

## Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

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### 13.2 Marketplaces

#### 13.2.1 Notice and Request for Comment – Application by Nodal Exchange, LLC for Exemption from Recognition and Registration as an Exchange and Related Registration Relief

#### ONTARIO SECURITIES COMMISSION

#### NOTICE AND REQUEST FOR COMMENT REGARDING APPLICATION BY NODAL EXCHANGE, LLC FOR EXEMPTION FROM RECOGNITION AND REGISTRATION AS AN EXCHANGE AND RELATED REGISTRATION RELIEF

#### A. Background

Nodal Exchange, LLC (**Nodal Exchange**) has applied to the Commission for an exemption from the requirement to be registered as an exchange pursuant to section 15 of the *Commodity Futures Act* (Ontario) (**CFA**) and the requirement to be recognized as an exchange pursuant to section 21 of the *Securities Act* (Ontario) (**OSA**).

Nodal Exchange is regulated as a designated contract market (**DCM**) by the United States Commodity Futures Trading Commission (**CFTC**), pursuant to the U.S. *Commodity Exchange Act*. As a DCM, Nodal Exchange operates an electronic trading system (**Trading System**) that offers cash settled commodity futures contracts that are based on electric power and natural gas (**Nodal Exchange Contracts**). Participants trade the Nodal Exchange Contracts solely for their own proprietary accounts without the ability to trade as a client through an intermediary such as a dealer or a futures commission merchant.

Nodal Exchange proposes to offer direct access in Ontario to their Trading System and facilities to prospective participants in Ontario (**Ontario Participants**).

As Nodal Exchange will be carrying on business in Ontario, it is required to be recognized as an exchange under the OSA and registered as a commodity futures exchange under the CFA or apply for exemptions from both requirements. Nodal Exchange has applied for an exemption from the registration and recognition requirements on the basis that it is already subject to regulatory oversight by the CFTC.

#### B. Related Relief

Nodal Exchange intends to provide direct access to the Trading System to Ontario Participants who will be (i) dealers that are engaged in the business of trading commodity futures contracts and commodity futures options in Ontario for their own proprietary accounts or (ii) Hedgers, as defined in subsection 1(1) of the CFA. Nodal Exchange is requesting exemptive relief from the registration requirements under section 22 of the CFA for trades in Nodal Exchange Contracts by Hedgers, in order for Hedgers to be able to access trading on Nodal Exchange directly and not “through a dealer” as otherwise required under the existing CFA exemption.

#### C. Application and Draft Exemption Order

In the application, Nodal Exchange has outlined how it meets the criteria for exemption from recognition and from registration. The specific criteria can be found in Appendix 1 of the draft recognition order. Subject to comments received, staff intend to recommend that the Commission grant an exemption order with terms and conditions based on the draft exemption order. The application and draft exemption order are attached as Appendices A and B, respectively, to this Notice.

#### D. Comment Process

The Commission is publishing for public comment Nodal Exchange’s application and the draft exemption order. We are seeking comment on all aspects of the application and draft exemption order.

Please provide your comments in writing, via e-mail, on or before September 6, 2014, to the attention of:

Ontario Securities Commission  
20 Queen Street West  
22nd Floor  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
Email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published.

Questions may be referred to:

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Appendix A



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July 17, 2014

Ontario Securities Commission  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON  
Canada M5H 3S8  
Attention: Secretary

*Secretary of the Ontario Securities Commission:*

**Nodal Exchange – Application for Exemption from Recognition as an Exchange and Registration as a Commodity Futures Exchange**

We are filing this application with the Ontario Securities Commission (“OSC”) for the following decisions (collectively, the “**Requested Relief**”):

1. A decision under Section 147 of the *Securities Act (Ontario)* (“**OSA**”) exempting Nodal Exchange from the requirement to be recognized as an exchange under Section 21(1) of the OSA;
2. A decision under Section 80 of the *Commodity Futures Act (Ontario)* (“**CFA**”) exempting Nodal Exchange from the requirement to be registered as a commodity futures exchange under Section 15(1) of the CFA; and
3. A decision under Section 38 of the CFA exempting trades in contracts on Nodal Exchange by a hedger (as defined in subsection 1(1) of the CFA) (“**Hedger**”) from the registration requirement under Section 22 of the CFA (the “**Hedger Relief**”).

OSC Staff has prescribed criteria that it will apply when considering applications by foreign-based commodity futures exchanges for registration (or exemption from registration) under Section 15 of the CFA. These criteria are prescribed in OSC Staff Notice 21-702 *Regulatory Approach for Foreign Based Stock Exchanges*, as updated, (“**Staff Notice 21-702**”) in relation to applications for recognition (or exemption from recognition) by foreign exchanges under Section 21 of the OSA.

For convenience, this Application is divided into the following listed Parts consistent with the criteria in Staff Notice 21-702.

Part I Background

Part II Application of Approval Criteria to Nodal Exchange

1. Regulation of the Exchange
2. Governance
3. Regulation of Products
4. Access
5. Regulation of Participants on the Exchange
6. Rulemaking
7. Due Process
8. Clearing and Settlement
9. Systems and Technology
10. Financial Viability
11. Transparency
12. Record Keeping
13. Outsourcing
14. Fees
15. Information Sharing and Oversight Arrangements
16. IOSCO Principles

Part III Submissions

Part IV Other Matters

## Part I Background

1. Nodal Exchange, LLC (“**Nodal Exchange**” or “**Exchange**”) and its parent holding company, Nodal Exchange Holdings, LLC (“**Nodal Holdings**”) are privately held companies organized as limited liability companies under the laws of the State of Delaware in the United States. On March 9, 2009, the Commodity Futures Trading Commission (“**CFTC**”) acknowledged Nodal Exchange as an Exempt Commercial Market (“**ECM**”), pursuant to the now repealed Section 5d of the *Commodity Exchange Act* (“**CEA**”).<sup>1</sup> Nodal Exchange launched its electronic trading system as an ECM on April 8, 2009. In accordance with Section 5 of the CEA, Nodal Exchange filed an application on October 11, 2012, with the CFTC for Designation as a Contract Market (“**DCM**”), which was approved on September 27, 2013 for commencement of operations as a DCM on September 30, 2013.<sup>2</sup> Nodal Exchange now operates as a DCM pursuant to Section 5 of the CEA and is regulated by the CFTC. Nodal Holdings does not carry on business as an exchange and is not regulated by the CFTC or any other regulatory authority.
2. Nodal Exchange operates the DCM from its headquarters in Tysons Corner, Virginia in the United States. The Exchange receives a majority of its revenue from transaction fees, which include electronic trading fees, surcharges for privately-negotiated transactions and other volume-related charges for contracts executed through the Exchange’s trading venues.
3. Nodal Exchange provides an electronic trading system and clearing support services to sophisticated commercial entities admitted by the Exchange (“**Participants**”) to transact in futures contracts offered by Nodal Exchange that are based on electric power and natural gas (“**Nodal Contracts**”). The electronic trading system for Nodal Exchange is known as Nodal LiveTrade, which is a Central Limit Order Book (“**CLOB**”) open during trading hours (“**Nodal LiveTrade**”). Participants consist of both buy- and sell-side traders, including utilities, investment banks, proprietary trading firms, hedge funds, commodity trading advisers, and other institutional investors. All Nodal Contracts are cleared through LCH.Clearnet Ltd. (“**LCH**”), which is recognized by the OSC as a clearing agency under Section 21.2 of the OSA. Nodal Exchange operates in the United States and does not have any offices nor maintains a physical presence in Ontario or any other Canadian province or territory.

Nodal Exchange offers cash settled power commodity futures contracts on hub, zone and node locations in the U.S. in the following organized electric power markets: ISO-NE, NYISO, PJM, MISO, ERCOT and CAISO with SPP and others to follow. Nodal Exchange power contracts may settle to the complete locational marginal pricing (“**LMP**”) of electricity, which consists of energy, loss and congestion or to just the energy component of LMP or the energy plus congestion components of LMP. For all locations, Nodal Exchange offers contracts settling to on-peak and off-peak hours, and in some select locations Nodal Exchange also offers contracts settling to a subset of the off-peak hours. In addition, Nodal Exchange also offers a natural gas contract.

4. Nodal Exchange also performs clearing support services for LCH that enable qualified Participants<sup>3</sup> to access LCH in order to clear Nodal Contracts that were executed off-exchange (“**Block Trades**”) and on Nodal LiveTrade. Qualified Participants executing Block Trades may access these clearing support services either directly or by authorizing a broker to submit Block Trades on their behalf (“**Authorized Broker**”).<sup>4</sup> The clearing support services provided by Nodal Exchange are administrative functions that consist of two primary functions: 1) verifying that each account holder’s trading activity does not cause their account to exceed the trade risk limit (“**TRL**”) provided by the LCH clearing member (“**Clearing Member**”), and 2) systems support for position keeping and clearinghouse administration.

To support the clearing process, Nodal Exchange conducts a TRL check on all transactions. The clearing member must provide the TRL, which is the maximum risk-based dollar amount permitted for each account. If a trade causes the TRL to be exceeded, Nodal will reject the trade. The Exchange also provides systems support for some clearing functions. In particular, Nodal Exchange performs the position keeping function for LCH and Clearing Members, and also produces intra-day and end of day margin calculations, which are verified by LCH.

5. The trading services of Nodal Exchange are available to two types of entities: Participants and Clearing Members. All market participants seeking access to Nodal LiveTrade as a Participant must execute (i) a participant agreement with Nodal Exchange and (ii) a clearing agreement with a Clearing Member, unless the Participant is a Clearing Member of LCH in order to clear its proprietary account. Participants admitted to the Exchange may access Nodal LiveTrade which

<sup>1</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) repealed Section 5d of the Commodity Exchange Act effective July 16, 2011, H.R. 4173, sec. 734(a), Pub. Law 111-203, 124 Stat. 1376.

<sup>2</sup> From July 16, 2011 until its effective registration as a DCM, Nodal Exchange continued to operate as an ECM pursuant to the CFTC’s ECM Grandfather Order, issued in accordance with section 723(c) of the Dodd-Frank Act, and subsequent CFTC orders issued pursuant to the CFTC’s exemptive authority under CEA Section 4(c) and its authority under section 712(f) of the Dodd-Frank Act.

<sup>3</sup> Persons executing Block Trades must be eligible contract participants as defined in 1a(18) of the CEA.

<sup>4</sup> An “Authorized Broker” is a regulated intermediary approved by the Exchange to submit Block Trades that are executed off-exchange, i.e. not on Nodal LiveTrade, on behalf of Participants to clear through specific accounts set up by Clearing Members. Authorized Brokers do not intermediate access onto Nodal LiveTrade.

is regulated by the CFTC as a DCM. Upon executing a participant agreement with Nodal Exchange, Clearing Members are admitted as Participants to access the Nodal LiveTrade solely for the purpose of liquidating trades on behalf of a Participant that has failed to perform its obligations to the Exchange or such Clearing Member.

The clearing support services of Nodal Exchange are available to Participants<sup>5</sup> for transactions on Nodal LiveTrade and Nodal Contracts executed off-exchange as Block Trades. Executed Block Trades may be submitted on behalf of Participants by Authorized Brokers who must be registered with the CFTC as either futures commission merchants or introducing brokers in accordance with the CEA.

Participants, Authorized Brokers, and Clearing Members must identify to the Exchange the individual employees, agents, or representatives designated with their authority to access the Exchange's services ("**Authorized Users**").<sup>6</sup> All Participants, Authorized Brokers, Clearing Members, and their respective Authorized Users are subject to the rules of Nodal Exchange ("**Rulebook**"), which have been submitted to the CFTC in accordance with rules promulgated by the CFTC ("CFTC Regulations" as further described in section 1.2.2 below).

6. Nodal Exchange proposes to offer access to Nodal LiveTrade and clearing support services to prospective participants in Ontario. To obtain direct access to Nodal Exchange, a prospective participant in Ontario must deliver an executed participant agreement, where therein, prospective participants consent to the jurisdiction of the Exchange. Prospective participants in Ontario admitted by Nodal Exchange ("**Ontario Participants**") will access the Exchange on a principal-to-principal basis, including the right to place Orders<sup>7</sup> on Nodal LiveTrade for each of its proprietary accounts. The Nodal Exchange Rulebook provides clear and transparent access criteria and requirements for all Participants, as well as minimum financial requirements for Participants to maintain the financial integrity of the Exchange. Nodal Exchange applies these criteria to all Participants in an impartial manner.
7. Nodal Exchange expects that Ontario Participants will be certain Canadian financial institutions (within the meaning of such term in subsection 1.1(3) of National Instrument 14-101 *Definitions*) and certain other market participants that have a head office or principal place of business in Ontario, such as (i) dealers that are engaged in the business of trading commodity futures in Ontario; (ii) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity; and (iii) institutional investors and proprietary trading firms. In each case, Nodal Exchange expects that Ontario Participants will be (i) dealers that are engaged in the business of trading commodity futures and commodity options in Ontario, or (ii) Hedgers.
8. Nodal Exchange does not require relief from the requirement under section 33 of the CFA, which prohibits trading in all contracts (other than by Hedgers) except contracts that are (a) traded on a registered or recognized commodity futures exchange, (b) qualified by prospectus under the OSA or (c) traded on an exchange situated outside of Ontario as a result of an unsolicited order placed by a dealer that does not carry on business in Ontario, as a result of the deemed rule entitled *In the Matter of Trading in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges in the United States of America*.

## Part II Application of Approval Criteria to Nodal Exchange

### 1 REGULATION OF THE EXCHANGE

#### 1.1 Regulation of the Exchange – The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

1.1.1 Nodal Exchange, LLC ("Nodal Exchange" or the "Exchange") is a Designated Contract Market ("DCM") within the meaning of that term under the U.S. *Commodity Exchange Act* ("CEA"). The Exchange is subject to regulatory supervision by the U.S. Commodity Futures Trading Commission ("CFTC"), a U.S. federal regulatory agency. The Exchange is obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces the Exchange's adherence to the CEA and the regulations thereunder on an ongoing basis, including the DCM core principles ("**DCM Core Principles**") relating to the operation and oversight of the Exchange's markets, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection.

1.1.2 Nodal Exchange is a DCM that operates a futures exchange providing an electronic trading system, known as Nodal LiveTrade, where Participants trade and execute futures contracts on electric power and natural gas ("Nodal

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<sup>5</sup> Persons executing Block Trades must be eligible contract participants as defined in 1(a)(18) of the CEA.

<sup>6</sup> An "Authorized User" is a natural person who is either employed by or is an agent of a Clearing Member, a Participant or Authorized Broker and who is authorized by the Exchange as an Authorized User in accordance with Nodal Exchange Rule 3.6.

<sup>7</sup> The term "Order" is defined in section 4.1.3 of Part II below.

Contracts”) on a principal-to-principal basis. A list of the Nodal Contracts traded on Nodal Exchange is available on Nodal Exchange’s website at [www.nodalexchange.com](http://www.nodalexchange.com) and is also included in Appendix “B” attached hereto.

- 1.1.3 The regulatory scheme by the CFTC for DCMs, such as Nodal Exchange, is generally comparable to the regulatory scheme in Ontario for comparable transactions. Nodal Exchange is obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces the Exchange’s adherence to the CEA and the regulations thereunder on an ongoing basis, including the DCM Core Principles relating to financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection. The CFTC’s Division of Market Oversight, Market Compliance Section conducts a regular in-depth review of every DCM on a biennial basis, known as a rule enforcement review, that assesses the exchange’s ongoing compliance with CFTC regulations in order to enforce its rules, prevent market manipulation and customer and market abuses, and to ensure the recording and safe storage of trade information.
- 1.1.4 While operating as an ECM since April 8, 2009, Nodal Exchange filed an application with the CFTC on October 11, 2012 for registration as a DCM which was approved on September 27, 2013 for operations commencing September 30, 2013. Nodal Exchange now operates as a DCM pursuant to the CEA and is regulated by the CFTC. Nodal Exchange has never been declared to be in breach of its regulatory responsibilities by the CFTC.
- 1.1.5 To be designated and maintain a designation as a contract market, Nodal Exchange must comply with the core principles for operation of section 5(d) of the CEA, and the provisions of Part 38.
- 1.1.6 Nodal Exchange’s Regulatory Chart, which was Exhibit L-1 of Nodal Exchange’s DCM application to the CFTC, demonstrates how Nodal Exchange complies with the DCM Core Principles:
- (a) Core Principle 1 – Designation as a Contract Market
  - (b) Core Principle 2 – Compliance with Rules
  - (c) Core Principle 3 – Contracts Not Readily Subject to Manipulation
  - (d) Core Principle 4 – Prevention of Market Disruption
  - (e) Core Principle 5 – Position Limitations or Accountability
  - (f) Core Principle 6 – Emergency Authority
  - (g) Core Principle 7 – Availability of General Information
  - (h) Core Principle 8 – Daily Publication of Trading Information
  - (i) Core Principle 9 – Execution of Transactions
  - (j) Core Principle 10 – Trade Information
  - (k) Core Principle 11 – Financial Integrity of Transactions
  - (l) Core Principle 12 – Protection of Markets and Market Participants
  - (m) Core Principle 13 – Disciplinary Procedures
  - (n) Core Principle 14 – Dispute Resolution
  - (o) Core Principle 15 – Governance Fitness Standards
  - (p) Core Principle 16 – Conflicts of Interest
  - (q) Core Principle 17 – Composition of Governing Boards of Contract Markets
  - (r) Core Principle 18 – Record Keeping
  - (s) Core Principle 19 – Antitrust Considerations

- (t) Core Principle 20 – System Safeguards
- (u) Core Principle 21 – Financial Resources
- (v) Core Principle 22 – Diversity of Board of Directors
- (w) Core Principle 23 – Securities and Exchange Commission

**1.2 Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.**

- 1.2.1 The CFTC carries out the regulation of the futures markets in accordance with the provisions of the CEA and the U.S. *Commodity Futures Modernization Act of 2000*. The CFTC is subject to reauthorization by the U.S. Congress every five years.
- 1.2.2 The CFTC has been charged with administering and enforcing the CEA. Accordingly, the CFTC is the U.S. government agency that has direct regulatory and oversight responsibility over DCMs. To implement the CEA, the CFTC has promulgated regulations and guidelines (“**CFTC Regulations**”) that further interpret the DCM Core Principles (described in paragraph 1.1.6 above) and govern the conduct of U.S. DCMs such as Nodal Exchange. The CFTC monitors trading on Nodal Exchange and receives daily transaction and other reports from Nodal Exchange, including reports showing trading volume and open interest. DCMs, such as Nodal Exchange, must document to the CFTC how they will make information routinely available and/or as appropriate to enable the CFTC to properly perform its oversight function.
- 1.2.3 Nodal Exchange is required to demonstrate its compliance with the DCM Core Principles applicable to all U.S. DCMs. As appropriate or upon request, and in a form and manner specified by the CFTC, a DCM must file information related to its business as a DCM, provide written documentation demonstrating the DCM’s compliance with one or more core principles, and information related to Participants or related positions. A DCM is required to make available to the CFTC information regarding its activities including information regarding risk assessments, internal governance, and legal proceedings.
- 1.2.4 To enforce the CEA and the CFTC’s authority, Nodal Exchange may suspend any Participant without notice in compliance with the Nodal Exchange participant agreement and Rulebook. All Participants are subject to the provisions of the Nodal Exchange participant agreement and Rulebook, which include the rules for regulatory compliance.
- 1.2.5 The CEA, the CFTC Regulations, and particularly the DCM Core Principles reflect standards set by the International Organization of Securities Commissions (“**IOSCO**”), such as “Objectives and Principles of Securities Regulation” (1998, 2002, and 2003) and “Report on Co-operation between Market Authorities and Default Procedures” as well as the “Standards for Regulated Markets” published by the Forum of European Securities Commissions in December 1999.

**2 GOVERNANCE**

**2.1 Governance – The governance structure and governance arrangements of the exchange ensure:**

**(a) effective oversight of Nodal Exchange,**

- 2.1.1 The Board of Directors of Nodal Exchange, LLC (“**Board**”), which consists of five individuals, is responsible for the oversight of the Exchange. The five-person Board is balanced with the Nodal Exchange CEO, two Public Directors<sup>8</sup> with significant and relevant industry experience, and two directors that are employees of Participants on the Exchange. The Board is authorized to manage the day-to-day business operations of the Exchange in accordance with the Nodal Exchange Limited Liability Company Agreement (“**LLC Agreement**”). Subject to the oversight of the Board, the Exchange shall appoint from time to time one or more individuals to serve as the Chief Executive Officer, Chief Regulatory Officer and may further appoint such other officers of the Exchange or any subsidiary of the Exchange (each, an “**Officer**”) as deemed necessary or appropriate, with such titles, duties, and authority as the Exchange shall approve, to carry out the business of the Exchange or any subsidiary of the Exchange, and upon such terms and conditions as the Board shall determine.
- 2.1.2 The holding company and sole shareholder of Nodal Exchange, Nodal Exchange Holdings, LLC (“Nodal Holdings”), is a privately held company and Nodal Exchange is its sole subsidiary. Nodal Holdings does not have any employees and

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<sup>8</sup> A director having the qualifications set out in Nodal Exchange Rule 2.1.5.

has limited contractual arrangements. The investors in Nodal Holdings are each represented on the Board of Directors of Nodal Holdings (“**Holdings Board**”), which consists of seven individuals, including three individuals on the Board of Directors of Nodal Exchange, each with one vote. However, Nodal Exchange and Nodal Holdings are separate entities. Membership on the Holdings Board does not confer any trading rights on Nodal Exchange. Nodal Holding’s primary governance obligations are to set the strategic direction of the Exchange, approve the annual operating budget, approve employee compensation, and to approve significant commitments and transactions involving Nodal Exchange. The Holdings Board does not have the authority to veto Exchange Board decisions within the Exchange Board’s purview.

- 2.1.3 In accordance with applicable CFTC Regulations, Nodal Exchange is required to maintain regulatory capital in an amount at least equal to one year of projected operating expenses as well as cash, liquid securities, or a line of credit at least equal to six months of projected operating expenses. On a monthly basis, Nodal assesses the adequacy of its financial resources to meet its requirements, and submits a report quarterly to the CFTC that provides the Exchange’s financial information to demonstrate compliance with the CFTC Regulations. Nodal Exchange is in compliance with this requirement and such requirement is taken into consideration as part of the budgeting process.
- 2.1.4 Nodal Exchange’s annual operating budget is based on regular ongoing business obligations and initiatives and is updated based on the upcoming annual goals of the Nodal Exchange management team. The overall budget is presented to the Nodal Holdings Board for approval. The Nodal Holdings Board also approves significant corporate matters, such as a credit facility or a strategic partnership.
- 2.1.5 The Board has day-to-day management authority, including which Nodal Contracts are available from time to time for trading subject to the Rules, and will approve Rules containing Contract Specifications of such Nodal Contracts. The Board has delegated authority to the Board Chairman & Chief Executive Officer and the President & Chief Operating Officer, who may separately approve rule changes, new products, and other Exchange matters on behalf of the Board, provided that changes with respect to rules and Nodal Contracts will be submitted to the CFTC as required by applicable law.
- 2.1.6 The Board has the power to call for review, and to affirm, modify, suspend or overrule, any and all decisions and actions of any committees of the Board or any panel of the Exchange’s officers related to the day-to-day business operations of the Exchange.
- 2.1.7 The Board sets high standards for the Exchange. Implicit in this philosophy is the importance of sound corporate governance. Nodal Exchange’s governance structures and processes reflect its commitment to the industry participants who rely on the Exchange to provide a fair and efficient energy market. Nodal Exchange’s governance approach also supports the Exchange’s important role as a self-regulatory organization subject to oversight by the CFTC.
- 2.1.8 The Holdings Board appoints all of the directors on the Board. Consistent with DCM Core Principle 15, persons involved in the governance of, and persons trading on, the Exchange are subject to fitness and eligibility criteria under the Exchange Rules. As described in the Nodal Exchange Rulebook, the eligibility/fitness criteria to serve as a director on the Board or any committee established by Nodal Exchange would disqualify any individual who has committed a disciplinary offense or subject to a disqualification from any registration with the CFTC.
- 2.1.9 The Board has the three following standing committees: the Nominating Committee, the Regulatory Oversight Committee, and the Exchange Participant Committee. Each committee has a written charter that sets forth its responsibilities in more detail.
- 2.1.10 The Nominating Committee, which consists of at least 51% Public Directors and is chaired by a Public Director, is responsible for (i) identifying individuals qualified to serve on the Board, consistent with criteria established by the Board and any composition requirement established by the CFTC; and (ii) administering a process for the nomination of individuals to the Board. It is the objective of the Board to be composed of individuals with the experience and the reputation for integrity to exercise good judgment to provide practical insights and different perspectives to effectively represent the best interests of the Exchange and the marketplace. The Holdings Board seeks to appoint directors on the Board with a variety of talents and expertise so that the Board operates effectively to ensure the market integrity of the Exchange.
- 2.1.11 With respect to director qualifications, the Nominating Committee recommends candidates to the Holdings Board for approval and appointment to the Board. The Exchange believes that it is essential that Board members represent diverse viewpoints taking into account the entirety of the individuals’ credentials. With respect to the nomination of continuing directors for re-appointment, the individual’s contributions to the Board are also considered. In assessing new candidates for the Board, Board members shall possess the ability to contribute to the effective oversight and management of Nodal Exchange, taking into account the needs of Nodal Exchange and such factors as the individual’s experience, perspective, skills and knowledge of the industry in which Nodal Exchange operates. The Nominating



Committee reviews the qualifications and backgrounds of potential directors in light of the needs of the Board at the time. In evaluating potential director nominees, the Nominating Committee will take into consideration, among other factors, whether the nominee:

- Has the highest professional and personal ethics and values;
- Has the relevant expertise and experience required to offer advice and guidance to Nodal Exchange's CEO;
- Has the ability to make independent analytical inquiries;
- Can dedicate sufficient time, energy and attention to the diligent performance of his or her duties;
- Has the ability to represent the interests of Nodal Holdings, as appropriate, and to create long-term value;
- Has any special business experience and expertise in a relevant area;
- Has an understanding of Nodal Exchange's business, products, market dynamics and customer base.

2.1.12 The Nominating Committee shall identify and recommend the directors on the Board who are qualified to fill vacancies on any committee of the Board (other than the Nominating Committee). In nominating a candidate for committee membership, the Nominating Committee shall take into consideration the factors set forth in the charter of that committee, if any, requirements under applicable law, including the CEA, as well as any other factors in light of the needs of that committee, including without limitation the individual's experience, perspective, skills, and knowledge and the interplay of the individual's experience with the experience of the other committee members.

2.1.13 The Regulatory Oversight Committee ("**ROC**") is composed solely of Public Directors. The ROC oversees the Exchange's regulatory program on behalf of the Board with the authority to (i) monitor the regulatory program of the Exchange for sufficiency, effectiveness, and independence and (ii) oversee all facets of the regulatory program, including:

- (a) trade practice, compliance, and market surveillance; audits, examinations, and other regulatory responsibilities with respect to Participants (including compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;
- (b) reviewing the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of regulatory personnel;
- (c) supervising the Chief Regulatory Officer of the Exchange, who will report directly to the Regulatory Oversight Committee;
- (d) recommending changes that would ensure fair, vigorous, and effective regulation; and
- (e) reviewing all regulatory proposals prior to implementation and advising the Board as to whether and how such changes may impact regulation.
- (f) In the event that the Board rejects any recommendation or supersedes any action of the ROC, Nodal Exchange shall prepare and submit a report to the CFTC as required under the CEA and the Nodal Exchange LLC Agreement.

2.1.14 The Exchange Participant Committee consists of at least 35% Public Directors. The Exchange Participant Committee is responsible for (i) determining the standards and requirements for initial and continuing Participant eligibility, (ii) reviewing appeals of staff denials of Participant applications, and (iii) approving Exchange Rules that would result in different categories or classes of Participants receiving disparate access to the Exchange. The Exchange Participant Committee may not, and may not permit the Exchange to, restrict access or impose burdens on access in a discriminatory manner, within each category or class of Participants or between similarly situated categories or classes of Participants. Per Exchange Rule 3.3.4., if an applicant's requested admission is denied or conditioned, then the applicant may appeal to the Exchange Participant Committee.

**(b) Nodal Exchange's business and regulatory decisions are in keeping with its public interest mandate,**

2.1.15 Nodal Exchange is committed to ensuring the integrity of the contracts it submits for clearing and the stability of the financial system, in which market infrastructure plays an important role. Nodal Exchange must ensure the integrity of contracts on the exchange and the protection of customer funds under Core Principle 11 – *Financial Integrity* ("**Core**

**Principle 11**)". Nodal Exchange fulfills this requirement in part through compliance with other DCM Core Principles, such as Core Principle 3 – *Contracts Not Readily Subject to Manipulation* ("**Core Principle 3**") and Core Principle 9 – *Execution of Transactions* ("**Core Principle 9**"). Stability of the market infrastructure is enhanced through compliance with Core Principle 21 – *Financial Resources* ("**Core Principle 21**"). Core Principle 21 requires a DCM to maintain adequate financial resources to discharge its responsibilities and ensure orderly operation of the market. Nodal Exchange maintains financial resources sufficient to cover its operating costs for one-year, calculated on a rolling basis. The rules, policies and activities of Nodal Exchange are designed and focused on ensuring it fulfills its public interest mandate. Nodal Exchange operates on a basis consistent with applicable laws and regulations, and practices of other DCMs.

2.1.16 Additionally, please refer to section (d) below for further discussion of the governance structure, arrangements and safeguards relating to the management of conflicts of interest that are relevant to the Nodal Exchanges' public interest mandate.

(c) **fair, meaningful and diverse representation on the Board of Directors ("Board") and any committees of the Board, including:**

- i. **appropriate representation of independent directors, and**
- ii. **a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,**

2.1.17 The experience and diversity of the Board has been, and continues to be, critical to Nodal Exchange's success. The Nodal Exchange Board maintains a proper balance among the different persons or companies using the services or facilities of the Exchange by (1) having a nominating committee to consider this balance in nominating board members, (2) having Public Directors who are experienced in the industry but not actively using the services, and (3) having Board members who are current users of the Exchange. The Board is responsible for evaluating how to maintain the appropriate expertise, industry knowledge and skills to oversee Nodal's complex business. The Board seeks directors from diverse professional backgrounds and expertise. All candidates for Board membership are nominated by the Nominating Committee of the Board and are evaluated for their expertise, experience, ethics, independence, commitment to enhancing shareholder value, understanding of Nodal's business, and lack of material conflicts of interest. The Nominating Committee may nominate Participant users as non-public directors. Directors elected to the Board have open access to senior management and, as appropriate, to Nodal's outside advisors. This access enables directors to gather input from a diverse pool of market participants, employees, and advisors. Nodal believes its leadership structure provides a well-functioning and effective balance between management leadership and appropriate safeguards and oversight by non-employee directors.

2.1.18 Nodal Exchange is required to ensure that it meets the DCM Core Principles which among other things require that Nodal has processes and procedures to address potential conflicts of interest that may arise in connection with the operation of the Exchange. Significant representation of individuals who do not have relationships with the Exchange, referred to as "public directors" in the CFTC Regulations, play an important role in Nodal's processes to address potential conflicts of interest. The Board has assessed which directors would be considered "public directors" based upon their lack of relationship with the Exchange and the industry per the CFTC Regulations.

2.1.19 Consistent with DCM Core Principle 16 and pursuant to Exchange Rule 2.1.4, at all times not less than 35% of the Board's Directors (but not fewer than two individuals) must be Public Directors, as defined by the CFTC. To qualify as a Public Director, a person cannot have a significant business relationship with the Exchange. In addition, Rule 2.6 establishes rules to minimize conflicts of interest and a process for resolving conflicts of interest. Rule 2.5.1 separately limits the use and disclosure of material non-public information gained in connection with a member's participation on the Board or any committee for any purpose other than the performance of his or her official duties as a member of the Board or committee.

2.1.20 Consistent with Core Principle 17 and pursuant to the Exchange LLC Agreement, the Board consists of five directors, two of which are Public Directors as defined in CFTC Regulations. As such, 40% of the Board is Public Directors. Additionally, the ROC is comprised solely of Public Directors. The Nominating Committee monitors and assesses the Board's independence, which includes developing and recommending to the Board standards to be applied in making determinations as to the absence of material relationships between Nodal Exchange and a director.

**(d) Nodal Exchange has policies and procedures to appropriately identify and manage conflicts of interest, and**

- 2.1.21 Nodal Exchange's reputation and the integrity of its market are its most valuable assets. It is, therefore, in Nodal Exchange's best interests to ensure the Exchange is operated in a manner that serves the best interests of the market which in turn benefits its shareholder(s) and the investors of Nodal Exchange Holdings.
- 2.1.22 Through its enforcement of the conflicts of interest policies in Rule 2.6 that apply to all members of the Board, any Disciplinary Panel and Appeals Committee, as well as the Exchange's compliance with the CEA and CFTC Regulations, Nodal Exchange has established a robust set of safeguards designed to ensure the Exchange's functions operate free from conflicts of interest or inappropriate influence as described above. The CFTC also conducts its own surveillance of the markets and market participants and actively enforces compliance with the CEA and CFTC Regulations, including Core Principle 16 – *Conflicts of interest*. In addition to the CFTC's oversight of the markets, Nodal Exchange separately establishes and enforces rules governing the activity of all market participants in their market. Further, the National Futures Association (“NFA”) establishes rules and has regulatory authority with respect to every firm and individual who conducts futures trading business with public customers. The CFTC, in turn, oversees the effectiveness of Nodal Exchange and the NFA in fulfilling their respective regulatory responsibilities.
- 2.1.23 Nodal Exchange has adopted a Code of Conduct that applies to all employees, including the executive officers. The provisions of the Code of Conduct address potential and actual conflicts of interest. On an annual basis, employees are trained with regards to the Code of Conduct.
- 2.1.24 In accordance with the Nodal Exchange LLC Agreement, no member of the Board may vote on any matter where such member is subject to a conflict of interest. Accordingly, no member of the Board, any Disciplinary Panel or any Appeals Committee will knowingly participate in such body's deliberations or voting in any matter involving a named party in interest where such member (i) is the named party in interest in the matter, (ii) is an employer, employee or fellow employee of a named party in interest, (iii) has any other significant, ongoing business relationship with a named party in interest, excluding relationships limited to Nodal Contracts, or (iv) has a family relationship with a named party in interest.
- 2.1.25 Prior to consideration of any matter involving a named party in interest, each member of the deliberating body who does not choose to abstain from deliberations and voting will disclose to the Chief Regulatory Officer whether such member has one of the relationships listed in paragraph 2.1.24 above with a named party in interest.
- 2.1.26 The Chief Regulatory Officer will determine whether any member of the relevant deliberating body who does not choose to abstain from deliberations and voting is subject to a conflicts restriction based on a named party in interest. Such determination will be based upon a review of the following information: (A) information provided by such member pursuant to paragraph 2.1.24 above; and (B) any other source of information that is held by and reasonably available to the Exchange.
- 2.1.27 No member of the Board, any Disciplinary Panel, any Appeals Committee or any other disciplinary committee of the Exchange will participate in such body's deliberations and voting on any significant action if such member has a direct and substantial financial interest in the result of the vote, as determined pursuant to paragraph 2.1.29 below.
- 2.1.28 Prior to consideration of any significant action, each individual who does not choose to abstain from deliberations and voting will disclose to the Chief Regulatory Officer any information that may be relevant to a determination of whether such member has a direct and substantial financial interest in the result of the vote.
- 2.1.29 The Chief Regulatory Officer will determine whether any individual who does not choose to abstain from deliberations or voting is subject to a conflicts restriction based on a direct and substantial financial interest. Such determination will be based upon a review of the following information: (A) the most recent large trader reports and clearing records available to the Exchange; (B) information provided by such member pursuant to paragraph 2.1.28 above; and (C) any other information reasonably available to the Exchange, taking into consideration the exigency of the significant action being contemplated.
- 2.1.30 Any member of the Board, any Disciplinary Panel, any Appeals Committee or any other disciplinary committee of the Exchange who would otherwise be required to abstain from deliberations and voting pursuant to paragraph 2.1.27 above may participate in deliberations, but not voting, if the deliberating body, after considering the factors specified below, determines that such participation would be consistent with the public interest; provided, however, that before reaching any such determination, the deliberating body will fully consider the information specified in paragraph 2.1.29 above which is the basis for such member's substantial financial interest in the significant action that is being contemplated. In making its determination, the deliberating body will consider: (A) whether such member's participation

in the deliberations is necessary to achieve a quorum; and (B) whether such member has unique or special expertise, knowledge or experience in the matter being considered.

2.1.31 The minutes of any meeting to which the conflicts determination procedures set forth in this Rule apply will reflect the following information:

- (a) the names of all members of the relevant deliberating body who attended such meeting in person or who otherwise participated in such meeting;
- (b) the name of any member of the relevant deliberating body who voluntarily recused himself or herself or was required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention, if stated;
- (c) the information that was reviewed for each member of the relevant deliberating body; and any determination made in accordance with paragraph 2.1.30 above.
- (e) **There are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.**

2.1.32 The Nodal Exchange insurance program provides professional indemnity and directors and officers' coverage to all directors and executive officers of Nodal Exchange.

2.1.33 The organizational documents for Nodal Holdings and Nodal Exchange include limitations of liability and indemnity provisions:

- Nodal Holdings: Sections 5.7, 7.5, and 7.6 of its Limited Liability Company Agreement.
- Nodal Exchange: Sections 2.6, 7.6, and 7.7 of its Limited Liability Company Agreement.

2.1.34 See paragraph 2.1.10 for information regarding director qualifications. Nodal Exchange hires officers and employees who are qualified for each position based on relevant experience and/or education. Their individual goals and performance are annually assessed by their direct manager as part of Nodal's performance management process. Directors, officers, and employees are competitively remunerated as appropriate for successful retention.

**2.2 Fitness – The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.**

2.2.2 Prior to appointment to the Board and on an annual basis thereafter, each director, director nominee and officer of Nodal Exchange must complete a questionnaire that requires disclosure relating to any criminal or disciplinary offenses, especially in regards to financial activities. A copy of the questionnaire is available upon request. Upon appointment, each member of the Board shall provide to the Exchange, where applicable, changes in registration information within 30 days and certification of compliance accordingly. The Exchange shall independently verify information supporting Board compliance with eligibility criteria.

2.2.3 In addition, to serve as a member of the Board, an individual must possess the ability to contribute to the effective oversight and management of the Exchange, taking into account the needs of the Exchange and such factors as the individual's experience, perspective, skills and knowledge of the industry in which the Exchange operates. This shall include sufficient expertise, where applicable, in financial services, risk management, and clearing services.

2.2.4 The Exchange will conduct annual surveys of each director and officer regarding criminal or disciplinary offenses in order ensure their continued compliance with eligibility and fitness standards, in accordance with Exchange Rules and policies.

### **3 REGULATION OF PRODUCTS**

**3.1 Review and Approval of Products – The products traded on Nodal Exchange and any changes thereto are reviewed by the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.**

3.1.1 Pursuant to 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8 and 12, the CFTC implemented Part 40 (Provisions Common to Registered Entities) ("**Part 40**"), which provides the process for review of new products traded on CFTC-registered DCMs. Part 40 requires that all new products and changes to products be self-certified with the CFTC under CFTC Regulations 40.2 –

*Listing products for trading by certification (“CFTC Regulation 40.2”)* and 40.6 – *Self-certification of rules (“CFTC Regulation 40.6”)*, respectively. CFTC Regulation 40.2 requires that the CFTC receive new product submissions “by the open of business on the business day preceding the product’s listing.” In addition, CFTC Regulation 40.2 requires that the new product submission contain a “[c]oncise explanation and analysis of the product and its compliance with the applicable provisions of the [CEA], including its core principles, and the [CFTC’s] regulations thereunder.” The CFTC core principles relevant to products traded on the DCM include: Core Principle 2 – *Compliance with Rules (“Core Principle 2”)*, Core Principle 3, Core Principle 4 – *Monitoring of Trading (“Core Principle 4”)*, Core Principle 5 – *Positions Limits or Accountability*, Core Principle 7 – *Availability of General Information (“Core Principle 7”)*, Core Principle 8 – *Daily Publication of Trading Information (“Core Principle 8”)*, Core Principle 9, Core Principle 10 – *Trade Information (“Core Principle 10”)*, Core Principle 11 and Core Principle 12 – *Protection of Market Participants (“Core Principle 12”)*. To show compliance with Core Principle 3, the CFTC requires DCMs to demonstrate that new products are not susceptible to manipulation. Explicit instructions to meet this requirement are at Appendix C to Core Principle 3 – *Demonstration of Compliance That a Contract is Not Readily Susceptible to Manipulation (“Appendix C”)*. Appendix C outlines general product requirements as well as requirements by derivative type (i.e., futures, swaps, and options). Appendix C includes the following general requirements: including certain contract terms and conditions in public-facing materials, reliance on publicly available information when practicable, attestations of reliability in calculating prices for trade and/or settlement, cash market descriptions based on both the national and regional/local markets relevant to the underlying commodity and price derivations that promote price discovery and are not susceptible to manipulation. Appendix C also contains varied and numerous requirements specific to each derivative type and settlement method. These specific requirements seek to foreclose the potential for price manipulation unique to each derivative type and settlement method.

- 3.1.2 In accordance with Part 40 of the CFTC’s regulations, the Exchange must submit all products to the CFTC prior to listing the product for trading. The Exchange may either request that the CFTC pre-approve the products, or in compliance with the CFTC’s Regulation 40.2, submit the products to the CFTC and certify that the products comply with the CEA and the CFTC’s regulations thereunder. This submission must include an analysis of the products that demonstrates compliance with the applicable provisions of the CEA, including the DCM’s core principles, and the CFTC’s regulations thereunder. The Exchange must submit the products and certification to the CFTC and simultaneously post the submission publicly on its website at least 24 hours in advance of making the product available for trading.
- 3.2 Product Specifications – The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.**
- 3.2.1 Among other things, the requirement that new products comply with the DCM Core Principles means that the self-certification submission contain an analysis of the underlying cash market and the deliverable supply of the underlying product. In response to a DCM’s self-certification of a new product, the CFTC may respond with questions requesting additional information on the underlying market including, but not limited to: supply and demand characteristics, participant composition, market concentration, deliverable supply estimates, or the relation of the contract size to the underlying market. If a DCM is unable to provide satisfactory answers to the CFTC’s questions, it may require the DCM to withdraw the product certification for failing to comply with the CEA and the DCM Core Principles.
- 3.2.2 The products traded on Nodal Exchange, known as Nodal Contracts, are standardized futures contracts based on the locational (hub, zones, and nodes) electric power pricing on the regional transmission grids administered by the Regional Transmission Organizations (“**RTOs**”) and Independent Service Operators (“**ISOs**”). The RTOs and ISOs operate regional wholesale electric markets that establish the usual commercial customs and practices for buying and selling electric power. The terms and conditions of Nodal Contracts are in conformity with the usual commercial customs and practices for trading wholesale electric power on the RTO/ISO systems. Nodal Exchange also offers a gas contract that settles at the Henry Hub gas price, which is a benchmark for the industry.
- 3.2.3 Nodal Contracts are futures contracts on locational electric power on the RTO/ISO systems. Futures contracts on energy commodities, including electric power, are commonly traded on exchanges regulated by the CFTC. The contract specifications of Nodal Contracts are in conformity with the usual commercial practices of futures contracts on electric power.
- 3.2.4 Consistent with Core Principle 3, the Exchange’s power contracts are all financially settled and do not involve the physical delivery of power. The contracts settle to power prices published by the relevant ISO or RTO. Each contract specification outlines which ISO/RTO price(s) will be used for settlement and which hours will be used in the settlement calculation. ISO/RTOs publish both Real Time (“**RT**”) and Day Ahead (“**DA**”) prices for each component of their Locational Marginal Price (“**LMP**”) – “Energy,” “Congestion” and “Loss” – at each location on their grid.<sup>9</sup> Nodal offers

<sup>9</sup> ERCOT does not publish Loss.

contracts that settle to RT LMP, DA LMP, the Energy component of the LMP, and the Energy plus Congestion components of the LMP.

- 3.2.5 For each contract, the Exchange specifies which hours during the month will be used for the calculation of the contract price. Contracts settle to the average of all applicable monthly hours. These periods are based on industry and ISO/RTO standards.
- 3.2.6 Because ISOs/RTOs publicly publish their DA and RT prices on a same-day basis, the settlement of the contracts is transparent to the Exchange market. Most Exchange contracts go into final settlement three business days after the end of the contract month to ensure that any timely ISO/RTO corrections to posted prices will be reflected in the Exchange's final settlement price. Contracts that settle to Energy plus Congestion settle five business days after month-end to incorporate the slightly later publication of some RTO zonal data.
- 3.2.7 The ISOs/RTOs provide a marketplace for wholesale power and are subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"), or the Public Utility Commission of Texas ("PUCT") in the case of the Electric Reliability Council of Texas ("ERCOT"). The DA and RT markets that generate the prices to which the Exchange contracts settle are directly related to the physical generation, and demand for, electricity as well as the physical capacity constraints of the grid.
- 3.2.8 The ISO/RTO DA and RT markets are well established and regulated markets that are closely monitored by market monitoring units ("MMUs") responsible to either FERC or, in the case of ERCOT, the PUCT. The MMUs continually review the DA and RT markets for signs of trading anomalies that might signal an intent to manipulate, and have the capacity to conduct investigations of potential manipulation and report manipulative activity to their regulator. The CFTC assessed the ISO/RTO markets in a Notice of Proposed Order and Request for Comment proposing to exempt specified ISO/RTO transactions from certain provisions of the Act. See 77 Fed. Reg. 52137 (August 28, 2012) The CFTC observed that even if RTO/ISO transactions serve as a source of settlement prices for transactions within the CFTC's jurisdiction, the RTOs/ISOs have monitoring systems to detect and deter manipulation in their markets that provide notification so that further investigation can be conducted. As a result of this guidance, the RTO/ISO prices are a trusted reference price for financial power transactions.
- 3.2.9 Nodal's Henry Hub gas contract is a financially settled contract based on the New York Mercantile Exchange ("NYMEX") Henry Hub contract, a long-established and highly liquid contract that is traded under the CFTC's jurisdiction. The Nodal Henry Hub natural gas contract settles promptly upon publication of the final settlement price in the NYMEX market. The Exchange's Henry Hub natural gas contract is financially settled based on a highly liquid, third-party product, and is therefore not readily susceptible to manipulation.
- 3.2.10 The contract specifications for the products traded on the Exchange are set forth on the Exchange's website ([http://www.nodalexchange.com/resource\\_center/participant\\_agreement\\_and\\_rulebook.php](http://www.nodalexchange.com/resource_center/participant_agreement_and_rulebook.php) and [http://www.nodalexchange.com/resource\\_center/contracts.php](http://www.nodalexchange.com/resource_center/contracts.php)).
- 3.3 Risks Associated with Trading Products – The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange, including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.**
- 3.3.1 All Nodal Contracts are settled and cleared through LCH.Clearnet ("LCH"), a leading horizontal clearing house that is recognized by the OSC as a clearing agency under Section 21.2 of the OSA. The membership of LCH, known as "Clearing Members," consists typically of large financial institutions.
- 3.3.2 Nodal Exchange requires all Participants to establish a relationship with a Clearing Member of LCH who is an LCH member for Nodal Exchange. If the Participant is a customer of the Clearing Member, and not a *house account* (as such term is defined in Part 39 of the CFTC Regulations), then the Clearing Member must be registered as a Futures Commission Merchant ("FCM"). The Clearing Members receive and hold each customer's funds in segregated accounts to guarantee such customer's trades cleared by LCH. LCH determines the minimum margin that needs to be held for each Participant portfolio; the Clearing Member assesses the risk for each Participant, and may require the customer to post additional funds. The Clearing Members assume the credit risk of the Participants, and LCH assumes the central counterparty risk to each Nodal Contract.
- 3.3.3 Clearing Members set each Participant's Trade Risk Limits and have the right to suspend trading by a Participant. Nodal Exchange monitors and enforces the Trade Risk Limits by rejecting trades that exceed the limits.
- 3.3.4 Nodal Exchange provides LCH with the settlement prices twice per day for use in settling trades and positions. Based on these prices, LCH calculates variation margin and initial margin at both the Clearing Member and Participant account level. Clearing Members use this information to determine Participants' margin requirements and execute

margin calls to Participants as necessary to ensure that positions are fully margined and mark-to-market losses on a portfolio are covered in full each day.

- 3.3.5 Nodal Exchange reviews all settlement prices that fluctuate more than a predetermined percentage within a trading day. LCH reviews all settlement prices that fluctuate more than a specified percentage, as determined by LCH, providing an additional check on price moves.
- 3.3.6 The Clearing Members may impose position limits on their Participants for each of three categories of contracts based on the type of location of electric power (i.e., hub, zone or node) as identified in the terms of the Nodal Contract. The hub based products are normally the most liquid, the zone based products are more liquid, and the node based products are normally the least liquid.
- 3.3.7 The Exchange has established spot month position limits, as well as single month and all-month position accountability levels for all contracts in accordance with Part 150 of the CFTC regulations. Exchange Rules 6.5 through 6.9 and Appendix C to the Exchange Rulebook set forth the Exchange's position limit, position accountability and position reporting rules and aggregation standards. The Exchange may grant position limit exemptions for bona fide hedging activity.
- 3.3.8 The Exchange uses accountability levels for single months (outside the spot month) and all-months combined for its power contracts because the underlying cash market is federally regulated and not readily susceptible to manipulation.<sup>10</sup> Position accountability levels are appropriate, and limits are not necessary, for markets where the threat of excessive speculation or manipulation is nonexistent or very low. All of the Exchange's power contracts are cash-settled against prices that are determined in highly regulated cash markets.
- 3.3.9 Position accountability levels outside the spot month allow the Exchange to take action to address concerns, whether raised externally or through the Exchange's market surveillance program, about Exchange positions without disrupting the market. See Exchange Rule 6.6.1 (Participants holding positions above the position accountability level required to initiate and liquidate any such positions in an orderly manner; provide information regarding the nature of the position, trading strategy and, if applicable, hedging information; and, if so ordered by the Nodal Compliance Department liquidate or not further increase those positions).
- 3.3.10 The Exchange's cash-settled Henry Hub natural gas contract is, at 2,500 MMBTU, a quarter of the size of the physically settled Henry Hub contract traded on the New York Mercantile Exchange and identical to the size of the financially settled ICE Futures U.S. Henry Hub contract. Nodal has spot month position limits and single month and all-months-combined position accountability and reportable levels commensurate with the levels in place at the other exchanges. The Exchange may grant exemptions from position limits for bona fide hedging activity.
- 3.3.11 Nodal Exchange does not impose price limits. On a real time basis, Nodal Exchange surveillance staff review all outright trades with a price difference of 5% from Nodal Exchange's latest mark and all spread trades with a price difference of 10% from the latest mark to ensure that the market is functioning properly. To reduce the chance of "fat finger" errors, Nodal Exchange Participants are warned upon submitting of an order with a price that differs more than 10% from the latest Nodal Exchange mark, and users submitting Block Trades are warned upon submitting a trade with a price that differs more than 30% from the latest Exchange mark.
- 3.3.12 Nodal Exchange's internal controls for measuring, monitoring, and mitigating risks associated with trading products include reviewing Participants' positions relative to Exchange position limits and accountability levels described in Sections 3.3.7 and 3.3.8 above, reviewing trades with a significant price difference from the latest mark, as outlined in Section 3.3.11 above, and monitoring FCM credit quality. FCM credit quality is monitored via information reported on Form 1-FR-FCM and FCM FOCUS reports, among other sources.

## 4 ACCESS

### 4.1 Fair Access

- (a) **The exchange has established appropriate written standards for access to its services including requirements to ensure:**
- (i) **Participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,**

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<sup>10</sup> The CFTC has observed that while the underlying RTO/ISO transactions serve as a source of settlement prices for these transactions within the CFTC's jurisdiction, the RTOs/ISOs have monitoring systems to detect and deter manipulation in their markets that provide notification so that further investigation can be conducted. 77 *Federal Register* 52137 (August 28, 2012) pp. 52146-7.

(ii) **The competence, integrity and authority of systems users, and**

(iii) **Systems users are adequately supervised.**

(b) **The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.**

(c) **The exchange shall not unreasonably prohibit, condition or limit access by a person or company to services offered by it.**

(d) **The exchange does not**

i. **permit unreasonable discrimination among participants, or**

ii. **impose any burden on competition that is not reasonably necessary and appropriate.**

4.1.1 Consistent with Core Principle 2, Nodal Exchange Rule 3.3 provides clear and transparent access criteria and requirements to ensure the competence, integrity, and authority of Participants on the Exchange. To be eligible for admission to the Exchange, the Participant must demonstrate to the Exchange that it:

(a) is of good reputation and business integrity;

(b) complies with the financial responsibility, recordkeeping and reporting requirements set out in Exchange Rule 3.4;

(c) is validly organized, in good standing, and authorized by its governing body and, if relevant, documents of organization, to trade Nodal Contracts;

(d) is not Insolvent;

(e) is not prohibited from using the services of the Exchange for any reason whatsoever;

(f) holds all registrations required under applicable law, if any, including any FCM, supervisory person and/or Associated Person registration, as applicable;

(g) is not subject to statutory disqualification under Section 8a(2) of the CEA;

(h) is not registered with the CFTC as an introducing broker or as a retail foreign exchange dealer; and

(i) satisfies any other criteria that the Exchange may require from a Participant.

4.1.2 Exchange Rule 3.4 establishes minimum financial requirements for Exchange Participants to maintain the financial integrity of the Exchange.<sup>11</sup> The Exchange applies these criteria in an impartial manner.

4.1.3 Pursuant to Exchange Rule 3.2, each Participant will have the right to access the Exchange on a principal-to-principal basis, including the right to submit offers to buy or sell Nodal Contracts (“**Orders**”) for each of its proprietary accounts. The access rights of a Participant hereunder may not be transferred, assigned, sold or leased.

4.1.4 Pursuant to Exchange Rule 3.3, a Participant to be admitted to the Exchange must deliver an executed participant agreement. By executing a participant agreement, Clearing Members may also be admitted as Participants; however, Clearing Members are admitted solely for the purpose of accessing the Exchange in order to liquidate positions on behalf of a Participant that is in default for failure to perform its obligations to the Exchange or such Clearing Member.

4.1.5 As part of the application procedure, the Exchange may request such information and documentation as it may reasonably require in order to determine whether the Exchange’s eligibility requirements have been satisfied. Any Participant organized or located outside of the United States shall enter into a written agreement acceptable to the Exchange appointing a third party as its U.S. agent for service of process for purposes of CFTC Regulation 15.05, and shall provide the Exchange with a copy of the agreement.

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<sup>11</sup> A Participant that is not registered with the CFTC as an FCM must maintain a net worth (excluding personal assets) of not less than \$1,000,000. A Participant must immediately notify the Exchange or the Regulatory Service Provider, if any, if its net worth (excluding personal assets) declines below \$1,500,000, and provide the Exchange or the Regulatory Service Provider, if any, with monthly financial statements by the tenth calendar day of each month thereafter until the Participants net worth exceeds \$1,500,000 for two consecutive months.



- 4.1.6 The Exchange may deny, condition, suspend, or terminate Participant status of any entity that:
- a. is unable to satisfactorily demonstrate its ability to satisfy the eligibility criteria to become or remain compliant as a Participant;
  - b. is unable to satisfactorily demonstrate its capacity to adhere to all applicable Exchange Rules;
  - c. would bring the Exchange into disrepute as determined by the Exchange in its sole discretion; or
  - d. shows such other cause as the Exchange may reasonably determine.
- 4.1.7 If the Exchange decides to deny or condition an applicant's application, the Exchange shall promptly notify the applicant in writing to the address provided by the applicant on the Exchange application form. Any such denial or condition placed by the Exchange may be appealed by the applicant and shall be promptly considered by the Exchange Participant Committee. In each case, the Exchange Participant Committee shall determine the specific procedures to be applied, provided that the applicant shall be afforded the opportunity to present such evidence as the Committee deems relevant. The rules of evidence shall not apply and a transcript shall not be created.
- 4.1.8 If the Participant is not itself a Clearing Member, the Participant must also be party to an agreement with a Clearing Member in accordance with Exchange Rule 5.2.1.
- 4.1.9 A person approved as a Participant shall be subject to all of the rules of the Exchange.
- 4.1.10 Each applicant and each Participant agrees (i) promptly to provide, or procure the provision of, such information and documents as the Exchange may reasonably request, and (ii) that the Exchange, without being prevented by any duty of confidentiality by any holder of information, may obtain such information and documents from any Clearing Member or from the LCH.
- 4.1.11 To obtain access onto the Exchange, the Nodal Exchange participant agreement must be executed. Participants may only trade through Nodal Exchange as principal, and not as an intermediary in a fiduciary capacity. All Participants must comply with the Nodal Exchange Rulebook. The Participant's representations in the Nodal Exchange participant agreement are deemed reaffirmed upon trading on the Exchange. Participants receive fourteen days notice of meaningful amendments to the Nodal Exchange participant agreement, which are also posted on the Nodal Exchange website. Nodal Exchange confirms that Ontario Participants are complying with Ontario securities laws or Ontario commodity futures laws or exempted from these requirements by obtaining a representation in the Nodal Exchange participant agreement to the effect that the Participant has the power and authority to execute and perform the obligations under this agreement, and that the Participant will comply with all applicable laws, rules, and regulations relative to its access or use of Nodal Exchange services. Nodal Exchange relies on the representation of all Participants, including Ontario Participants, that such Participants are complying with the laws to which they are bound. Furthermore, the Nodal Exchange participant agreement or an annex to the participant agreement to be signed by an Ontario Participant will contain representations relating to the Hedger Relief.
- 4.1.12 Nodal Exchange Participants may qualify as "hedgers", in accordance with section 1 of the CFA because as a necessary part of their commercial activities, Nodal Exchange Participants typically "become exposed to risks upon fluctuations in the price of a commodity and offset that risk through trading in contracts for the commodity or related commodities." Nodal Exchange would describe most Ontario Participants on Nodal Exchange as commercial entities qualifying as "hedgers" in Ontario.
- 4.1.13 Nodal Exchange expects Ontario residents that become Nodal Exchange Participants to maintain a compliance program in accordance with the Nodal Exchange Rulebook. The Participant's compliance program is designed, in part, to ensure conduct in accordance with applicable laws and regulations. Accordingly, Nodal Exchange will expect Ontario residents that become Nodal Exchange Participants to be cognizant of their Ontario and other Canadian regulatory requirements, as appropriate.
- 4.1.14 Nodal Exchange does not unreasonably prohibit, condition, or limit access to its services. The restrictions on access to Nodal Exchange are consistent with regulatory requirements and risk limits established by Clearing Members. Nodal Exchange may need to prohibit, condition, or limit access in the case of extenuating market circumstances which include, but are not limited to, any occurrence or circumstance which threatens or may threaten such matters as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any Nodal Contracts, and which in the opinion of Exchange administration requires immediate action. The process implemented by Nodal Exchange to exercise such emergency authority is reasonable and consistent with the process used by similar markets in order to protect the integrity of the market.

- 4.1.15 Any rules pertaining to membership criteria or selection must be self-certified under CFTC Regulation 40.6. CFTC Regulation 40.6 requires the Exchange to provide certification and explanatory analysis that the revised Rules comply with the CEA, CFTC Regulations, and the DCM Core Principles. The CFTC reviews all self-certifications of rules and rule amendments under CFTC Regulation 40.6 for compliance with the DCM Core Principles. Core Principle 12 requires exchanges to establish and enforce rules that protect market participants from fraudulent, noncompetitive or unfair actions committed by any party, and further, to discipline such behavior under Core Principle 2. Membership rules that are unreasonably discriminatory or access and fee rules that unreasonably discriminate among participant classes would not meet DCM Core Principle requirements and would therefore not be certified by the CFTC.

## 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

### 5.1 Regulation – The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

- 5.1.1 In accordance with CFTC Regulation 38.151, and pursuant to the participant agreement and Exchange Rule 3.1, Participants, Authorized Users and Authorized Brokers must consent to the jurisdiction of the Exchange before being granted access to the Exchange. Rule 3.3.7 also requires Participants to promptly provide information and documents reasonably requested by the Exchange and permits the Exchange to obtain such information or documents directly from any Clearing Member or from LCH. Pursuant to Rule 7.3.1, a Participant is required to cooperate with an Exchange investigation by making an appearance and making its books and records available to the Exchange.
- 5.1.2 Exchange Rule 3.3 provides clear and transparent access criteria and requirements for Participants. Rule 3.4 establishes minimum financial requirements for Exchange Participants to maintain the financial integrity of the Exchange. The Exchange will apply these criteria in an impartial manner.
- 5.1.3 Exchange Rule 3.16 provides clear and transparent criteria and requirements for Authorized Brokers accessing the Exchange on behalf of Participants. The Exchange will apply these criteria in an impartial manner.
- 5.1.4 Section VI of the Nodal Exchange Rulebook imposes an extensive Participant Code of Conduct designed to encourage ethical conduct and protect Participants from abusive, disruptive, fraudulent or noncompetitive conduct or trade practices. The Exchange Rulebook includes ethical standards (Rule 6.1) and prohibit specific trade practice violations and other illicit behavior, including price manipulation, fictitious, non-competitive or artificial transactions (Rule 6.2.3), market manipulation (Rule 6.2.4), market disruption (Rule 6.2.5), disruptive trading practices (Rule 6.2.7), rumors (Rule 6.2.8), false reports (Rule 6.2.9), wash sales (Rule 6.2.10), spoofing (Rule 6.2.11), acts detrimental to the Exchange (Rule 6.2.13), disclosing order information (Rule 6.2.15), pre-arranged trades and money passes (Rule 6.3), and front running (Block Trades only) (Rule 4.6.6). *See also* Core Principle 4, below.
- 5.1.5 The Exchange's Regulatory Oversight Committee ("ROC") will prepare an annual report assessing the Exchange's regulatory program for the Exchange's Board. The ROC's annual report must (i) describe the Exchange's regulatory program, (ii) set forth the expenses of the regulatory program, (iii) describe the staffing and structure of the regulatory program, (iv) catalogue investigations and disciplinary actions taken during the year, and (v) review the performance of disciplinary committees and panels, as well as the performance of the Exchange's Chief Regulatory Officer (the "CRO").
- 5.1.6 The Compliance Department, in accordance with Exchange Rule 7.2.1, is responsible for ensuring that the Exchange's Rules are followed. The Compliance Department's Surveillance Team monitors overall activity on the Exchange on a real-time and post-trade basis. Specifically, the Surveillance Team views all activity on the Exchange, including Orders, transactions and Block Trades, reviews the trades executed on Nodal LiveTrade, tracks the activity of specific traders, monitors 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. Under Exchange Rule 4.9.1, the Exchange may adjust trade prices or cancel (bust) trades in appropriate circumstances.
- 5.1.7 Pursuant to Section VII of the Exchange Rules, the Compliance Department is authorized to investigate trading activities on the Exchange, and initiate enforcement procedures to ensure compliance with its Rules. Pursuant to Section 7.3.1 of the Rules, the Surveillance Team will commence an investigation upon the receipt of a request from CFTC staff or upon the discovery or receipt of information that indicates a possible basis for a finding that a violation has occurred or will occur. Absent mitigating circumstances, the Surveillance Team must complete its investigation within twelve months after the date the investigation is opened. Permissible mitigating circumstances include the complexity of the investigation, the number of firms or individuals involved as potential respondents, the number of potential violations to be investigated and the volume of documentation and data that must be analyzed. The Surveillance Team will submit a written report of each investigation to the CRO and maintain a log of all investigations

and their disposition in accordance with Exchange Rule 7.3.2. Under Rule 7.3.2, investigations may be resolved through a warning letter; however, no more than one warning letter for the same potential violation may be issued to the same Participant during a rolling 12-month period.

- 5.1.8 Pursuant to Exchange Rule 2.8, the Exchange may enter into information-sharing agreements, as the CFTC may require, with any Person or body (including the CFTC, National Futures Association (“NFA”), any Self-Regulatory Organization, any exchange, market, or clearing organization, or foreign regulatory authority).
- 5.1.9 Consistent with Core Principle 4, and pursuant to Exchange Rule 2.4.4, the ROC will oversee the Exchange’s regulatory program on behalf of the Exchange, with the authority to monitor the regulatory program of the Exchange for sufficiency, effectiveness, and independence. The ROC will oversee all facets of the regulatory program, including: (a) trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to Participants (including compliance with, as applicable, financial integrity, financial reporting, sales practice, recordkeeping and other requirements) and the conduct of investigations; (b) reviewing the size and allocation of the regulatory budget and resources, and the number, hiring, termination, and compensation of regulatory personnel; (c) supervising the CRO, who will report directly to the Regulatory Oversight Committee; (d) recommending changes that would ensure fair, vigorous, and effective regulation; and (e) reviewing all regulatory proposals prior to implementation and advising the Board as to whether and how such changes may impact regulation.
- 5.1.10 Exchange Rules 6.2 and 6.3 set forth certain prohibited trading practices and specifically proscribes manipulation, price distortion and disruptive trading practices.
- 5.1.11 The ROC, together with the CRO and Compliance Department, will implement the Exchange’s monitoring, surveillance and other enforcement functions. The Exchange Rules provide the framework for the Exchange’s enforcement activities. The Surveillance Team monitors trading activity on a real-time and post-trade basis, and the Exchange’s automated trade practice surveillance system monitors trading activity on a trade day plus one (T+1) basis. Nodal will utilize audit trail data to support its enforcement efforts.
- 5.1.12 Pursuant to Exchange Rule 4.11, Participants that enter Orders into Nodal LiveTrade through an electronic order routing/front-end system<sup>12</sup> rather than directly through Nodal LiveTrade are responsible for maintaining or causing to be maintained audit trail information for such electronic Orders. Audit Trail information must be maintained for a minimum of five years and Participants must produce Audit Trail data in a standard format upon request of the Exchange.
- 5.1.13 The Surveillance Team has access to information related to the Exchange’s contracts, including relevant contracts at other exchanges, news events and economic reports, and historical price and volume information. In addition, the Exchange Rules specifically contemplate information-sharing arrangements with other markets. See Exchange Rule 2.8.1.
- 5.1.14 Several Exchange Rules impose risk management obligations for Participants. As described in Rules 4.5.6 and 4.6.5, all transactions executed on or pursuant to the Rules are checked against the dollar amount set by the Participant’s Clearing Member establishing the maximum position risk that the Participant is allowed to assume on the Exchange. Rule 3.5.2 requires each Participant to monitor and enforce compliance with its internal risk limits and shall be responsible for all Orders, transactions and Block Trades on the Exchange.
- 5.1.15 Section VII of the Exchange Rules describe the Exchange’s compliance and enforcement procedures, which include inquiries, investigations, disciplinary proceedings, and provide for arbitrations related to Exchange activity.
- 5.1.16 Consistent with Core Principle 8 and Exchange Rule 4.14, the Exchange will publish daily information on settlement prices, volume, open interest and opening and closing ranges for actively traded Nodal Contracts on its website. The Exchange will also publish the total quantity of Block Trades that are included in trading volume for each trading day.
- 5.1.17 Consistent with Core Principle 12, Section VI of the Exchange Rules protects the market and market Participants from abusive, disruptive, fraudulent, noncompetitive and unfair conduct and trade practices. Improper conduct and trade practices will be investigated and adjudicated as described in Section VII of the Rules (Discipline and Enforcement). The Exchange will conduct a trade practice, market and financial surveillance monitoring program. The Surveillance Team will conduct real-time surveillance and initiate inquiries and investigations relating to such surveillances.
- 5.1.18 Consistent with Core Principle 13, Section VII of the Exchange Rules describes the disciplinary procedures of the Exchange that authorize the Exchange to discipline, suspend, or expel Participants that violate the Exchange’s Rules.

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<sup>12</sup> The Exchange may certify third party providers to connect their electronic order routing/front-end systems to Nodal LiveTrade, although none have been certified to date. Electronic order routing/front-end systems may provide Participants with analytical trading tools and will not be permitted to enable intermediation.

- 5.1.19 The Surveillance Team will conduct inquiries and investigations relating to real-time surveillance, trade practice, market surveillance, while the Compliance Department more broadly will investigate matters involving financial surveillance. In the event such investigations result in further disciplinary proceedings, Exchange Rules 7.3 through 7.7 provide procedures regarding informal disposition, service of notice, answers to charges, settlements, hearings, appeals, sanctions (which may include limitation or termination of trading privileges, censure, restitution, suspension and/or fines), summary actions and rights and responsibilities after suspension or termination.
- 5.1.20 In continual support of its regulatory function, Nodal Exchange has invested in, and continues to invest in, technology and staff dedicated to developing and continually maintaining the regulatory technology structure to evolve with the changing dynamics of the marketplace. The Exchange's regulatory technological systems are customized for trade practice surveillance that allow surveillance staff to monitor trading in real time and conduct detailed analysis of historical trading and order patterns. These systems include tools to examine audit trail data of market activity, detect trading patterns potentially indicative of market abuses, and help protect against market disruptions.

## 6 RULEMAKING

### 6.1 Purpose of Rules

- (a) **The exchange has rules, policies and other similar instruments ("Rules") that are designed to appropriately govern the operations and activities of participants.**
- (b) **The Rules are not contrary to the public interest and are designed to**
- (i) **Ensure compliance with applicable legislation,**
  - (ii) **prevent fraudulent and manipulative acts and practices,**
  - (iii) **promote just and equitable principles of trade,**
  - (iv) **foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in products traded on the exchange,**
  - (v) **provide a framework for disciplinary and enforcement actions, and**
  - (vi) **ensure a fair and orderly market.**
- 6.1.1 Pursuant to its obligation under the CEA and more specifically 7 U.S.C 2, 5, 6, 6c, 7, 7a-2, 12a and Part 38 of the CFTC Regulations, Nodal Exchange has implemented rules, policies and other similar instruments that govern the operations and activities of its Participants.
- 6.1.2 Nodal Exchange is not subject to securities legislation in the U.S. due to the fact that the Exchange is a trading system for trading commodity futures. However, Nodal Exchange is obligated to comply with the CEA, the DCM Core Principles and the CFTC Regulations (collectively, the "**U.S. Futures Regulations**"). The U.S. Futures Regulations require compliance on behalf of Nodal Exchange and that Nodal Exchange implement rules that require compliance with the U.S. Futures Regulations by its participants. Nodal Exchange Rules are recorded in the Nodal Exchange Rulebook, which was reviewed by the CFTC for the Exchange's DCM registration to ensure compliance with the CEA and the CFTC Regulations. Revisions to the Nodal Exchange Rulebook must be submitted to the CFTC for review pursuant to CFTC Regulation 40.6, which requires the Exchange to provide certification and explanatory analysis that the revised Rules comply with the CEA and the CFTC Regulations, including the DCM Core Principles.
- 6.1.3 All activity on Nodal Exchange is conducted in accordance with the Nodal Exchange Rules. The Nodal Exchange Rules are applicable to Nodal Exchange Participants without regard to jurisdictional boundaries as such obligations arise by virtue of the contractual relationship between Nodal Exchange and its Participants. Nodal Exchange Rules include the Nodal Exchange Rulebook, which contains substantive provisions relating to membership standards, procedural provisions relating to discipline, arbitration, and other provisions. Nodal Exchange Participants are required to act in accordance with the spirit as well as the letter of the Nodal Exchange Rules.
- 6.1.4 The Nodal Exchange Rules are designed to enable Nodal Exchange to fulfill its requirement to provide a fair and orderly market. Section 4.1.3 of the Exchange Rulebook explicitly reserves the right of the Exchange to adjust market hours and suspend market activities in the event of extenuating market circumstances that may threaten the fair and orderly trading in, or the liquidation of or delivery pursuant to any Nodal Contracts, which in the opinion of the Exchange administration requires immediate action.

- 6.1.5 In accordance with Core Principle 12 (Protection of Markets and Market Participants), Section VI of the Exchange's Rulebook is designed to protect the market and market participants from abusive, disruptive, fraudulent, noncompetitive and unfair conduct and trade practices. In relation to the prevention of fraudulent and manipulative acts and practices, Rule 6.2.10 – Wash Sales states that:
- No Participant shall place or accept buy and sell Orders in the same product and expiration month, where known or reasonably should know that the purpose of the Orders is to avoid taking a bona fide market position exposed to market risk (transactions commonly known or referred to as wash sales). Buy and sell Orders by Participants that are entered with the intent to negate market risk or price competition shall be deemed to violate the prohibition on wash trades. Additionally, no Participant shall knowingly execute or accommodate the execution of such Orders by direct or indirect means.
- 6.1.6 In addition, Rule 6.2.3 – Price Manipulation, Fictitious, Non-Competitive or Artificial Transactions prevents Participants from engaging in fraudulent and manipulative acts including transactions used to create a false, misleading, or artificial price, trading volume, or appearance of market activity that does not reflect the true state of the market in Nodal Contracts. In addition, Rule 6.2.4 – Market Manipulation prevents Participants from attempting to manipulate the market in any Nodal Contract. Thus, the Nodal Exchange Rulebook is clearly designed to prevent fraudulent and manipulative acts and practices.
- 6.1.7 In relation to promoting just and equitable principles of trade, the Exchange operates in accordance with Core Principle 12. Accordingly, Rule 4.5 – Central Limit Order Book Trades describes the rules for executing trades on the Exchange, which are designed to promote fair and equitable trading on the Exchange.
- 6.1.8 Rule 2.8 – Information-Sharing Arrangements authorizes the Exchange to “enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets.” Further, the Exchange is authorized to “require its current or former Participants to provide information and documents to the Exchange at the request of other markets which the Exchange has an information-sharing agreement or other arrangements or procedures.”
- 6.1.9 In accordance with Core Principle 13 (Disciplinary Procedures) Nodal Exchange Participants are subject to disciplinary action in the event of failure to comply with Nodal Exchange Rules. Disciplinary action may result in suspension, expulsion, and/or unlimited penalties. Nodal Exchange Participants are accountable for the actions of its users accessing Nodal Exchange.
- 6.1.10 The Participant Code of Conduct is defined in Section VI of the Nodal Exchange Rulebook to complement Participants' internal principles and practices for trading on the Exchange with integrity to ensure a fair and orderly market. Compliance with the Participant Code of Conduct assures Nodal Exchange, regulators, and other Participants that ethical standards and sound trading practices will be maintained.
- 6.1.11 The Participant Code of Conduct in Section VI of the Nodal Exchange Rulebook prohibits activities that unlawfully restrain competition, including collusion with other Participants to affect the price or supply of any commodity, allocate territories, customers or Contracts.
- 6.1.12 The Nodal Exchange Rulebook describes the trading rules and actions that constitute violations that may be subject to penalties including, but not limited to, temporary and permanent suspension from the Exchange. The Compliance Department is appointed and authorized by the Chief Executive Officer to provide market surveillance and investigation of trading activities on the Exchange to ensure compliance with the Rules and applicable law.
- 6.1.13 The Compliance Department may issue notice of Rulebook violations. Nodal Exchange Participants may respond to charges by written submission, request for formal hearing, and/or an offer in settlement.
- 6.1.14 Participants charged with violations may request a formal hearing before a Hearing Panel composed of at least three individuals selected by the Exchange from among Participants and/or individuals knowledgeable and experienced in electric power or financial markets. The responding Participant may elect to be represented by counsel and has the power to cross-examine witnesses and documentary evidence. The burden of proof is on the Compliance Department, which shall prosecute the case. The Hearing Panel will determine violations by a majority vote and determine disciplinary action to be taken by the Exchange.
- 6.1.15 Consistent with Core Principle 14 (Dispute Resolution), Section VIII of the Rules establishes rules concerning alternative dispute resolution, which provide for the resolution of disputes between or among Participants through the NFA arbitration.

7 DUE PROCESS

7.1 Due Process – For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

- (a) parties are given an opportunity to be heard or make representations, and
- (b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

7.1.1 The Compliance Department provides market surveillance and investigation of trading on the Exchange to ensure compliance with Exchange Rules and applicable law. The Chief Regulatory Officer (“CRO”), or a Review Panel established at the sole discretion of the CRO for this purpose, reviews evidence of potential Exchange Rule violations and will determine whether to authorize:

- a. the informal disposition (by issuing a warning letter or otherwise) because disciplinary proceedings are unwarranted;
- b. closing the matter without any action because no reasonable basis exists to believe that a violation within the Exchange’s jurisdiction has occurred or is about to occur; or
- c. the commencement of disciplinary proceedings because a reasonable basis exists to believe that a violation within the Exchange’s jurisdiction has occurred or is about to occur.

7.1.2 In accordance with the requirements for Participants described in Rule 3.3, the Exchange may deny, condition, suspend, or terminate Participant status of any entity or otherwise deny access to the Exchange. No entity may be exempted from the requirements in Rule 3.3. In the event the Exchange decides to deny access or condition an applicant’s application, Rule 3.3.4 requires prompt written notification to the applicant who may appeal for prompt consideration by the Exchange Participant Committee. The Exchange Participant Committee shall determine the specific procedures to be applied, provided that the applicant shall be afforded the opportunity to present such evidence as the Exchange Participant Committee deems relevant.

7.1.3 The Compliance Department may, in its discretion, notify the subject (“**Respondent(s)**”) that formal disciplinary charges are recommended and allow the Respondent to submit, within a specified time period, an offer of settlement or a written statement explaining why disciplinary proceedings should not be instituted or why one or more of the charges should not be brought.

7.1.4 Service of Notice of Charges. Once the CRO or Review Panel, as appropriate, authorizes disciplinary proceedings, the Compliance Department will prepare and serve a notice of charges that will provide as follows:

- a. state the acts, practices or conduct that the Respondent is alleged to have engaged in;
- b. state the Rule or provision of applicable law alleged to have been violated or about to be violated;
- c. state the proposed sanctions;
- d. advise the Respondent of its right to a hearing;
- e. advise the Respondent that he has the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process, other than an Exchange Official or any person substantially related to the underlying investigation, such as a material witness or Respondent;
- f. state the period of time within which the Respondent can request a hearing on the notice of charges, which will not be less than twenty (20) days after service of the notice of charges;
- g. advise the Respondent that any failure to request a hearing within the period stated, except for good cause, will be deemed to constitute a waiver of the right to a hearing; and
- h. advise the Respondent that any allegation in the notice of charges that is not expressly denied will be deemed to be admitted.

The service of notice upon the Respondent shall be deemed complete either personally or by leaving the notice at his or her place of business; by deposit in the United States mail, postage prepaid, via registered or certified mail

addressed to the Respondent at the Respondent's last known place of business or residence. Service shall also be deemed complete via electronic mail to the Respondent's last known electronic mail address.

7.1.5 Answer to Service of Notice of Charges. If the Respondent determines to answer a notice of charges, the Respondent must file a written answer within twenty (20) days after being served with such notice, or within such other time period as stated in such notice of charges. The Respondent must answer the notice of charges in writing as follows:

- a. for each allegation set forth in the notice of charges,
  - i. admit such allegation,
  - ii. deny such allegation, or
  - iii. affirmatively state that the Respondent does not have and is unable to obtain sufficient information to admit or deny such allegation, which shall have the effect of a denial of such allegation;
- b. specify any specific facts that contradict the notice of charges;
- c. specify any affirmative defenses to the notice of charges;
- d. sign and serve the answer on the CRO; and
- e. if applicable, request a hearing before a Hearing Panel.

Failure by the Respondent to timely serve an answer to the notice of charges will be deemed to be an admission to the allegations in such notice. Any allegation in a notice of charges that the Respondent fails to expressly deny will be deemed admitted. A general denial by the Respondent, without more, will not satisfy the requirements herein.

7.1.6 Settlement Offers. At any time after notifying a Respondent of an intent to recommend charges, a Respondent may submit to the Compliance Department a written offer of settlement related to anticipated or instituted disciplinary proceedings. If the Respondent submits the settlement offer any time before the Hearing Panel is formed, the CRO will, in his or her discretion, (i) determine whether to accept or reject the settlement offer or (ii) if a Review Panel has been established, determine whether to accept or reject the offer and forward the basis for its recommendation to the Review Panel for final determination. If the Hearing Panel is formed by the time the Respondent submits the settlement offer, the CRO will forward his or her recommendation to the Hearing Panel for final determination.

7.1.7 The CRO or Disciplinary Panel, as applicable, may permit the Respondent to settle disciplinary proceedings without admitting or denying the Rule violations if the Respondent consents to the entry of findings and sanctions imposed. When accepting the settlement offer, the CRO or Hearing Panel may not alter the terms of the offer unless the Respondent agrees. The offer of settlement must detail the Rule violations, including the basis for the conclusions of the CRO or Disciplinary Panel, as applicable, and any sanctions imposed. If a settlement offer is accepted without the agreement of the CRO, the decision should adequately support the Disciplinary Panel's acceptance of the settlement. If applicable, the decision must also include a statement that the Respondent has accepted the sanctions imposed without either admitting or denying the Rule violations.

7.1.8 The acceptance of a settlement offer by either the CRO or Hearing Panel, as applicable, constitutes a waiver of the Respondent's right to notice, opportunity for a hearing and review, and appeal under the Rules. If the settlement offer is not accepted, fails to become final, or is withdrawn by the Respondent, the matter will proceed without prejudice as if the offer had not been made and the offer and all documents related to it will not become part of the record.

7.1.9 Hearings. Respondents charged with violations may request a formal hearing before a Hearing Panel composed of at least three individuals selected by the Exchange from among Participants and/or individuals knowledgeable and experienced in electric power or financial markets. The responding Respondent may elect to be represented by counsel and has the power to cross-examine witnesses and documentary evidence. The burden of proof is on the Compliance Department, which shall prosecute the case. The Hearing Panel will determine violations by a majority vote and determine disciplinary action to be taken by the Exchange.

7.1.10 Upon conclusion of a hearing, the Hearing Panel will render a written decision based on the weight of the evidence contained in the record of the disciplinary proceedings. Pursuant to the written decision, the Hearing Panel may take the following actions or impose the following sanctions against the Respondent: (i) a warning letter, which shall indicate each specific Rule that the Respondent was found to have violated; (ii) a cease and desist order; and/or (iii) any sanctions or remedies prescribed in Rule 7.3.10. The Exchange will serve a copy of the written decision on the Respondent and the Compliance Department. The written decision will include the following information:

- a. the notice of charges or a summary of the charges;
  - b. the answer, if any, or a summary of the answer;
  - c. a summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigation Report (“Investigation Report” is described in section 12.1.4);
  - d. a statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other bases for such findings and conclusions with respect to each charge;
  - e. an indication of each specific Rule that the Respondent was found to have violated; and
  - f. a declaration of all actions taken or sanctions imposed against the Respondent, including the basis for such sanctions and the effective date of such sanctions.
- 7.1.11 Consistent with Core Principle 13, Section VII of the Rules describes the disciplinary procedures of the Exchange that authorize the Exchange to discipline, suspend, or expel Participants that violate the Exchange’s Rules.
- 7.1.12 Summary Suspensions. At any time, the CRO, in consultation with the Regulatory Oversight Committee (“ROC”) of the Board, may summarily suspend, revoke, limit, or condition a Participant’s right to access the Exchange or the association of an Authorized User or Authorized Broker with a Participant, or suspend access to the Exchange to any other person subject to the Exchange’s jurisdiction. The CRO must reasonably believe that immediate action is necessary to protect the best interest of the Exchange or the marketplace.
- 7.1.13 Appeal Procedures. A Respondent found by the Hearing Panel to have violated a Rule or applicable law or who is subject to any summary action may appeal the order or decision within twenty (20) days after the order or notice is served on the Respondent by filing a notice of appeal with the CRO. Except for summary suspensions imposed pursuant to Rule 7.4.1, Hearing Panel orders and summary actions shall be suspended while the appeal is pending.
- 7.1.14 Appeals Committee. Within 30 days after the last submission filed, the Board will appoint an Appeals Committee at the recommendation of the CRO, which shall be composed of not less than three individuals from among individuals with knowledge and experience in the electric power or financial markets, who are not members of the Compliance Department or involved in any other stage of the same proceeding or the conduct giving rise to the alleged Rule violations. No group or class of Participants may dominate or exercise disproportionate influence on the Appeals Committee. The chair of the Appeals Committee will be an individual qualified to be a Public Director.
- 7.1.15 Review by the Appeals Committee. The Appeals Committee will hold a hearing before all the members of such Appeals Committee to allow parties to present oral arguments. Any hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of hearings, the Appeals Committee may appoint individuals to attend any hearing and assist in the deliberations if such individuals agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary matters, the Appeals Committee will not be bound by any evidentiary or procedural rules or law. Except for good cause shown, the review by the Appeals Committee shall only consider the record before the Hearing Panel, the written exceptions filed by the parties, and the oral and written arguments of the parties.
- 7.1.16 Final Decision. The Appeals Committee will issue a written decision based on the weight of the evidence before the Appeals Committee. To the extent that the Appeals Committee reaches a different conclusion from that of the Hearing Panel, the written decision will include the following information:
- a. the notice of charges or a summary of the charges;
  - b. the answer, if any, or a summary of the answer;
  - c. a summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigation Report;
  - d. a statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other bases for such findings and conclusions with respect to each charge;
  - e. an indication of each specific Rule that the Respondent was found to have violated; and
  - f. a declaration of all sanctions imposed against the Respondent, including the basis for such sanctions and the effective date of such sanctions.



The order by the appeals Committee will be the final action of the Exchange and will not be subject to further appeal within the Exchange.

## **8 CLEARING AND SETTLEMENT**

### **8.1 Clearing Arrangements – The exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing house.<sup>13</sup>**

8.1.1 Nodal Exchange is not a clearing house. All trades in Nodal Contracts are settled and cleared through LCH in accordance with the clearing agreement between Nodal Exchange and LCH. LCH is recognized by the OSC as a clearing agency under Section 21.2 of the OSA. Accordingly, appropriate arrangements that are regulated by the OSC exist for the clearing and settlement of Nodal Contracts.

### **8.2 Regulation of the Clearing House – The clearing house is subject to acceptable regulation.**

8.2.1 LCH is an entity formed in the United Kingdom and is subject to the regulations of a Clearing House recognized by the Bank of England. In addition, LCH is required to comply with the terms and conditions imposed by the OSC and compliance with these regulatory requirements are overseen by the OSC. As part of its oversight, the OSC reviews required filings and reviews any new substantive rules or substantive changes to current rules relating to access criteria, default management that are specific to the clearing services utilized by Ontario clearing members.

### **8.3 Authority of Regulator – A foreign regulator has the appropriate authority and procedures for oversight of the clearing house. This includes regular, periodic regulatory examinations of the clearing house by the foreign regulator.**

8.3.1 Besides the regulatory oversight by the OSC, LCH is also regulated by the CFTC as a derivatives clearing organization (“DCO”). To maintain its registration, LCH must comply with the DCO core principles established in 5b of the CEA.

8.3.2 As appropriate and/or upon request and in a form and manner specified by the CFTC, LCH must file information related to its business as a DCO, written demonstration of its compliance with one or more core principles, and information related to counterparties or related positions. LCH is required to make available to the CFTC information regarding its activities including information regarding stress test results, internal governance, and legal proceedings.

### **8.4 Access to the Clearing House**

(a) **The clearing house has established appropriate written standards for access to its services.**

(b) **The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.**

8.4.1 LCH has established written criteria for clearing membership, including minimum levels of net capital, appropriate banking arrangements, staff experience and knowledge of products being cleared, appropriate systems to cope with clearing activities, and adequate credit support and facilities. All member applicants must sign legal agreements, remit the application fee and minimum contributions upon approval. Membership criteria is available on the LCH website; such criteria is deemed to be applied reasonably and fairly on all applicants.

### **8.5 Sophistication of Technology of Clearing House – The exchange has assured itself that the information technology used by the clearing house has been adequately reviewed and tested and provides at least the same level of safeguards as required of the exchange.**

8.5.1 Nodal Exchange is assured of the level of secure, safe, and reliable technology solutions maintained by LCH. Nodal Exchange and LCH conduct joint testing of new capabilities.

8.5.2 LCH is regulated by both the CFTC and the Bank of England. The Bank of England subjects LCH's technology and risk management systems to scrutiny and oversight, while the CFTC requires LCH to demonstrate that it has adequate operational resources to complete settlements on a timely basis under varying circumstances. LCH must also comply with the applicable CFTC core principles requiring adequate and appropriate systems safeguards, emergency procedures, and plan for disaster recovery.

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<sup>13</sup> For the purposes of these criteria, “clearing house” also means a “clearing agency”.

**8.6 Risk Management of Clearing House – The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls**

8.6.1 Nodal Exchange is assured that LCH has appropriate risk management policies and procedures that includes default protections, valuation and variation margining, intra-day risk monitoring, operational risk management, risk committees, and management of risks in payments, settlement, and delivery.

8.6.2 The DCO core principles regulated by the CFTC require that LCH maintain adequate and appropriate risk management capabilities. The clearinghouse may comply with these core principles by documenting its use of risk analysis tools and procedures by showing how the adequacy of financial resources is tested on an ongoing periodic basis in a variety of market conditions. The clearing house may show their use of specific risk management tools such as stress testing and value at risk calculations, and what contingency plans exist for managing extreme market events.

8.6.3 The clearinghouse must demonstrate to the CFTC that its collateral and credit limits are used to adequately secure obligations arising from clearing transactions. The clearing house must document the factors considered in determining appropriate margin levels for Nodal Contracts cleared and for clearing members and participants. The clearing house systems are implemented to prevent members/participants from exceeding its credit limits.

8.6.4 Nodal Exchange and LCH closely coordinate their activities. Nodal Exchange and LCH have an agreed default management plan to be activated in the event of a clearing member default that clearly outlines the responsibilities of each party and the necessary timing for the various activities, and Nodal Exchange has participated in LCH “default fire drills” simulating the default of a clearing member to test our default management plans. Nodal Exchange and LCH also conduct coordinated disaster recovery failover tests. Nodal Exchange and LCH routinely discuss risk management matters, with Nodal Exchange personnel providing data and market insight as inputs to LCH’s risk management determinations.

**9 SYSTEMS AND TECHNOLOGY**

**9.1 Systems and Technology – Each of the exchange’s critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:**

- a. order entry,
- b. order routing,
- c. execution,
- d. trade reporting,
- e. trade comparison,
- f. data feeds,
- g. market surveillance,
- h. trade clearing, and
- i. financial reporting.

9.1.1 All Nodal Contracts are traded electronically on Nodal LiveTrade, which is owned and operated by Nodal Exchange. Nodal LiveTrade is in compliance with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of IOSCO as applied flexibly and pragmatically by the CFTC. Nodal LiveTrade is a Central Limit Order Book (“CLOB”) open during trading hours. Nodal LiveTrade accepts and validates orders for the CLOB, runs the CLOB matching engine, and sends the completed trades to the clearing house to be cleared through a Clearing Member of the clearing house. Nodal LiveTrade records information about CLOB trading which the Market Administration & Surveillance team monitors to ensure the market is running in orderly fashion. In addition to Nodal LiveTrade, the Exchange accepts Block Trades on Nodal Contracts from participants, either directly or through an Authorized Broker, to be submitted to the clearing house. For both Block Trades and CLOB trades, the Exchange performs a Trade Risk Limit check to ensure that the trade has not exceeded Clearing Member or FCM set risk parameters. This check is performed before the trade is submitted to the clearing house.

In addition to Nodal LiveTrade, the Exchange also produces twice per day settlement prices for the Nodal Contracts as well as final settlement prices. For power contracts, Nodal Exchange collects hourly information to be used for final settlement from the relevant ISO.

Nodal Exchange market information, including pricing, is available directly from the Exchange and is also made available via sFTP for pricing, and via FIX for trade information.

As of this time, Nodal Exchange does not offer automated services (APIs) for order entry or order routing into Nodal LiveTrade.

- 9.1.2 Nodal LiveTrade accepts limit orders for single contracts or groups of contracts (e.g., a time series). Nodal LiveTrade's matching engine operates on a price time priority algorithm. Orders can be placed into Nodal LiveTrade using LiveTrade's web interface as well as through a file upload.
- 9.1.3 Nodal LiveTrade is designed to run on a cluster of servers, and is deployed in the production environment with an "N+1" configuration so that the failure of a single server will not disrupt trading. The FIX Gateway for trade reporting and the engine supporting the pricing algorithms are also deployed in this fashion.
- 9.1.4 Nodal Exchange maintains both a production data center in the metropolitan New Jersey area and a disaster recovery site in the metropolitan Northern Virginia area. Both sites are housed at Tier I data centers with extensive security systems and provisions for back up power. Failover to the disaster recovery site is tested twice per year.
- 9.1.5 Nodal Exchange has a documented Business Continuity/Disaster Recovery ("BC-DR") plan which contains procedures for operating through significant business disruptions. Nodal Exchange has activated this plan because of the inaccessibility of our headquarters due to severe weather, power outages, and an earthquake, with no disruption to market operations.
- 9.1.6 Nodal Exchange's architecture has designated user access zones to ensure proper protection of data. All access to Nodal Exchange requires strong passwords which expire periodically. Users who incorrectly attempt a password too many times are locked out.
- 9.1.7 Nodal Exchange employs numerous monitoring programs to assess the performance of its hardware and software. These monitoring programs generate automatic alerts should any performance or availability deviate from prescribed standards.
- 9.1.8 Nodal Exchange has a variety of security features to protect it from external attacks, such as unauthorized access or a denial of service attack. Nodal Exchange periodically conducts security audits to identify any system vulnerabilities.

Nodal Exchange also conducts regular, periodic, objective testing and review of: (1) its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity; and (2) its BC-DR capabilities. The Exchange will ensure that all such tests meet the following requirements:

- (a) *Testing by Qualified Personnel.* Testing is performed by qualified professionals, which may be Exchange employees or independent third parties.
- (b) *Coordination with Service Providers.* The Exchange will ensure that the BC-DR Plan takes into account the business continuity and disaster recovery plans of its telecommunications, power, water, clearing and other essential service providers.

Nodal Exchange staff also conducts an annual assessment of internal controls for the Exchange.

- 9.1.9 Nodal Exchange conducts background checks on all employees and requires all employees to pass an on-line security training program. Nodal Exchange deploys state of the art virus protection programs on all Nodal Exchange computers.
- 9.1.10 Nodal Exchange has multiple controls and systems to mitigate against data loss, including two different standby databases and the use of off-site data backup.
- 9.1.11 Nodal Exchange employs a suite of performance test to ensure that Nodal LiveTrade will withstand extreme user and trading volumes relative to the levels the system is currently experiencing in production.
- 9.1.12 Consistent with Core Principle 20, the Exchange has developed a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the

development of automated systems that are reliable, secure, and have adequate scalable capacity. This program includes information regarding the security of those systems, the Exchange's risk assessment reviews, internal controls for operations, functional testing, security testing and capacity planning and testing. It also describes the Exchange's emergency plan and includes a description of the back-up systems and emergency procedures that include recovery time objectives. In addition, during an emergency, Rule 4.1.3 authorizes the Exchange to implement temporary emergency procedures and rules.

**9.2 Information Technology Risk Management Procedures – The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.**

9.2.1 Consistent with Core Principle 6, the Exchange has adopted procedures and guidelines for implementing an emergency intervention in the market. Under Rule 4.1.3, the Board may implement temporary emergency procedures and rules ("**Emergency Rules**"), subject to applicable provisions of the CEA and CFTC Regulations. Emergency Rules may require or authorize the Exchange, the Board, the Chief Executive Officer or any other authorized Officer to take actions necessary or appropriate to respond to the Emergency, including, but not limited to, the following actions: (a) suspending or curtailing trading or limiting trading to liquidation only (in whole or in part); (b) extending or shortening the last trading date for Nodal Contracts; (c) providing alternative settlement mechanisms; (d) ordering the liquidation of Transactions, the fixing of a Settlement Price, or the reduction of positions; (e) extending, limiting or changing the Trading Hours; (f) temporarily modifying or suspending any provision of the Rules; (g) requiring Participants to meet special margin requirements; (h) alter the settlement terms or conditions for any Nodal Contract; (i) imposing or modifying trading limits, price limits and/or position limits; and/or (j) any other action as directed by the CFTC. As appropriate, such actions will be taken in consultation with the Clearing House.

9.2.2 Pursuant to Rule 4.1.3, before any Emergency Rules may be adopted and enforced, the Board must approve the enforcement of such Emergency Rule at a duly convened meeting. Directors may attend such a meeting by teleconference.

9.2.3 If the Chief Executive Officer, or another authorized Officer, determines that Emergency Rules must be implemented with respect to an Emergency before a meeting of the Board can reasonably be convened, then the Chief Executive Officer or such Officer shall have the authority, without Board action, to implement any Emergency Rules with respect to such Emergency that he or she deems necessary or appropriate to respond to such Emergency. As soon as practicable after the Chief Executive Officer or other Officer has implemented an Emergency Rule, the Board must convene a meeting in order to affirm, amend, revoke, suspend or modify such Emergency Rule.

9.2.4 Whenever the Exchange, the Board, the Chief Executive Officer or authorized Officer takes actions necessary or appropriate to respond to an Emergency, a duly authorized representative of the Exchange will notify Participants. The Exchange will endeavor also to notify the CFTC in accordance with CFTC Regulations prior to implementing, modifying or terminating an Emergency Rule. If such prior notification is not practicable, the Exchange will notify the CFTC as soon as reasonably practicable, but in all circumstances within 24 hours of the implementation, modification or termination of such Emergency Rule. The Exchange may take any actions as directed by the CFTC.

9.2.5 The Board will terminate the actions taken in response to the Emergency once the Board determines in good faith that the Emergency has sufficiently abated to permit the affected functions of the Exchange to resume normal functioning. If the Board has not yet convened, the Chief Executive Officer or other authorized Officer will terminate the actions taken in response to the Emergency once such Officer determines that the Emergency has sufficiently abated to permit the affected functions of the Exchange to resume normal functioning.

9.2.6 Emergency actions taken pursuant to Rule 4.1.3 are subject to the conflict of interest provisions set forth in Rule 2.6.

**10 FINANCIAL VIABILITY AND REPORTING**

**10.1 Financial Viability – The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.**

10.1.1 Nodal Exchange has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements. In accordance with CFTC Regulations, Nodal Exchange is required to consistently maintain regulatory capital in an amount at least equal to one year of projected operating expenses as well as cash, liquid securities, or a line of credit at least equal to six months of projected operating expenses.

10.1.2 Consistent with Core Principle 21, Nodal Exchange has adequate financial, operational, and managerial resources to discharge each responsibility of the Exchange. As required by the CFTC, the financial resources of the Exchange exceed the total amount that would enable the Exchange to cover its operating costs for a one-year period, as calculated on a rolling basis. On a monthly basis, Nodal assesses the adequacy of its financial resources and capital to

meet its requirements, and submits a quarterly report to the CFTC that provides the Exchange's financial information to demonstrate compliance with CFTC Regulations. In addition, the Exchange maintains unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities) equal to at least six months' operating costs.

- 10.1.3 Nodal Exchange maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed to meet CFTC requirements.

## 11 TRANSPARENCY

### 11.1 **Transparency – The Exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.**

- 11.1.1 The Rules of the Exchange describe sound trading practices and the accuracy of market information provided by Participants to ensure the transparency of market behavior of all market Participants.

11.1.2 Nodal Exchange provides its settlement pricing information twice per day to all Participants. Consistent with Core Principle 8 and Rule 4.14, Nodal Exchange publishes daily information on settlement prices, volume, open interest and opening and closing ranges for actively traded Nodal Contracts on its website. The Exchange also publishes the total quantity of Block Trades that are included in trading volume for each trading day.

- 11.1.3 Nodal Exchange provides all of its Participants access to all listed active order information and timely reporting of any trades during the trading day.

## 12 RECORD KEEPING

### 12.1 **Record Keeping – The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.**

- 12.1.1 The Controller of Nodal Exchange maintains its financial books and records to ensure adequate representation of the Exchange's financial condition. External auditors conduct the annual audit to confirm that the Exchange's books and records are properly maintained in order to issue an independent audit opinion.

12.1.2 Consistent with Core Principle 10, Nodal LiveTrade maintains audit trail data with all information with respect to each order (whether or not such order results in a consummated trade) and each consummated trade, as well as other information relating to the trade environment that determines the matching and clearing of trades (e.g., information from the Clearing Members indicating the number and types of contracts such Clearing Members will clear for Participants). As such, any order submitted to Nodal LiveTrade can be tracked from the time it is entered into the system until the time that it is matched, canceled or otherwise removed.

- 12.1.3 The Exchange's recordkeeping program satisfies the relevant criteria set forth in the CFTC's Regulations. The Exchange retains all books and records on electronic storage media in a write once, read many times format that is stored at multiple locations to ensure redundancy and critical safeguarding of the data.

12.1.4 The Compliance Department's recordkeeping program satisfies the relevant criteria set forth in the CFTC's Regulations. The Compliance Department maintains a log of all investigations and their disposition. The written report of the investigation (the "**Investigation Report**") will include the reasons for initiating the investigation, all relevant facts and evidence gathered, analysis and conclusions, the Respondent's disciplinary history at the Exchange, and the staff's recommendation. Compliance retains books and records pertaining to trading activity on limited access electronic storage media in a write once, read many times format that is stored at multiple locations to ensure redundancy and critical safeguarding of the data.

12.1.5 The ROC oversees all facets of the regulatory program, including compliance with recordkeeping requirements. As required by the CFTC and Nodal Exchange, the Exchange (i) keeps, or causes to be kept, complete and accurate books and records of accounts of the Exchange, including all books and records required to be maintained pursuant to the CEA and CFTC Regulations, and (ii) retains all such books and records for at least five years, making such books and records readily accessible for inspection by the CFTC and the U.S. Department of Justice during the first two years of such five-year period. The Exchange may record conversations and retain copies of electronic communications between Exchange Officials and Participants, their Authorized Users or other agents.

## 13 OUTSOURCING

### 13.1 Outsourcing – Where the Exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations, and that are in accordance with industry best practices.

13.1.1 Nodal Contracts are settled and cleared by LCH. LCH is recognized by the OSC as a clearing agency under Section 21.2 of the OSA. Accordingly, appropriate and formal arrangements and processes in place to ensure that the clearing obligation is met in accordance with industry best practices.

13.1.2 Nodal Exchange does not outsource any of its key functions. Nodal Exchange outsources some non-key functions (e.g., physical co-location of the Exchange's hardware and software for disaster recovery ), and has appropriate, formal and legal arrangements in place to ensure its obligations are met in accordance with industry best practices.

## 14 FEES

### 14.1 Fees

(a) **All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating unreasonable condition or limit on access by participants to the services offered by the exchange.**

(b) **The process for setting fees is fair and appropriate, and the fee model is transparent.**

14.1.1 All fees imposed by Nodal Exchange are equitably allocated and do not have the effect of creating unreasonable barriers to access. All Participants are subject to the same base fee schedule. The process for setting fees is fair and appropriate and consistently applied for the energy commodities markets. Nodal Exchange operates in a highly competitive marketplace for energy transactions and establishes fees at market rates. Participants in the energy markets have a wide variety of trading options from which to select, ensuring that Nodal Exchange sets fees competitively. Nodal Exchange Rules as well as market forces ensure there are no fee barriers to market participants and that the relevant considerations are balanced appropriately.

14.1.2 All changes in fee levels are communicated to all Nodal Exchange Participants in advance. This is a highly competitive environment and Nodal Exchange carefully considers how any changes to its fees impact the market and its business.

14.1.3 Nodal may offer fee discounts to liquidity providers. At its discretion, Nodal Exchange may offer a liquidity provider program that provides incentives to Participants willing to supply substantial numbers of bids and offers or traded volume in the market. The liquidity provider program may offer reduced fees, among other incentives, for qualified liquidity providers as determined by the Exchange. As of this application, Nodal has no active liquidity provider programs for trading Participants.

14.1.4 Pursuant to Exchange Rule 3.13, Exchange fees are made available on the Exchange's website.

## 15 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

### 15.1 Information Sharing and Regulatory Cooperation – The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

15.1.1 Nodal Exchange has mechanisms in place to share information (including records of trade details) with LCH, as authorized by the clearing agreement between LCH and Nodal Exchange. In collaboration with LCH, Nodal Exchange ensures that LCH receives the necessary information to support the clearing function.

15.1.2 Nodal Exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the relevant regulatory authorities on a timely basis. Nodal Exchange monitors trading on the Exchange through market surveillance, compliance and disciplinary practices and procedures as described in the Nodal Exchange Rulebook. By executing the Nodal Exchange participant agreement, Participants consent to the collection of such information by Nodal Exchange in order to perform its monitoring functions and carry out its self regulatory functions.

15.1.3 Exchange Rule 2.8.1 authorizes the Exchange to enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets on which financial instruments related to the Nodal Contracts

trade. As part of any information-sharing agreements or other arrangements or procedures adopted pursuant to this Rule, the Exchange is authorized to:

- (a) provide market surveillance reports to other markets;
- (b) share information and documents concerning current and former Participants with other markets;
- (c) share information and documents concerning ongoing and completed investigations with other markets; or
- (d) require its current or former Participants to provide information and documents to the Exchange at the request of other markets with which the Exchange has an information-sharing agreement or other arrangements or procedures.

15.1.4 Pursuant to Rule 2.8.2, the Exchange may enter into any arrangement with any Person or body (including the CFTC, the NFA, any self-regulatory organization, any exchange, market, or clearing organization, or foreign regulatory authority) if the Exchange considers such arrangement to be in furtherance of the Exchange's purpose or duties under the Rules or any law or regulation. In compliance with Core Principle 7 – Availability of General Information – the Exchange posts general information, including its contract specifications and the Rulebook on the Exchange's website.

15.1.5 Core Principle 2(C) (Compliance with Rules – Requirement of Rules) requires DCM rules to provide the DCM with “the ability and authority to obtain any necessary information to perform any function in this section [CFTC regulations Part 38], including the capacity to carry out such international information-sharing agreements as the [CFTC] may require.” Exchange Rule 2.8 authorizes Nodal Exchange to enter into information-sharing agreements with other markets in furtherance of the Exchange's purpose or duties under its Rules or any law or regulation. Nodal Exchange is a signatory to the International Information Sharing Memorandum of Understanding and Agreement (March 15, 1996) (“MOU”), which establishes a framework for participating exchanges and clearing organizations worldwide to share information relevant to managing global market emergencies.

**15.2 Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the Ontario Securities Commission and the Foreign Regulator.**

15.2.1 The Ontario Securities Commission, together with the Autorité des marchés financiers, Alberta Securities Commission and British Columbia Securities Commission, recently entered into a Memorandum of Understanding with the United States Commodity Futures Trading Commission concerning regulatory cooperation related to the supervision and oversight of regulated entities that operate in both the United States and Canada (the “Supervisory MOU”). The Supervisory MOU provides a comprehensive framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of cross-border regulated entities and enhances the OSC's ability to supervise these entities. The Supervisory MOU became effective on March 25, 2014.

**16 IOSCO PRINCIPLES**

**16.1 IOSCO Principles – To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (“IOSCO”) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).**

16.1.1 Nodal Exchange adheres to the IOSCO principles by virtue of the fact that the Exchange must comply with the CEA and the CFTC Regulations, which reflect the IOSCO standards. The CFTC is a signatory to the IOSCO Memorandum of Understanding that provides for the international exchange of information to investigate and enforce laws regarding securities and derivatives violations.

16.1.2 Nodal Exchange adheres to the IOSCO principles set out in the “Objectives and Principles of Securities Regulation” (2003) applicable to exchanges and trading systems. Consistent with the CEA and CFTC regulations, Nodal Exchange maintains operations to achieve the following:

- (a) ensure the integrity of trading through fair and equitable rules that strike an appropriate balance between the demands of different market Participants;
- (b) promote transparency of trading;
- (c) detect and deter manipulation and other unfair trading practices;
- (d) ensure proper management of large exposures, default risk and market disruption; and

- (e) ensure that clearing and settlement of transactions are fair, effective and efficient, and that they reduce systemic risk.

### Part III Submissions by Nodal Exchange

#### 1. Submissions Concerning the Exchange Relief

- A. All contracts traded on Nodal Exchange fall under the definitions of “commodity futures contract” or “commodity futures option”<sup>14</sup> set out in section 1 of the CFA. Nodal Exchange is therefore considered a “commodity futures exchange” as defined in section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration under section 15 of the CFA. Nodal Exchange seeks to provide Ontario market participants with direct, electronic access to trading in Nodal Contracts and may therefore be considered to be “carrying on business as a commodity futures exchange” in Ontario.
- B. Nodal Exchange is not registered with or recognized by the OSC as a commodity futures exchange under the CFA and no Nodal Contracts have been accepted by the Director (as defined in the OSA) under the CFA. Therefore, Nodal Contracts are considered “securities” under paragraph (p) of the definition of “security” set out in subsection 1(1) of the OSA and Nodal Exchange is considered an “Exchange” under the OSA. Therefore, Nodal Exchange is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under subsection 21(1) of the OSA. Nodal Exchange seeks to provide Ontario market participants with direct, electronic access to trading in Nodal Contracts and may therefore be considered to be “carrying on business as an Exchange” in Ontario.
- C. Nodal Exchange satisfies all the criteria for registration or exemption from registration as a commodity futures exchange and recognition or exemption from recognition as an exchange set out by OSC Staff, as described under Part II of this application. Ontario market participants that trade in commodity futures would benefit from the ability to trade on Nodal Exchange, as they would have access to a range of exchange-traded energy derivative products based on North American electricity markets, which are not currently available in Ontario. Nodal Exchange would offer its Ontario Participants a transparent, efficient and liquid market to trade Nodal Contracts. Nodal Exchange uses sophisticated information systems and has adopted Rules and compliance functions subject to CFTC oversight that will ensure that Ontario users are adequately protected in accordance with international standards set by IOSCO. We therefore submit that it would not be prejudicial to the public interest to grant the Requested Relief.
- D. Provided that the OSC exempts Nodal Exchange from registration as a commodity futures exchange under the CFA, Nodal Exchange will be an “exempt exchange” as defined in OSC Rule 92-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* (“OSC Rule 91-503”) and the Nodal Contracts will be “exempt exchange contracts” under OSC Rule 91-503. We submit that OSC Rule 91-503 applies to Nodal Exchange as “situate outside Ontario” and that separate exemptive relief for trades in Nodal Contracts is not required from the registration requirement in Section 25 of the OSA and prospectus requirement in section 53 of the OSA pursuant to Part II of OSC Rule 91-503.
- E. Additionally, pursuant to the deemed rule entitled *In the Matter of Trading in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges in the United States of America*, trades by any persons or companies in commodity futures contracts and commodity futures options entered into on commodity futures exchanges designated by the CFTC as DCMs under the CEA are not subject to the registration requirement in section 25 of the OSA and the prospectus requirement in section 53 of the OSA. Therefore, no registration or prospectus relief will be required under the OSA for trades in Nodal Contracts in Ontario.

#### 2. Submissions Concerning Hedger Relief

- A. Nodal Exchange seeks to provide direct access to trading in Nodal Contracts to Ontario Participants that are “hedgers” as defined in subsection 1(1) of the CFA. Section 32(1)(a) of the CFA provides an *exemption from registration for trades “by a hedger through a dealer,”* which will not be available to Ontario resident hedgers because they will have direct access to Nodal Exchange and will not be considered to be executing “through a dealer”. To become Nodal Exchange Participants, Ontario resident hedgers must execute a Nodal Exchange participant agreement agreeing to comply with the Rules of Nodal Exchange and all applicable law pertaining to the use of Nodal Exchange, and obtain a guarantee from an LCH Clearing Member that clears for Nodal Exchange unless the Ontario Participant is an LCH Clearing Member clearing for its proprietary account.

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<sup>14</sup> Nodal Exchange intends to offer options on Nodal Contracts, but does not do so at this time.



- B. The relevant LCH Clearing Member with which an Ontario resident hedger seeks to open an account for the purpose of trading on Nodal Exchange, will complete credit, know-your-client and anti-money laundering checks, suitability analyses and other account supervision procedures prior to entering into clearing agreements with all clients and on an ongoing basis in accordance with CFTC, SEC and Nodal Exchange requirements. Furthermore, because LCH Clearing Members are ultimately responsible for the trading activity of any Ontario Participants that they agree to guarantee, they can be expected to ensure that such Ontario Participants will have the requisite sophistication and proficiency in the trading of Nodal Contracts to satisfy investor protection concerns associated with having direct access to Nodal Exchange.
- C. Nodal Exchange intends to confirm that Ontario Participants that seek to rely on the Hedger Relief are “hedgers” (as defined in subsection 1(1) of the CFA) by obtaining a representation to that effect from such Ontario resident hedgers as a part of the application documentation. The documentation will specify that this representation is deemed to be repeated by the Ontario Participant each time it enters an Order for a Nodal Contract and that the Ontario Participant must be a “hedger” for the purposes of each trade resulting from such an order.
- D. The requested Hedger Relief is needed to allow sophisticated Ontario residents who meet the definition of “hedger” to become Ontario Participants and gain the benefits of direct access to Nodal LiveTrade and facilities of Nodal Exchange. Given the sophistication of such Ontario Participants and the fact that the financial responsibility for their trading activity ultimately lies with the LCH Clearing Member that guarantees their trades, or the Ontario Participant itself if it is an LCH Clearing Member, it is not necessary for the protection of other investors or the integrity of the market to require such Ontario Participants to send their Orders through a dealer rather than accessing Nodal Exchange directly.

**Part IV Other Matters**

- 1. In support of this application, we are enclosing the following:
  - a. a verification statement from an officer of Nodal Exchange confirming our authority to prepare and file this application, and certifying the truth of the facts contained herein as Appendix A;
  - b. a list of the Nodal Contracts that trade on Nodal Exchange as Appendix B;
  - c. a cheque in the amount of the fees payable to the OSC; and
  - d. a draft form of the order.
- 2. Nodal Exchange consents to the publication of this Application for public comment in the OSC Bulletin.

**Appendix A**

**Verification Certificate**

**To: Ontario Securities Commission**

Dear Sirs/Mesdames:

**Re: Application by Nodal Exchange, LLC**

I, Paul Cusenza as Chief Executive Officer and Chairman of the Board of Nodal Exchange, do hereby certify that the preparation and compilation of the attached application to the Ontario Securities Commission is authorized and confirm the truth of the facts contained therein as they relate to Nodal Exchange.

DATED July 17, 2014

"Paul Cusenza"  
Paul Cusenza  
Chief Executive Officer and Chairman of the Board  
Nodal Exchange, LLC

**Appendix B**

**List of Nodal Contracts**

The list of Nodal Contracts is available for download as a PDF on the Exchange's website:  
[http://www.nodalexchange.com/resource\\_center/contracts.php](http://www.nodalexchange.com/resource_center/contracts.php)

Appendix B

Nodal Exchange, LLC – Draft Exemption Order

IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S. 5, AS AMENDED  
(THE OSA)

AND

IN THE MATTER OF  
THE COMMODITY FUTURES ACT,  
R.S.O. 1990, CHAPTER C.20, AS AMENDED  
(THE CFA)

AND

IN THE MATTER OF  
NODAL EXCHANGE, LLC

ORDER

(Section 147 of the OSA and sections 38 and 80 of the CFA)

**WHEREAS** Nodal Exchange, LLC (**Nodal Exchange**) has filed an application (**Application**) with the Ontario Securities Commission (**Commission**) requesting:

- a. an order pursuant to section 147 of the OSA exempting Nodal Exchange from the requirement to be recognized as an exchange under subsection 21(1) of the OSA;
- b. an order pursuant to section 80 of the CFA exempting Nodal Exchange from the requirement to be registered as a commodity futures exchange under subsection 15(1) of the CFA (together with the requested order above, **Exchange Relief**); and
- c. an order pursuant to section 38 of the CFA exempting trades in contracts on Nodal Exchange by a “hedger”, as defined in subsection 1(1) of the CFA (**Hedger**), from the registration requirement under section 22 of the CFA (**Hedger Relief**);

**AND WHEREAS** OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario (Rule 91-503)* exempts trades of commodity futures contracts or commodity futures options made on commodity futures exchanges not registered with or recognized by the Commission under the CFA from sections 25 and 53 of the OSA;

**AND WHEREAS** the deemed rule titled *In the Matter of Trading in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges in the United States of America* provides that section 33 of the CFA does not apply to trades entered into a commodity futures exchange designated by the United States (**U.S.**) Commodity Futures Trading Commission (**CFTC**) under the U.S. Commodity Exchange Act (**CEA**);

**AND WHEREAS** Nodal Exchange has represented to the Commission that:

1. Nodal Exchange is a limited liability company organized under the laws of the State of Delaware in the U.S. and is a wholly owned subsidiary of Nodal Exchange Holdings, LLC, a privately held limited liability company organized under the laws of the State of Delaware;
2. Nodal Exchange receives a majority of its revenue from transaction fees, which include electronic trading fees, surcharges for privately-negotiated transactions and other volume-related charges for contracts executed through the Nodal Exchange trading venue;
3. Nodal Exchange Holdings, LLC, as the holding company for Nodal Exchange, does not have operations of its own, does not have employees, relies upon the profits paid by its subsidiary and has limited contractual arrangements. Nodal Exchange is the primary employer and retains operational control;
4. Nodal Exchange is a designated contract market (**DCM**) by the CFTC, within the meaning of that term under the CEA. Nodal Exchange is subject to regulatory supervision by the CFTC, a U.S. federal regulatory agency. Nodal Exchange is

obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces Nodal Exchange's adherence to the CEA and regulations thereunder on an ongoing basis, including DCM core principles (**DCM Core Principles**) relating to the operation and oversight of Nodal Exchange's markets, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection;

5. The CFTC's Division of Market Oversight, Market Compliance Section conducts regular in-depth reviews of each DCM's ongoing compliance with CFTC regulations in order to enforce its rules, prevent market manipulation and customer and market abuses, and to ensure the recording and safe storage of trade information. The results of these rule enforcement reviews are in most cases summarized in reports by the CFTC which are made available to the public and posted on the CFTC's website;
6. Nodal Exchange provides trading services for sophisticated commercial entities transacting in cash settled commodity futures contracts offered by Nodal Exchange that are based on electric power and natural gas (**Nodal Contracts**). Nodal Exchange offers over 1,000 power contracts settling to monthly peak or off-peak hours for hub, zone, or node locations within the organized power markets in the U.S. Nodal Exchange's commercial customers are comprised of both buy and sell side investors, including commercial and investment banks, corporations, money managers, proprietary trading firms, hedge funds, and other institutional customers. All Nodal Contracts are cleared through LCH.Clearnet Ltd. (**LCH.Clearnet**), which is recognized by the Commission as a clearing agency under Section 21.2 of the OSA, by LCH.Clearnet clearing members (**LCH.Clearnet Clearing Member**);
7. Nodal Exchange maintains and operates an electronic trading system known as Nodal LiveTrade, that functions as the electronic central limit order book (**Trading System**) where entities trade Nodal Contracts on a principal-to-principal basis for their proprietary accounts without the capability to trade through an intermediary in a fiduciary capacity such as a dealer or futures commission merchant (**FCM**);
8. Nodal Exchange also performs clearing support services for LCH.Clearnet that are administrative processes that enable participants to access LCH.Clearnet in order to clear Nodal Contracts that were executed off-exchange (**Block Trades**) and on the Trading System. These clearing support services are administrative roles that consist of two primary functions: 1) verifying that each account holder's trading activity does not cause their account to exceed the trade risk limit (**TRL**) provided by the LCH.Clearnet Clearing Member and 2) systems support for position keeping and clearinghouse administration;
9. Nodal Exchange does not have any offices or maintain other physical installations in Ontario or any other Canadian province or territory;
10. Nodal Exchange proposes to offer direct access in Ontario to its Trading System and facilities to prospective participants in Ontario (**Ontario Participants**). To obtain direct access to the Trading System and facilities of Nodal Exchange, an Ontario Participant must execute (i) a participant agreement with Nodal Exchange that requires, among other things, compliance with the rules of Nodal Exchange and all applicable laws relating to the use of Nodal Exchange, and (ii) a clearing agreement with a LCH.Clearnet Clearing Member unless the Ontario Participant is a LCH.Clearnet Clearing Member clearing for their own proprietary account (such participants on Nodal Exchange shall herein be referred to as **Nodal Exchange Participants**). Nodal Exchange Participants can transmit orders and trades directly into Nodal Exchange with the guarantee of a LCH.Clearnet Clearing Member;
11. Nodal Exchange expects that Ontario Participants will be certain Canadian financial institutions (within the meaning of such term in subsection 1.1(3) of National Instrument 14-101 *Definitions*) and certain other market participants that have a head office or principal place of business in Ontario, such as (i) dealers that are engaged in the business of trading commodity futures in Ontario; (ii) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity; and (iii) institutional investors and proprietary trading firms. In each case, Nodal Exchange expects that Ontario Participants will be (i) dealers that are engaged in the business of trading commodity futures and commodity options in Ontario for their proprietary accounts, or (ii) Hedgers;
12. Nodal Contracts fall within the definition of "commodity futures contract" as defined in section 1 of the CFA. As a result, Nodal Exchange is considered a "commodity futures exchange" as defined in section 1 of the CFA. Therefore, Nodal Exchange is prohibited from carrying on business in Ontario unless it is registered or exempt from registration as a commodity futures exchange under subsection 15(1) of the CFA;
13. As Nodal Exchange intends to provide Ontario Participants with access in Ontario to its Trading System and facilities to trade Nodal Contracts, Nodal Exchange is considered to be "carrying on business as a commodity futures exchange in Ontario";

14. Nodal Exchange is not registered with or recognized by the Commission as a commodity futures exchange under the CFA and none of the Nodal Contracts have been accepted by the Director (as defined in the OSA) under the CFA. As a result, Nodal Contracts are also considered “securities” under paragraph (p) of the definition of “security” in section 1 of the OSA and Nodal Exchange is considered to be an “exchange” under the OSA. Therefore, Nodal Exchange is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under subsection 21(1) of the OSA;
15. Further, while Nodal Contracts are also considered “securities” under paragraph (p) of the definition of “security” in section 1 of the OSA for the reasons outlined in the preceding paragraph, Nodal Contracts would not be considered “securities” under any other paragraph contained in that definition, nor would any Nodal Contract be considered a “derivative” as defined in section 1(1) of the OSA;
16. Similar to paragraph 12 above, since Nodal Exchange seeks to provide Ontario Participants with access in Ontario to trade Nodal Contracts, Nodal Exchange is considered to be “carrying on business as an exchange in Ontario”;
17. Additionally, the exemption from registration in subsection 32(a) of the CFA applies for trades “by a hedger through a dealer”. This exemption will not be available for trades in Nodal Contracts by Ontario resident Hedgers that become Nodal Exchange Participants since they will have direct access to Nodal Exchange but will not be considered to be executing “through a dealer”. For this reason, Nodal Exchange is seeking Commission approval for the Hedger Relief;
18. Nodal Exchange ensures that all applicants to become Nodal Exchange Participants must satisfy certain criteria, including, among other things: validly organized and in good standing, good reputation, business integrity and adequate financial resources to assume the responsibilities and privileges of being a Nodal Exchange Participant;
19. All LCH.Clearnet Clearing Members holding customer accounts to guarantee the trades of Nodal Exchange Participants under paragraph 10 will be registered FCMs with the CFTC. Such LCH.Clearnet Clearing Members are subject to the compliance requirements of the CEA, the CFTC, and the National Futures Association as they relate to customer accounts, including various know-your-client, suitability, risk disclosure, anti-money laundering and anti-fraud requirements. These requirements, in conjunction with the margin requirements for Nodal Contracts applicable to LCH.Clearnet Clearing Members, and subsequently to their clients whose trades they guarantee, ensure that Ontario Participants seeking to become Nodal Exchange Participants that are not also LCH.Clearnet Clearing Members are subjected to appropriate due diligence procedures and fitness criteria. In addition, Nodal Exchange Participants are responsible for, among other things, compliance with the rules of Nodal Exchange, as those rules relate to the entering and executing of transactions, and to comply with all applicable laws pertaining to the use of Nodal Exchange;
20. Based on the facts set out in the Application, Nodal Exchange satisfies the criteria for exemption set out in Appendix 1 of Schedule A to this order;

**AND WHEREAS** the Commission will monitor developments in international and domestic capital markets and Nodal Exchange’s activities on an ongoing basis to determine whether it is appropriate for the Commission to continue to grant the Exchange Relief or Hedger Relief and, if so, whether it is appropriate for the Exchange Relief and Hedger Relief to continue to be granted subject to the terms and conditions set out in Schedule A to this order;

**AND WHEREAS** Nodal Exchange has acknowledged to the Commission that the scope of the Exchange Relief or Hedger Relief and the terms and conditions imposed by the Commission set out in Schedule A to this order may change as a result of its monitoring of developments in international and domestic capital markets or Nodal Exchange’s activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives, commodity futures contracts, commodity futures options or securities;

**AND WHEREAS** based on the Application, together with the representations made by and acknowledgements of Nodal Exchange to the Commission, the Commission has determined that:

- a. Nodal Exchange satisfies the criteria for exemption set out in Appendix 1 of Schedule A;
- b. The granting of the Exchange Relief would not be prejudicial to the public interest; and
- c. The granting of the Hedger Relief would not be prejudicial to the public interest;

**IT IS HEREBY ORDERED** by the Commission that:

- a. Pursuant to section 147 of the OSA, Nodal Exchange is exempt from recognition as an exchange under subsection 21(1) of the OSA;

- b. Pursuant to section 80 of the CFA, Nodal Exchange is exempt from registration as a commodity futures exchange under subsection 15(1) of the CFA; and
- c. Pursuant to section 38 of the CFA, trades in Nodal Contracts by Hedgers who are Ontario Participants are exempt from the registration requirement under section 22 of the CFA.

**PROVIDED THAT** Nodal Exchange complies with the terms and conditions attached hereto as Schedule A.

**DATED** \_\_\_\_\_, 2014.

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**Meeting Criteria for Exemption**

1. Nodal Exchange will continue to meet the criteria for exemption included in Appendix 1 to this schedule.

**Regulation and Oversight of Nodal Exchange**

2. Nodal Exchange will maintain its registration as a DCM with the CFTC and will continue to be subject to the regulatory oversight of the CFTC.
3. Nodal Exchange will continue to comply with the ongoing requirements applicable to it as a DCM registered with the CFTC.
4. Nodal Exchange must do everything within its control, which would include cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the OSA, as a commodity futures exchange exempted from registration under subsection 15(1) of the CFA, and in compliance with Ontario securities law and Ontario commodity futures law.

**Access**

5. Nodal Exchange will maintain and operate a Trading System where Nodal Exchange Participants trade on a principal-to-principal basis for their own proprietary accounts without the capability to trade through an intermediary in a fiduciary capacity such as a dealer or FCM.
6. Nodal Exchange will not provide direct access to an Ontario Participant unless the Ontario Participant is appropriately registered to trade in Nodal Contracts or is a Hedger; in making this determination, Nodal Exchange may reasonably rely on a written representation from the Ontario Participant that specifies either that it is appropriately registered to trade in Nodal Contracts or that it is a Hedger, and Nodal Exchange will notify such Ontario Participant that this representation is deemed to be repeated each time it enters an order for a Nodal Contract.
7. Each Ontario Participant that intends to rely on the Hedger Relief will be required to, as part of its application documentation or continued access to trading in Nodal Contracts:
  - (a) represent that it is a Hedger;
  - (b) acknowledge that Nodal Exchange deems the Hedger representation to be repeated by the Ontario Participant each time it enters an order for a Nodal Contract and that the Ontario Participant must be a Hedger for the purposes of each trade resulting from such an order;
  - (c) agree to notify Nodal Exchange if it ceases to be a Hedger;
  - (d) represent that it will only enter orders for its own account;
  - (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements; and
  - (f) acknowledge that its ability to continue to rely on the Hedger Relief in accessing trading on Nodal Exchange will be dependent on the Commission continuing to grant the relief and may be affected by changes to the terms and conditions imposed in connection with the Hedger Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities.
8. Nodal Exchange will require Ontario Participants to notify Nodal Exchange if their applicable registration has been revoked, suspended or amended by the Commission or if they have ceased to be a Hedger and, following notice from the Ontario Participant or the Commission and subject to applicable laws, Nodal Exchange will promptly restrict the Ontario Participant's access to Nodal Exchange if the Ontario Participant is no longer appropriately registered with the Commission, or is no longer a Hedger.
9. Nodal Exchange must make available to Ontario Participants appropriate training for each person who has access to trade in Nodal Contracts.



### Trading by Ontario Participants

10. Nodal Exchange will not provide access to an Ontario Participant to trading in exchange-traded products of an exchange other than those of Nodal Exchange, unless such other exchange has sought and received appropriate regulatory standing in Ontario.
11. Nodal Exchange will not provide access to an Ontario Participant to trading in Nodal Contracts other than those that meet the definition of “commodity futures contract” or “commodity futures option” as defined in subsection 1(1) of the CFA, and which also fall under paragraph (p) of the definition of “security” in subsection 1(1) of the OSA, without prior Commission approval.

### Submission to Jurisdiction and Agent for Service

12. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission’s regulation and oversight of the activities of Nodal Exchange in Ontario, Nodal Exchange will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
13. Nodal Exchange will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Commission’s regulation and oversight of Nodal Exchange’s activities in Ontario.

### Disclosure

14. Nodal Exchange will provide to its Ontario Participants disclosure that states that:
  - (a) rights and remedies against Nodal Exchange may only be governed by the laws of the U.S., rather than the laws of Ontario, and may be required to be pursued in the U.S. rather than in Ontario;
  - (b) the rules applicable to trading on Nodal Exchange may be governed by the laws of the U.S., rather than the laws of Ontario; and
  - (c) Nodal Exchange is regulated by the CFTC, rather than the Commission.

### Filings with the CFTC

15. Nodal Exchange will promptly provide staff of the Commission copies of all material rules of Nodal Exchange, and material amendments to those rules, that it files with the CFTC under the regulations pertaining to self-certification and/or approval.
16. Nodal Exchange will promptly provide staff of the Commission copies of all material contract specifications and material amended contract specifications that it files with the CFTC under the regulations pertaining to self-certification and/or approval.
17. Nodal Exchange will promptly provide staff of the Commission the following information to the extent it is required to file such information with the CFTC:
  - (a) the annual Board of Directors’ report regarding the activities of the Board and its committees;
  - (b) the annual financial statements of Nodal Exchange;
  - (c) details of any material legal proceeding instituted against Nodal Exchange;
  - (d) notification that Nodal Exchange has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate Nodal Exchange or has a proceeding for any such petition instituted against it; and
  - (e) the appointment of a receiver or the making of any voluntary arrangement with creditors.

### Prompt Notice or Filing

18. Nodal Exchange will promptly notify staff of the Commission of any of the following:
- (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:
    - (i) changes to the regulatory oversight by the CFTC;
    - (ii) the corporate governance structure of Nodal Exchange;
    - (iii) the access model, including eligibility criteria, for Ontario Participants;
    - (iv) systems and technology; and
    - (v) the clearing and settlement arrangements for Nodal Exchange;
  - (b) any change in Nodal Exchange's regulations or the laws, rules and regulations in the U.S. relevant to futures and options where such change may materially affect its ability to meet the criteria set out in Appendix 1 to this schedule;
  - (c) any condition or change in circumstances whereby Nodal Exchange is unable or anticipates it will not be able to continue to meet the DCM Core Principles or any applicable requirements of the CEA or CFTC regulations;
  - (d) any revocation or suspension of, or amendment to, Nodal Exchange's registration as a DCM by the CFTC or if the basis on which Nodal Exchange's registration as a DCM was granted has significantly changed;
  - (e) any known investigations of, or disciplinary action against, Nodal Exchange by the CFTC or any other regulatory authority to which it is subject;
  - (f) any matter known to Nodal Exchange that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and
  - (g) any default, insolvency, or bankruptcy of any Nodal Exchange Participant known to Nodal Exchange or its representatives that may have a material, adverse impact upon Nodal Exchange or any Ontario Participant.
19. Nodal Exchange will promptly file with staff of the Commission copies of any Rule Enforcement Review report regarding Nodal Exchange once issued as final by the CFTC.

### Quarterly Reporting

20. Nodal Exchange will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a quarterly basis (within 30 days of the end of each calendar quarter), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Participants, specifically identifying for each Ontario Participant:
    - (i) its status as a Nodal Exchange Participant or as an LCH.Clearnet Clearing Member for Nodal Exchange, and
    - (ii) the basis upon which it represented to Nodal Exchange that it could be provided with direct access (i.e., that it is appropriately registered to trade in Nodal Contracts or is a Hedger);
  - (b) a list of all Ontario Participants against whom disciplinary action has been taken in the last quarter by Nodal Exchange or, to the best of Nodal Exchange's knowledge, by the CFTC with respect to such Ontario Participants' activities on Nodal Exchange;
  - (c) a list of all referrals to the Nodal Exchange Chief Regulatory Officer by the Nodal Exchange Surveillance Team concerning Ontario Participants;
  - (d) a list of all Ontario applicants for status as an Ontario Participant who were denied such status or access to Nodal Exchange during the quarter;

- (e) a list of all new by-laws, rules, and contract specifications, and changes to by-laws, rules and contract specifications, not already reported under sections 15 and 16 of this schedule;
- (f) a list of all Nodal Contracts available for trading during the quarter, identifying any additions, deletions or changes since the prior quarter;
- (g) for each Nodal Contract,
  - (i) the total trading volume and value originating from Ontario Participants, presented on a per Ontario Participant basis, and
  - (ii) the proportion of worldwide trading volume and value on Nodal Exchange conducted by Ontario Participants, presented in the aggregate for such Ontario Participants; and
- (h) a list outlining each incident of a significant system outage that occurred at any time during the quarter for any system impacting Ontario Participants' trading activity, including trading, routing or data, specifically identifying the date, duration and reason for the outage, and noting any corrective action taken.

**Annual Reporting**

- 21. Nodal Exchange will arrange to have the annual audited financial statements of Nodal Exchange filed with the Commission promptly after their issuance.

**Reporting**

- 22. If an IT Service Auditor's Report (**Report**) is prepared for Nodal Exchange, Nodal Exchange will promptly file with the Commission the Report after the Report is issued as final by its independent auditor.

**Information Sharing**

- 23. Nodal Exchange will provide information (including additional periodic reporting) as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

## APPENDIX 1

### CRITERIA FOR EXEMPTION

#### PART 1 REGULATION OF THE EXCHANGE

##### 1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

##### 1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

#### PART 2 GOVERNANCE

##### 2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange,
- (b) that business and regulatory decisions are in keeping with its public interest mandate,
- (c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:
  - (i) appropriate representation of independent directors, and
  - (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest, and
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

##### 2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

#### PART 3 REGULATION OF PRODUCTS

##### 3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are reviewed by the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

##### 3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

##### 3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

## **PART 4 ACCESS**

### **4.1 Fair Access**

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure
  - (i) participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,
  - (ii) the competence, integrity and authority of systems users, and
  - (iii) systems users are adequately supervised.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.
- (c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.
- (d) The exchange does not
  - (i) permit unreasonable discrimination among participants, or
  - (ii) impose any burden on competition that is not reasonably necessary and appropriate.

## **PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE**

### **5.1 Regulation**

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

## **PART 6 RULEMAKING**

### **6.1 Purpose of Rules**

- (a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants.
- (b) The Rules are not contrary to the public interest and are designed to
  - (i) ensure compliance with applicable legislation,
  - (ii) prevent fraudulent and manipulative acts and practices,
  - (iii) promote just and equitable principles of trade,
  - (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,
  - (v) provide a framework for disciplinary and enforcement actions, and
  - (vi) ensure a fair and orderly market.

## **PART 7 DUE PROCESS**

### **7.1 Due Process**

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

- (a) parties are given an opportunity to be heard or make representations, and

- (b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

## **PART 8 CLEARING AND SETTLEMENT**

### **8.1 Clearing Arrangements**

The exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing house.

### **8.2 Regulation of the Clearing House**

The clearing house is subject to acceptable regulation.

### **8.3 Authority of Regulator**

A foreign regulator has the appropriate authority and procedures for oversight of the clearing house. This includes regular, periodic regulatory examinations of the clearing house by the foreign regulator.

### **8.4 Access to the Clearing House**

- (a) The clearing house has established appropriate written standards for access to its services.
- (b) The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

### **8.5 Sophistication of Technology of Clearing House**

The exchange has assured itself that the information technology used by the clearing house has been adequately reviewed and tested and provides at least the same level of safeguards as required of the exchange.

### **8.6 Risk Management of Clearing House**

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

## **PART 9 SYSTEMS AND TECHNOLOGY**

### **9.1 Systems and Technology**

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

- (a) order entry,
- (b) order routing,
- (c) execution,
- (d) trade reporting,
- (e) trade comparison,
- (f) data feeds,
- (g) market surveillance,
- (h) trade clearing, and
- (i) financial reporting.

## **9.2 Information Technology Risk Management Procedures**

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

## **PART 10 FINANCIAL VIABILITY**

### **10.1 Financial Viability**

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

## **PART 11 TRANSPARENCY**

### **11.1 Transparency**

The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

## **PART 12 RECORD KEEPING**

### **12.1 Record Keeping**

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

## **PART 13 OUTSOURCING**

### **13.1 Outsourcing**

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

## **PART 14 FEES**

### **14.1 Fees**

- (a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.
- (b) The process for setting fees is fair and appropriate, and the fee model is transparent.

## **PART 15 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS**

### **15.1 Information Sharing and Regulatory Cooperation**

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

### **15.2 Oversight Arrangements**

Satisfactory information sharing and oversight agreements exist between the Ontario Securities Commission and the Foreign Regulator.

## **PART 16 IOSCO PRINCIPLES**

### **16.1 IOSCO Principles**

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the "Principles for the Regulation and Supervision of Commodity Derivative Markets" (2011).