

ALBERTA SECURITIES COMMISSION

EXEMPTION ORDER: FOREIGN DERIVATIVES EXCHANGE

Citation: Re Nodal Exchange, LLC, 2017 ABASC 143

Date: 20170815

Nodal Exchange, LLC

Background

1. Nodal Exchange, LLC (**Nodal**) seeks an order of the Alberta Securities Commission (the **Commission**) under:
 - (a) section 213 of the *Securities Act* (Alberta) (the **Act**) exempting Nodal from the exchange recognition requirement of section 62 of the Act; and
 - (b) section 15.1(1) of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) exempting Nodal from the requirements of NI 21-101.

Interpretation

2. Terms defined in the Act or in National Instrument 14-101 *Definitions* have the same meaning in this order unless otherwise defined herein.

Representations

3. Nodal represents as follows:
 - (a) Nodal is a limited liability company organized under the laws of Delaware and is a wholly-owned indirect subsidiary of European Energy Exchange AG (**EEX**), a stock corporation (*Aktiengesellschaft*) incorporated under German law.
 - (b) Nodal and EEX are indirect subsidiaries of Deutsche Börse AG, a stock corporation (*Aktiengesellschaft*) incorporated under German law.
 - (c) Nodal does not maintain an office or place of business in Alberta.
 - (d) Nodal makes exchange contracts available for trading on an electronic trading platform owned, operated, leased, licensed or otherwise made available by Nodal in accordance with rules promulgated by Nodal (the **Exchange Platform**).
 - (e) Nodal is registered as a designated contract market (**DCM**) with the Commodity Futures Trading Commission (**CFTC**). The CFTC reviews, assesses and enforces Nodal's adherence to United States (**US**) regulatory requirements for DCMs.
 - (f) CFTC regulation of Nodal addresses similar public interest concerns in respect of the execution and clearing of exchange contracts to those of interest to the Commission in the exercise of its jurisdiction under the Act.

- (g) Nodal offers direct access to the Exchange Platform to participants (**Trading Participants**) trading as principal whereby a Trading Participant has an explicit grant of authority to enter trades directly into the Exchange Platform (**Direct Access**). Nodal intends to offer Direct Access to participants resident in Alberta that apply to and are approved by Nodal as Trading Participants and agree to comply with its rules (**Alberta Participants**).
- (h) Nodal Clear, LLC (the **Clearing Agency**) clears, settles and guarantees the performance of all transactions in exchange contracts executed on the Exchange Platform.
- (i) The Clearing Agency is a wholly-owned subsidiary of Nodal.
- (j) The Clearing Agency is registered with the CFTC as a derivatives clearing organization (**DCO**) and is in good standing with the CFTC as a DCO.
- (k) The Clearing Agency complies with CFTC requirements implementing the Committee on Payments and Market Infrastructures and the Technical Committee of the International Organization of Securities Commissions (**IOSCO**) *Principles for financial market infrastructures* as amended or superseded from time to time.
- (l) Nodal adheres to IOSCO's *Principles for the Oversight of Screen-Based Trading Systems for Derivative Products* as amended or superseded from time to time and IOSCO's *Principles for the Regulation and Supervision of Commodity Derivatives Markets* as amended or superseded from time to time.
- (m) The CFTC is a signatory to:
 - (i) IOSCO's *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information*;
 - (ii) the Futures Industry Association's *Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations* which endorses the *International Information Sharing Memorandum of Understanding and Agreement* (the **Information-Sharing MOU**);
 - (iii) the *Tokyo Communiqué on Supervision of Commodity Futures Markets*; and
 - (iv) the *Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities* to which the Commission and certain other Canadian regulatory authorities are also signatories.
- (n) Nodal has executed the Information-Sharing MOU.

Undertakings

4. Nodal undertakes:

- (a) to maintain its status with the CFTC as a DCM in good standing in all material respects;
- (b) to comply with all requirements applicable to CFTC-regulated DCMs;
- (c) not to provide, and to take reasonable steps to prevent third parties from providing, Direct Access to persons in Alberta other than Alberta Participants;
- (d) to require each Alberta Participant that is not registered with the Commission as a dealer to file with Nodal:
 - (i) a written representation, executed by a person with the authority to bind the Alberta Participant, stating that as long as the Alberta Participant is granted Direct Access, the Alberta Participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to this order; and
 - (ii) a written undertaking, executed by a person with the authority to bind the Alberta Participant, stating that the Alberta Participant will provide promptly to the Commission such information as the Commission may request, and access to all premises in or from which the Alberta Participant operates;
- (e) to require each Alberta Participant to confirm in writing to Nodal that the Alberta Participant understands that:
 - (i) the Alberta Participant may be unable to enforce any legal rights against Nodal or any of its directors, officers, employees or agents as they are resident outside Alberta and all or substantially all of their assets are situated outside of Alberta; and
 - (ii) Nodal is subject to primary regulatory oversight by its home jurisdiction under the regulatory regime of that jurisdiction which may not be equivalent in all respects to the regulatory regime administered by the Commission;
- (f) to file a document evidencing Nodal's submission to the non-exclusive jurisdiction of the courts and administrative tribunals of Alberta in any proceeding arising out of, related to, concerning, or in any other manner connected with, Nodal carrying on business as an exchange in Alberta;
- (g) to maintain a valid and binding appointment of an agent for service in Alberta upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, relating to, concerning, or in any other

manner connected with, Nodal carrying on business as an exchange in Alberta;

- (h) to report to the Commission in accordance with the reporting requirements set out in the Appendix to this order (the **Reporting Requirements**);
- (i) to provide promptly to the Commission any information that a Commission representative may request;
- (j) to employ reasonable procedures for monitoring and enforcing compliance with the undertakings herein;
- (k) to cooperate with the Commission with respect to arrangements established to address cross-market oversight issues, including surveillance, emergency actions and the monitoring of trading; and
- (l) to continue to ensure the representations herein remain accurate in all material respects except as reported to the Commission under the Reporting Requirements.

Decision

5. Based on the representations and undertakings herein, the Commission:

- (a) under section 213 of the Act, exempts Nodal from the requirement to be recognized as an exchange under section 62(1) of the Act in connection with transactions in exchanges contracts on the Exchange Platform with Alberta Participants through Direct Access; and
- (b) under section 15.1(1) of NI 21-101, exempts Nodal from NI 21-101;

for so long as Nodal satisfies its undertakings herein and the Clearing Agency remains in good standing in all material respects as a DCO registered with the CFTC.

For the Commission:

“original signed by”

Stan Magidson, Chair & CEO

“original signed by”

Tom Cotter, Vice-Chair

Appendix Reporting Requirements

This Appendix forms a part of, and adopts terms defined in, the order exempting Nodal from section 62(1) of the Act and NI 21-101 (the **Order**).

Event reporting

1. Nodal will notify the Commission promptly:
 - (a) if the CFTC revokes, suspends or significantly changes the conditions of Nodal's registration as a DCM;
 - (b) if the CFTC revokes, suspends or significantly changes the conditions of the Clearing Agency's registration as a DCO;
 - (c) of any significant change to any representation in the Order;
 - (d) of any breach of an undertaking in the Order; and
 - (e) of any material disciplinary action commenced against, or any sanctions imposed on Nodal, or a senior officer or director of Nodal, by the CFTC.

Quarterly reporting

2. Nodal will provide to the Commission, within 30 days after the end of each calendar quarter, and at any time promptly upon the request of a Commission representative:
 - (a) a statement setting out:
 - (i) total volumes of exchange contracts traded in the quarter through the Exchange Platform worldwide;
 - (ii) the names and principal addresses of all Alberta Participants that have Direct Access to the Exchange Platform;
 - (iii) information, in a form and manner acceptable to the Executive Director, regarding exchange contracts traded in the quarter through Direct Access by Alberta Participants; and
 - (b) a list of all Alberta Participants against whom disciplinary action has commenced in the last quarter by Nodal or, to the best of Nodal's knowledge, the CFTC, with respect to activities undertaken by the Alberta Participant pursuant to its Direct Access to the Exchange Platform.

Annual reporting

3. Nodal will provide to the Commission, within 30 days after the end of each calendar year:

- (a) a description of any significant change to the regulatory requirements applicable in the US relevant to Nodal's registration as a DCM;
- (b) a certificate, executed by a senior officer of Nodal, that:
 - (i) the representations in the Order remain accurate except to the extent of any change previously disclosed to the Commission under the Order;
 - (ii) Nodal remains compliant with the undertakings in the Order;
 - (iii) Nodal continues to maintain its registration as a DCM in good standing in all material respects with the CFTC; and
 - (iv) the Clearing Agency has advised Nodal that the Clearing Agency continues to maintain its registration as a DCO in good standing with the CFTC.