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Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

RE: Notice and Request for Comment Regarding Application By Nodal Exchange, LLC For Exemption from Recognition and Registration as an Exchange and Related Registration Relief

Dear Sirs/Mesdames:

TMX Group Limited (“**TMX Group**”) welcomes the opportunity to comment on the application (the “**Application**”) and related draft order (“**Draft Order**”) of Nodal Exchange, LLC (“**Nodal Exchange**”) 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**”). For the reasons detailed below, TMX Group believes that the Draft Order should be amended to require approval or self-certification of new products similar to the review process performed by the Commodity Futures Trading Commission (the “**CFTC**”) in the United States with respect to Foreign Boards of Trade (“**FBOTs**”).

TMX Group

TMX Group's key subsidiaries operate cash and derivative markets for multiple asset classes including equities, fixed income and energy. Toronto Stock Exchange, TSX Venture Exchange, TMX Select, Alpha Exchange, The Canadian Depository for Securities, Montréal Exchange, Canadian Derivatives Clearing Corporation, Natural Gas Exchange, Boston Options Exchange, Shorcan, Shorcan Energy Brokers, Equicom and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products and other services to the global financial community. TMX Group is headquartered in Toronto and operates offices across Canada (Montreal, Calgary and Vancouver), in key U.S. markets (New York, Houston, Boston and Chicago) as well as in London, Beijing and Sydney.

New Product Approval

In the United States, exchanges for commodity futures contracts that are appropriately regulated in a foreign jurisdiction must be registered with the CFTC as an FBOT in order to permit direct access to their systems. Under the FBOT regime, the CFTC relies upon the foreign exchange's home regulator for many regulatory and oversight matters, but still retains the role of reviewing and approving of new products.



Pursuant to CFTC Rule 48.10, “a registered foreign board of trade that wishes to make an additional futures, option or swap contract available for trading by identified members or other participants located in the United States with direct access to its electronic trading and order matching system must submit a written request prior to offering the contracts from within the United States. Such a written request must include the terms and conditions of the additional futures, option or swap contracts..., and that the foreign board of trade and the clearing organization continue to satisfy the requirements and conditions of registration. The foreign board of trade can make available for trading by direct access the additional contracts ten business days after the date of receipt by the Commission of the written request, unless the Commission notifies the foreign board of trade that additional time is needed to complete its review of policy or other issues pertinent to the additional contracts...”

While pursuant to section 16, the Draft Order requires that Nodal Exchange “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,” there is currently no requirement in the Draft Order which suggests that approval by the Ontario Securities Commission (the “OSC”) or self-certification is required.

In the interest of protecting local market participants and the public generally, the OSC should adopt an approach that is similar to that set out in CFTC Rule 48.10. Retaining the role of approving of new products will ensure that these products are accurately classified and understood and meet any existing or future regulations that may apply. This will also ensure that before such products reach the market, they have received adequate review and attention from the OSC and, if necessary, have potentially been modified appropriately to meet any regulatory concerns or requirements.

While the CFTC defers to an FBOT’s primary regulator on many ongoing matters, it believes that review of new products is sufficiently important and poses significant enough risk to the local market that it still carefully reviews and approves of changes to this area of a foreign exchange’s business. Canadian participants would similarly be subject to new and potentially significant risks with the offering of a new exchange product and expect that products offered to them meet Canadian regulatory requirements. As such, the OSC should provide the same level of protection to participants in its markets as the CFTC provides to participants in its own.

The OSC has noted in OSC Staff Notice 21-702 *Regulatory Approach for Foreign-Based Stock Exchanges* that “investor protection must be balanced with efficient markets when facilitating access to foreign-based stock exchanges.” The cost to a US foreign exchange such as Nodal Exchange in terms of time and expenses that would result from TMX Group’s proposed modification to the Draft Order will likely be low as it is already required to make similar submissions with similar delays for approval in its home country. Our proposal will only increase any form of cost in instances where the OSC uncovers a potential issue with a new product and in such instances, any additional cost or impact to market efficiency would be outweighed by the benefits of investor protection.

Finally, in the interest of maintaining a level playing field among domestic exchanges and their US competitors, many of whom are now also operating in Canada, and not impeding the ability of domestic



exchanges to compete with their competitors, the OSC should not place greater reliance upon CFTC oversight than the CFTC places upon Canadian regulatory oversight. Currently, Canadian exchanges operating across North America are subject to new product approval by both their home regulator and a US regulator while pursuant to the Draft Order, Nodal Exchange would only be subject to approval by its home regulator. This situation both puts Canadian exchanges at a disadvantage and provides Canadian investors with less protection.

In light of the above, we ask that the OSC modify the Draft Order to require approval or self-certification of any new product offering.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jim Costerbaan', written over the typed name below.

Jim Costerbaan