (3) prevent screen trades between related entities, and (4) submit to the CFTC all audit trail and trading information entered on the DCM.

Burden on the DCM

Risk controls are a critical component of any DCM. But a DCM, with the greatest understanding of its own market, is best situated to establish and implement risk controls for orders on its own platform. Nodal Exchange has put substantial time and resources into establishing and implementing pre-trade, post-trade and self-trade prevention risk controls that apply to all orders submitted on the Exchange. Therefore, the Exchange believes the additional *Risk controls for trading* proposed by Rule 40.20 would be redundant and of minor impact while at the same time putting an unnecessary burden on the DCM.

DCM test environments proposed by Rule 40.21 and *DCM review of compliance reports; maintenance of books and records* proposed by Rule 40.22 would also represent an unnecessary and significant burden to small DCMs. Due to the substantial costs a DCM will incur in order to implement programs to meet the requirements of Regulation AT, the Commission should carefully consider the intended parties of Regulation AT. The Commission should ensure Regulation AT includes exemptions for DCMs, FCMs and other CFTC registrants that are not truly the intended parties of Regulation AT but will incur substantial costs to comply with the Proposal in its current state.

We appreciate this opportunity to provide comments on the Proposal and respectfully request that the Commission consider the comments set forth herein as it develops any final rulemaking in this proceeding. If you have any questions, please contact me.

Respectfully submitted,

/s/ Anita Herrera

General Counsel & Chief Regulatory Officer