

April 24, 2024

Divisions of Market Oversight, Clearing and Risk, Market Participants, and Data and the Office of Technology Innovation
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Via CFTC Comments Portal: <https://comments.cftc.gov>

Re: CFTC Staff Request for Comment on the Use of Artificial Intelligence in CFTC Regulated Markets

Ladies and Gentlemen:

Nodal Exchange, LLC (“Nodal Exchange”) and Nodal Clear, LLC (“Nodal Clear”) (collectively, “Nodal”) appreciate the opportunity to respond to the Commodity Futures Trading Commission’s (“CFTC’s” or “Commission’s”) Staff Request for Comment on the Use of Artificial Intelligence in CFTC Regulated Markets (“RFC”) issued on January 25, 2024.¹ The RFC seeks comment on the definition of Artificial Intelligence (“AI”) and its applications, including its use in trading, risk management, compliance, cybersecurity, recordkeeping, data processing and analytics, and customer interactions, as well as certain risks related to AI. CFTC Staff intends to consider the responses to the RFC in analyzing possible future actions by the CFTC, such as new or amended guidance, interpretations, policy statements, or regulations.

As background, Nodal Exchange is a designated contract market (“DCM”) with the CFTC. Nodal Clear is a wholly owned subsidiary of Nodal Exchange and, as a registered derivatives clearing organization (“DCO”), acts as its clearinghouse. Nodal Clear is also the clearinghouse for another DCM, Coinbase Derivatives Exchange. Nodal is ultimately wholly owned by the European Energy Exchange AG. Nodal Clear is a “Subpart C” DCO, having elected to comply with the requirements applicable to DCOs that have been designated systemically important by the Financial Stability Oversight Council.

Nodal respectfully submits the following comments in response to the RFC.

¹ *Request for Comment on the Use of Artificial Intelligence in CFTC Regulated Markets* (Jan. 25, 2024), available at [CFTC Staff Releases Request for Comment on the Use of Artificial Intelligence in CFTC-Regulated Markets | CFTC](#).

Comments

Nodal commends the Commission staff for issuing the RFC in order to obtain a better understanding of the potential uses of AI in derivatives markets. Nodal uses AI on a limited basis to enhance efficiency, streamline processes, and gain insights from data. It is important for the CFTC to understand how AI is being used before undertaking rulemaking or issuing guidance. Obtaining a better understanding of AI uses may help to inform any regulations or guidance issued by the Commission. However, the public RFC process, such as that being followed here, may not be the best way for the Commission to obtain such understanding because market participants likely will not want to make specific comments in response to the RFC due to competition concerns that may not be addressed by a request for confidential treatment. A better way for the CFTC might be through a confidential survey, such as that recommended by the Future of Finance Subcommittee of the CFTC’s Market Risk Advisory Committee, or other confidential means (e.g., through examinations) that may be better protected from disclosure under the Freedom of Information Act.² Such an approach also is more flexible than the RFC and, along with a greater degree of confidentiality, may give the CFTC more detailed information of use cases that may better inform its decisions.

While it may be important for the Commission to understand AI use cases, any rules or guidance that are issued in response to the RFC, wherever possible, should be technology agnostic and principles-based. Rules or guidance that require the use of certain technologies or are overly prescriptive will quickly become out-of-date and unworkable in the fast-evolving world of AI. We note that in 2015, the Commission considered proposed rules in a related emerging technologies area, Regulation Automated Trading.³ These rules were in part a response to the development of high-frequency trading technologies. The proposed rules were subsequently withdrawn.⁴ Proposed Reg. AT was highly prescriptive in many respects and, had it been adopted, would largely be obsolete by this time.

Moreover, it is important that the CFTC promulgate rules that address policy concerns such as clearing member risk management or consumer protection, but without mandating the use of AI or other specific technology. AI is a developing technology that likely will be relevant for a number of decades. An approach that is not technologically agnostic may require the Commission to continually revisit its rules over a considerable time period, which may stifle innovation and undermine the Commission’s policy objectives. It may also go beyond the CFTC’s expertise, as it regulates derivatives market activity, not particular technologies. A good example where the Commission affirmed a technology neutral approach was in its amendments issued in 2017 to its recordkeeping rules. Through that rulemaking, the Commission eliminated the technologically obsolete Write One, Read Many (“WORM”) format that had been prescribed by its recordkeeping regulations, and instead established a principles-based, technology-neutral approach to

² In this regard, Section 8(a) of the Commodity Exchange Act, 7 U.S.C. §12, authorizes the Commission to make such investigations as it deems necessary to ascertain the facts regarding the operations of designated contract markets and other registrants, subject to certain confidentiality restrictions. Using its Section 8 authority, the Commission could obtain information regarding AI through a survey while ensuring that its confidentiality may be maintained.

³ *Regulation Automated Trading*, 80 Fed. Reg. 78824 (Dec. 17, 2015).

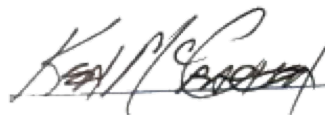
⁴ *Regulation Automated Trading: Withdrawal*, 85 Fed. Reg. 42755 (July 15, 2020).

recordkeeping systems and technology.⁵ In this regard, the Commission did not require or endorse any particular type of record retention system or technology under its technology-neutral approach. Rather, the Commission adopted a principles-based standard in its rules pursuant to which records required under the CFTC’s rules were to be retained “in a form and manner necessary to ensure the records’ and recordkeeping systems’ authenticity and reliability.”⁶ However, the length of time that elapsed before the CFTC reconsidered its recordkeeping rules to adopt this approach was considerable--WORM was a technology concept that, although state-of-the-art when it was first imposed as a requirement in the Commission’s rules, was about twenty years old and completely obsolete when the CFTC finally proposed to amend its rules. This lapse of time in the recordkeeping rule context is illustrative and demonstrates the importance of the Commission not adopting a prescriptive approach, or an approach that is not technology neutral, with regard to the use of AI.

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Nodal appreciates the opportunity to comment on the RFC. If you have any questions regarding these comments, please do not hesitate to contact the undersigned at mccracken@nodalexchange.com

Respectfully submitted,



Ken McCracken
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Nodal Clear, LLC

⁵ See *Recordkeeping*, 82 Fed. Reg. 24479 (May 30, 2017).

⁶ *Id.* at 24482.