

7.3

Réglementation des bourses, des
chambres de compensation, des OAR et
d'autres entités réglementées

7.3. RÉGLEMENTATION DES BOURSES, DES CHAMBRES DE COMPENSATION, DES OAR ET D'AUTRES ENTITÉS RÉGLEMENTÉES

7.3.1 Consultation

Nodal Exchange, LLC – Demande de dispense de reconnaissance à titre de bourse ou de marché organisé

L'Autorité des marchés financiers (l'« Autorité ») publie la demande, déposée par Nodal Exchange, LLC, de dispense de reconnaissance à titre de bourse ou de marché organisé en vertu de la *Loi sur les instruments dérivés*, RLRQ, c. I-14.01.

L'Autorité invite toutes les personnes intéressées à lui présenter leurs observations relativement à cette demande.

(Les textes sont reproduits ci-après.)

Commentaires

Toute personne désirant soumettre des commentaires est invitée à les faire parvenir par écrit, au plus tard le 20 février 2017, à :

M^e Anne-Marie Beaudoin
Secrétaire générale
Autorité des marchés financiers
800, square Victoria, 22^e étage C.P. 246, tour de la Bourse Montréal (Québec) H4Z 1G3
Télécopieur : 514 864-6381
Courrier électronique : consultation-en-cours@lautorite.qc.ca

Information complémentaire

Pour de plus amples renseignements, on peut s'adresser à :

Maxime Lévesque
Analyste aux OAR
Direction principale de l'encadrement des structures de marché
Autorité des marchés financiers
Téléphone : 514 395-0337, poste 4324
Numéro sans frais : 1 877 525-0337, poste 4324
Télécopieur : 514 873-7455
Courrier électronique : maxime.levesque@lautorite.qc.ca

Corinne Lemire
Analyste expert aux OAR
Direction principale de l'encadrement des structures de marché
Autorité des marchés financiers
Téléphone : 514 395-0337, poste 4334
Numéro sans frais : 1 877 525-0337, poste 4334
Télécopieur : 514 873-7455
Courrier électronique : corinne.lemire@lautorite.qc.ca

Nodal Clear, LLC – Demande de dispense de l'obligation de reconnaissance à titre de chambre de compensation

L'Autorité des marchés financiers (l'« Autorité ») publie la demande, déposée par Nodal Clear, LLC, de dispense de l'obligation de reconnaissance à titre de chambre de compensation en vertu de la *Loi sur les instruments dérivés*, RLRQ, c. I-14.01.

L'Autorité invite toutes les personnes intéressées à lui présenter leurs observations relativement à cette demande.

(Les textes sont reproduits ci-après.)

Commentaires

Toute personne désirant soumettre des commentaires est invitée à les faire parvenir par écrit, au plus tard le 20 février 2017, à :

M^e Anne-Marie Beaudoin
Secrétaire générale
Autorité des marchés financiers
800, square Victoria, 22^e étage C.P. 246, tour de la Bourse Montréal (Québec) H4Z 1G3
Télécopieur : 514 864-6381
Courrier électronique : consultation-en-cours@lautorite.qc.ca

Information complémentaire

Pour de plus amples renseignements, on peut s'adresser à :

Martin Picard
Analyste à la réglementation
Direction principale de l'encadrement des structures de marché
Autorité des marchés financiers
Téléphone : 514 395-0337, poste 4347
Numéro sans frais : 1 877 525-0337, poste 4347
Télécopieur : 514 873-7455
Courrier électronique : martin.picard@lautorite.qc.ca



1921 Gallows Road, 3rd Floor
Tysons Corner, VA 22182
Phone (703) 962 9800
Fax (703) 962 9850
www.nodalexchange.com

January 9, 2017

Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Re: Nodal Exchange, LLC – Application for Exemption from Recognition as an Exchange

Autorité des marchés financiers:

Nodal Exchange, LLC ("**Nodal Exchange**" or the "**Exchange**") is filing the enclosed application ("**Application**") with the Autorité des marchés financiers ("**AMF**") for decisions under article 86 of the *Derivatives Act* ("**DA**") granting Nodal Exchange relief as follows:

1. Exemption from the requirement to be recognized by the AMF as an exchange and published market under article 12 of the DA,
2. Exemption from the requirement to be qualified by the AMF as a person who creates or markets a derivative under article 82 of the DA, and
3. Exemption from the requirements of Regulation 21-101 *Marketplace Operation* and Regulation 23-101 *Trading Rules*.

Nodal Exchange is a designated contract market regulated by the Commodity Futures Trading Commission ("**CFTC**") in the United States. The Application addresses the criteria for exchanges as presented in the Policy Statement Respecting the Authorization of Foreign-Based Exchanges (March 30, 2005) ("**Policy Statement**") and describes the process for obtaining recognition and the regulatory oversight regime of the CFTC.

Part I Background

Part II Application of AMF Policy Statement approval criteria to Nodal Exchange

1. Regulation of exchange in home jurisdiction
2. Recognition or authorization process of regulator in home jurisdiction
3. Powers of exchange respecting co-operation
4. Powers respecting co-operation of regulator in home jurisdiction
5. Conditions of compliance

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**").¹ 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, 2013.² The Order of Designation was issued to Nodal Exchange without any conditions. 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 to sophisticated commercial entities admitted by the Exchange under one classification ("**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**"). Nodal Exchange also provides an electronic non-trading system that enables qualified Participants³ to submit Nodal Contracts that were executed off-exchange ("**Block Trades**") in accordance with the rules of the Exchange in order to be cleared through the Exchange's clearing agency, Nodal Clear, LLC ("**Nodal Clear**"). Qualified Participants executing Block Trades may submit Block Trades for clearing either directly or

¹ 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.

² 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.

³ Persons executing Block Trades must be "eligible contract participants" as such term is defined in 1a(18) of the CEA.

through an authorizing broker on their behalf ("**Authorized Broker**").⁴ Nodal Exchange verifies that no transactions cause a Participant's account to exceed the trade risk limits ("**Trade Risk Limit**") as provided by the respective clearing member of Nodal Clear ("Clearing Member") that guarantees the Participant's trades for clearing. 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.

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, CAISO, and SPP with 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. All Nodal Contracts are cleared through Nodal Clear, a wholly owned subsidiary of Nodal Exchange that is a privately held company organized as a limited liability company under the laws of the State of Delaware in the United States. Nodal Clear is a derivatives clearing organization ("**DCO**") registered and regulated by the CFTC as of October 19, 2015. Nodal Exchange and Nodal Clear operate in the United States and do not have any offices nor maintain a physical presence in Québec or any other Canadian province or territory.

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

5. The trading services of Nodal Exchange are available to two types of entities: Participants and Clearing Members. All market participants seeking access to the Exchange 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 Nodal Clear in order to clear its proprietary

⁴ 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.

account. Upon executing a participant agreement with Nodal Exchange, Clearing Members are admitted as Participants to access the Exchange 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.

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**").⁵ All Participants, Authorized Brokers, Clearing Members, and their respective Authorized Users are subject to the rules of Nodal Exchange ("**Rules**") that includes the Nodal Exchange Rulebook ("**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 prospective participants in Québec direct electronic access to Nodal LiveTrade and clearing support services for Block Trades executed in accordance with the Rules. To obtain direct access to Nodal Exchange, a prospective participant in Québec must deliver an executed participant agreement, where therein, prospective participants consent to the jurisdiction of the Exchange. Prospective participants in Québec admitted by Nodal Exchange ("**Québec Participants**") will access the Exchange on a principal-to-principal basis, including the right to place Orders⁶ on Nodal LiveTrade for each of its proprietary accounts and to execute Block Trades in accordance with the Rules. 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 Québec 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 Québec, such as (i) derivatives dealers that are engaged in the business of trading commodity futures in Québec; (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.

⁵ 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.

⁶ The term "Order" is defined in section 2.3.4 of Part II below.

Part II Application of AMF Policy Statement approval criteria to Nodal Exchange

(1) REGULATION OF EXCHANGE IN HOME JURISDICTION

- i) **measures put in place by the regulator to ensure compliance and effective supervision of exchange operations;**
 - ii) **approval of internal by-laws, rules, policies and similar instruments by the regulator;**
 - iii) **powers of the regulator in respect of investigations and penalties to ensure effective investor protection (the reputation of the legal system in which the regulatory regime operates is considered);**
 - iv) **power of the regulator to obtain information from the exchange and carry out inspections;**
 - v) **approval of products traded on the exchange;**
 - vi) **for a derivatives exchange, the existence of a process for the approval of contracts or types of contracts by the regulator;**
 - vii) **adherence to IOSCO standards by the regulator;**
 - viii) **any other relevant criteria.**
- i) **measures put in place by the regulator to ensure compliance and effective supervision of exchange operations;**

1.1.1 Nodal Exchange is a DCM within the meaning of that term under the CEA and is subject to the regulatory supervision of the CFTC. To be designated and maintain a designation as a contract market, Nodal Exchange must comply with section 5(d) of the CEA. 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 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 The CFTC has been charged with administering and enforcing the CEA. To implement the CEA, the CFTC has promulgated regulations and guidelines ("**CFTC Regulations**") that further interpret the DCM Core Principles 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.

- 1.1.3 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. 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. The CFTC's Division of Market Oversight, Market Compliance Section conducts a regular in-depth review of every DCM, known as a rule enforcement review, that assesses the 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.
- 1.1.4 Pursuant to CFTC Regulation 38.5, Nodal Exchange is required to demonstrate its compliance with the DCM Core Principles. 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.
- 1.1.5 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.
- ii) approval of internal by-laws, rules, policies and similar instruments by the regulator;**
- 1.2.1 In accordance with CFTC Regulations Part 40 the Exchange is required to either self-certify or request approval from the CFTC in advance of implementing amendments to the Rules. The definition of "Rules" is broadly defined by in CFTC Regulation 40.1(i) to include any governance documents, bylaws, stated policies, advisories, the Rules of the Exchange, and similar instruments. At the same time the documents are submitted to the CFTC, the Exchange must post the documents on its website. The Compliance Department manages the notification process, including the preparation and submission of the required documents to the CFTC and ensures

compliance with CFTC Regulations.

- 1.2.2 The Exchange may make additions or amendments to Exchange Rules without obtaining prior CFTC approval by submitting a self-certification package to the CFTC. To self-certify amended Rules, the Exchange must certify that the rule or rule amendment complies with the CEA and CFTC Regulations, including documentation sufficient to substantiate such certification. The submission also includes a brief statement of any opposing views of members of the Exchange Board or relevant committees in considering the rule or rule amendment, or a statement that no such opposing views were expressed. Self-certified rules become effective on the intended implementation date or ten business days after submission, whichever is later, unless the CFTC otherwise notifies the Exchange.
- 1.2.3 The Exchange may elect to request prior CFTC approval of a rule or rule amendment prior to implementation by submitting a request to the CFTC that includes an explanation of the operation, purpose and effect of the rule. The submission includes documentation sufficient to substantiate that the rule or rule amendment complies with the CEA and CFTC Regulations. The submission also includes a brief statement of any opposing views of members of the Board of Directors ("**Board**") of the Exchange or relevant committees in considering the rule or rule amendment, or a statement that no such opposing views were expressed. The submission will be deemed approved 45 days after receipt by the CFTC, which can only reject a new rule or rule amendment if it is inconsistent with the CEA or CFTC Regulations. This time frame may be extended by up to 45 days by the CFTC or such longer period as may be agreed to by the Exchange.
- 1.2.4 As of the date of this application, none of the rules or rule amendments submitted by Nodal Exchange to the CFTC have been rejected.
- iii) powers of the regulator in respect of investigations and penalties to ensure effective investor protection (the reputation of the legal system in which the regulatory regime operates is considered);**
- 1.3.1 Pursuant to CFTC Regulation 38.5(b), a DCM must demonstrate upon request by the CFTC its compliance with one or more DCM Core Principles as specified in the request. In accordance with DCM Core Principle 2 – Compliance With Rules, a DCM must maintain rules and procedures that require compliance staff to conduct investigations of possible rule violations. In addition, DCM Core Principle 12 – Protection of Markets and Market Participants, a DCM is required to enforce its rules to protect the market and market participants from abusive practices including fraudulent, noncompetitive or unfair actions, committed by any party. In compliance with DCM Core Principle 13 – Disciplinary Procedures, a DCM must impose disciplinary sanctions commensurate with the violations committed and

must be clearly sufficient to deter recidivism or similar violations by other market participants.

1.3.2 In conducting a rule enforcement review of a DCM, the CFTC's Division of Market Oversight, Market Compliance Section, assesses the DCM's ongoing compliance with CFTC regulations and DCM Core Principles in enforcing its rules to ensure effective protection of the markets and market participants.

iv) power of the regulator to obtain information from the exchange and carry out inspections;

1.4.1 Nodal Exchange is obligated under the CEA and CFTC Regulation 38.5 to give the CFTC access to all records. The CFTC reviews, assesses and enforces the Exchange's adherence to the CEA and the CFTC 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.

1.4.2 The CFTC's Division of Market Oversight, Market Compliance Section conducts investigations of DCMs that are referred to herein as rule enforcement reviews. CFTC staff assess the DCM's ongoing compliance with CFTC regulations and the enforcement of its rules to protect the market and market participants, and to ensure the recording and safe storage of trade information.

v) approval of products traded on the exchange;

1.5.1 In accordance with CFTC Regulations Part 40 the Exchange is required to either self-certify or obtain approval from the CFTC in advance of listing new products. At the same time the notification documents are submitted to the CFTC, the Exchange must post the documents on its website.

1.5.2 The Exchange may list new products for trading without obtaining prior CFTC approval through self-certification of such contracts. To self-certify new products, the Exchange must provide the CFTC with certification that the new products comply with the CEA and the CFTC Regulations, including documentation sufficient to substantiate such certification. The submission must provide sufficient information to demonstrate that the new products are not readily susceptible to manipulation. The self-certification contains a statement indicating that the Exchange has undertaken a due diligence review of the legal conditions, including those relating to contractual and intellectual property rights, that may materially affect trading in the new product. The CFTC must receive the self-certification submission no later than the open of business on the business day immediately preceding the day the new product will be listed for trading for the first time.

- 1.5.3 Alternatively, the Exchange may elect to request prior CFTC approval of a new product before listing such product for trading by submitting a request to the CFTC that contains documentation sufficient to substantiate that the new products comply with the CEA and the CFTC Regulations, including information to demonstrate that the new products are not readily susceptible to manipulation. The submission also contains a statement indicating that the Exchange has undertaken a due diligence review of the legal conditions, including those relating to contractual and intellectual property rights, that may materially affect trading in the new products. The submission is deemed approved 45 days after receipt by the CFTC unless it is rejected by the CFTC on the grounds that the terms and conditions of the product(s) violate the CEA or CFTC Regulations. This time frame may be extended by up to 45 days by the CFTC or such longer period as may be agreed to by the Exchange.
- 1.5.4 As of the date of this application, all Nodal Exchange products have been self-certified and no products have been rejected by the CFTC. Exchange products are based on standard terms and conditions such that the CFTC did not require pre-approval.
- 1.5.5 New products are approved by Nodal Exchange management. The staff of Market Administration prepares the description, including terms and conditions, of a proposed new product and submits the proposal to the Chief Regulatory Officer with an explanation and analysis of the product. The Chief Regulatory Officer assesses the new product for compliance with applicable provisions of the CEA, including the DCM Core Principles and the CFTC Regulations. The Chief Regulatory Officer may conduct research or otherwise obtain additional information in order to complete the assessment to determine whether the new product can meet the criteria required by the CFTC. Based on this assessment, the Chief Regulatory Officer determines whether the new product should be presented to the CFTC for pre-approval or self-certification and will prepare the submission to the CFTC accordingly. The Compliance Department will prepare and submit the filing to the CFTC pursuant to either CFTC Regulation 40.2 *Listing products for trading by certification* or CFTC Regulation 40.3 *Voluntary submission of new products for Commission review and approval*.
- vi) for a derivatives exchange, the existence of a process for the approval of contracts or types of contracts by the regulator;**
- 1.6.1 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* or approved by the CFTC under 40.3 – *Voluntary submission of new products for Commission review*

and approval, 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.” CFTC Regulation 40.3 requires an explanation and analysis of the product and its compliance with applicable provisions of the CEA, including the DCM Core Principles. The DCM Core Principles relevant to products traded on the DCM include: DCM Core Principle 2 – *Compliance with Rules*, DCM Core Principle 3 – *Contract is Not Readily Susceptible to Manipulation*, DCM Core Principle 4 – *Monitoring of Trading*, DCM Core Principle 5 – *Positions Limits or Accountability*, DCM Core Principle 7 – *Availability of General Information*, DCM Core Principle 8 – *Daily Publication of Trading Information*, DCM Core Principle 9 – *Execution of Transactions*, DCM Core Principle 10 – *Trade Information*, DCM Core Principle 11 – *Financial Integrity of Transactions*, and Core Principle 12 – *Protection of Market Participants*. 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 in Part 38 of the CFTC Regulations, Appendix C to Core Principle 3 – *Demonstration of Compliance That a Contract is Not Readily Susceptible to Manipulation*. 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.

- 1.6.2 Among other things, the requirement that new products comply with the DCM Core Principles means that the new product submission contain an analysis of the underlying cash market and the deliverable supply of the underlying product. In response to a DCM’s submission 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 new product submission for failing to comply with the CEA and the DCM Core Principles.

- 1.6.3 The contract specifications for the products traded on the Exchange are set forth on the Exchange's website (<http://www.nodalexchange.com/products-services/contracts/>).

vii) adherence to IOSCO standards by the regulator;

- 1.7.1 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.

- 1.7.2 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.

- 1.7.3 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.

viii) any other relevant criteria.

- 1.8.1 The electricity based products traded on Nodal Exchange 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. The ISOs/RTOs provide a marketplace for wholesale power and are subject to the jurisdiction of the U.S. Federal Energy Regulatory Commission ("**FERC**"), or the Public Utility Commission of Texas ("**PUCT**") in the case of the Electric Reliability Council of Texas ("**ERCOT**").

- 1.8.2 The ISO/RTO 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 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.⁷ 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 power contracts on the Exchange are not readily susceptible to manipulation in accordance with DCM Core Principle 3 (Contracts Not Readily Susceptible to Manipulation) and DCM Core Principle 5 (Position Limits), and the RTO/ISO prices are a trusted reference price for these Nodal Contracts.

⁷ See 77 Fed. Reg. 52137 (August 28, 2012)

(2) RECOGNITION OR AUTHORIZATION PROCESS OF REGULATOR IN HOME JURISDICTION

- i) Governance
- ii) Fees
- iii) Fair and equitable access
- iv) Regulation
- v) Market operations
- vi) Systems and technology
- vii) Clearing and settlement

i) governance

2.1.1 The Board of Nodal Exchange, 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"**⁸ with significant and relevant industry experience, and two directors that are employees of Participants on the Exchange. The members of the Board are identified on the Exchange website at <http://www.nodalexchange.com/about-us/corporate-governance/board-of-directors/>. 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 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 recommending 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 Exchange's complex business. The Board seeks directors from diverse professional

⁸ A director that has been found by the Board to have no material relationship with the Exchange in accordance with Nodal Exchange Rule 2.1.5.

backgrounds and expertise. All candidates for Board membership are recommended by the Nominating Committee of the Board and are evaluated for their expertise, experience, ethics, independence, commitment to enhancing shareholder value, understanding of Nodal Exchange's business, and lack of material conflicts of interest. The Nominating Committee may recommend Participant users as non-public directors. The compensation of directors is determined by Nodal Holdings and is based on experience, skills, market conditions and, in the case of non-public directors, involvement with the Exchange and shareholdings of Nodal Holdings. Directors elected to the Board have open access to senior management and, as appropriate, to Nodal Exchange's outside advisors. This access enables directors to gather input from a diverse pool of market participants, employees, and advisors. Nodal Exchange believes its leadership structure provides a well-functioning and effective balance between management leadership and appropriate safeguards and oversight by non-employee directors.

- 2.1.3 Nodal Exchange is required to ensure that it meets the DCM Core Principles which among other things require that Nodal Exchange 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 Exchange'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.
- 2.1.4 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.
- 2.1.5 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 Regulatory Oversight Committee of the Board ("**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.

- 2.1.6 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, who may 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.
- 2.1.7 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.
- 2.1.8 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.
- 2.1.9 The holding company and sole shareholder of Nodal Exchange, Nodal Holdings, is a privately held company and Nodal Exchange is its sole subsidiary. Nodal Holdings does not have any employees and 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.
- 2.1.10 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. The members of the Board committees are identified on the Exchange website at <http://www.nodalexchange.com/about-us/corporate-governance/board-committees/>.
- 2.1.11 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, which appoints all of the directors on the 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.

2.1.12 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. Consistent with DCM Core Principle 15, persons involved in the governance of the Exchange are subject to fitness and eligibility criteria under the Exchange Rules that would disqualify any individual who has committed a disciplinary offense or subject to a disqualification from any registration with the CFTC. 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:

- (a) Has the highest professional and personal ethics and values;
- (b) Has the relevant expertise and experience required to offer advice and guidance to Nodal Exchange's CEO;
- (c) Has the ability to make independent analytical inquiries;
- (d) Can dedicate sufficient time, energy and attention to the diligent performance of his or her duties;
- (e) Has the ability to represent the interests of Nodal Holdings, as appropriate, and to create long-term value;
- (f) Has any special business experience and expertise in a relevant area;

- (g) Has an understanding of Nodal Exchange's business, products, market dynamics and customer base.

2.1.13 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.

2.1.14 The 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.

2.1.15 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.

- 2.1.16 Through its enforcement of the conflicts of interest policies in Rule 2.6 that apply to all members of the Board, as well as the Exchange's compliance with the CEA and CFTC Regulations, Nodal Exchange has established a robust set of safeguards designed to mitigate conflicts of interest or inappropriate influence. 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*.
- 2.1.17 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 will knowingly participate in deliberations or voting in any matter involving a named party in interest where such member of the Board (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.
- 2.1.18 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.
- 2.1.19 All members of the Board, Officers, and employees of the Exchange are covered by a commercial insurance policy obtained by the Exchange. The insurance policy provides for payment in the event of a loss as a result of legal action brought for alleged wrongful acts in their capacity as Board members, Officers, or employees. Intentional illegal acts are not covered under this insurance policy.

ii) fees

- 2.2.1 In compliance with CFTC Regulation 38.151, 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. Exchange management is responsible for setting the fees for accessing Exchange services.
- 2.2.2 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.
- 2.2.3 Nodal Exchange offers 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. All Participants are aware that Nodal Exchange offers incentive programs because incentive programs must be self-certified to the CFTC and published on the Exchange website. However, these incentive programs are only offered to Participants who agree to be liquidity providers for the Exchange.
- 2.2.4 Pursuant to Exchange Rule 3.13, Exchange fees are made available on the Exchange's website.

iii) fair and equitable access

- 2.3.1 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;
- (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.

2.3.2 Exchange Rule 3.4 establishes minimum financial requirements for Exchange Participants to maintain the financial integrity of the Exchange.⁹ The Exchange applies these criteria in an impartial manner.

2.3.3 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.

2.3.4 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.

2.3.5 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.

⁹ A Participant that is not registered with the CFTC as an FCM must maintain minimum financial requirements consistent with the financial requirements of an "eligible contract participant" as defined in Section 1a(18) of the CEA.

- 2.3.6 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.
- 2.3.7 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. Further, a Participant may request that the CFTC review an Exchange's decision to deny access; however, it is in the CFTC's discretion to review the decision pursuant to section 8c of the CEA.
- 2.3.8 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.
- 2.3.9 A person approved as a Participant shall be subject to all of the rules of the Exchange.
- 2.3.10 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 Nodal Clear.
- 2.3.11 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 Québec Participants are complying with

Québec securities laws or Québec derivatives laws and regulations 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 Québec Participants, that such Participants are complying with the laws to which they are bound. On an annual basis, the Compliance Department performs a Participant audit to determine whether its Participants continue to meet the 'Requirements for Participants' as described in 2.3.1.

Annually, Compliance Department regulatory employees are reviewed by their supervisors based on the requirements of the employees' job description. Job performance is rated based on the employee's success in meeting or exceeding expectations. The criteria for success of regulatory employees is largely based on their skills in enforcing Exchange Rules and implementing the requirements of the Compliance Manual. To the extent regulatory employees exceed expected performance, the supervisor may recommend additional remuneration. Remuneration for regulatory employees is based on comparable jobs within the industry and is reviewed by the Risk Oversight Committee of the Board, which consists solely of Public Directors. Remuneration of Public Directors is not linked to the business objectives of Nodal Exchange.

- 2.3.12 Nodal Exchange expects Québec 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 Québec residents that become Nodal Exchange Participants to be cognizant of their Québec and other Canadian regulatory requirements, as appropriate.
- 2.3.13 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.

iv) regulation

- 2.4.1 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. The Exchange Rules are in compliance with the DCM Core Principles, which is in accordance with DCM Core Principle 1. The Nodal Exchange Rulebook is available to the public at www.nodalexchange.com, in accordance with DCM Core Principle 7.
- 2.4.2 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 regarding compliance with the CEA and the CFTC Regulations. Revisions to the Nodal Exchange Rulebook must be submitted to the CFTC for CFTC Regulation 40.5 approval or self-certification by 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.
- 2.4.3 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.
- 2.4.4 In order to become a DCM, Nodal Exchange demonstrated to the CFTC how the Exchange complies with the DCM Core Principles:
- (a) DCM Core Principle 1 – Designation as a Contract Market
 - (b) DCM Core Principle 2 – Compliance with Rules
 - (c) DCM Core Principle 3 – Contracts Not Readily Subject to Manipulation
 - (d) DCM Core Principle 4 – Prevention of Market Disruption
 - (e) DCM Core Principle 5 – Position Limitations or Accountability

- (f) DCM Core Principle 6 – Emergency Authority
- (g) DCM Core Principle 7 – Availability of General Information
- (h) DCM Core Principle 8 – Daily Publication of Trading Information
- (i) DCM Core Principle 9 – Execution of Transactions
- (j) DCM Core Principle 10 – Trade Information
- (k) DCM Core Principle 11 – Financial Integrity of Transactions
- (l) DCM Core Principle 12 – Protection of Markets and Market Participants
- (m) DCM Core Principle 13 – Disciplinary Procedures
- (n) DCM Core Principle 14 – Dispute Resolution
- (o) DCM Core Principle 15 – Governance Fitness Standards
- (p) DCM Core Principle 16 – Conflicts of Interest
- (q) DCM Core Principle 17 – Composition of Governing Boards of Contract Markets
- (r) DCM Core Principle 18 – Record Keeping
- (s) DCM Core Principle 19 – Antitrust Considerations
- (t) DCM Core Principle 20 – System Safeguards
- (u) DCM Core Principle 21 – Financial Resources
- (v) DCM Core Principle 22 – Diversity of Board of Directors
- (w) DCM Core Principle 23 – Securities and Exchange Commission

- 2.4.5 In accordance with DCM Core Principles 2 and 6, the Nodal Exchange Rules are designed to enable Nodal Exchange to fulfill its requirement to provide a fair and orderly market. Rule 4.1.3 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.
- 2.4.6 To comply with DCM Core Principles 2 and 4, CFTC Regulation 38.159 requires DCMs to have the ability and authority to obtain any information necessary to perform its functions, including the capacity to carry out international information-sharing agreements. 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.”
- 2.4.7 In accordance with DCM Core Principle 2, 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 Nodal Clear. 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.

- 2.4.8 To comply with DCM Core Principle 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 in compliance with DCM Core Principle 11. The Exchange applies these criteria in an impartial manner.
- 2.4.9 To comply with DCM Core Principle 2, Exchange Rule 3.16 provides clear and transparent criteria and requirements for Authorized Brokers accessing the Exchange on behalf of Participants. The Exchange applies these criteria in an impartial manner.
- 2.4.10 Consistent with DCM 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.
- 2.4.11 In accordance with DCM Core Principle 9, Nodal Exchange provides a competitive and open market that protects the price discovery process. 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.
- 2.4.12 In accordance with DCM Core Principle 10, Nodal Exchange maintains recordkeeping and audit trail requirements. These requirements are also applicable to Participants, which are enforced through annual audits conducted by the Compliance Department pursuant to Rule 4.11.
- 2.4.13 Consistent with DCM Core Principles 2, 9, 10, 11, 12, and 13, Section VI of the Exchange Rules protects the market and market Participants from abusive, disruptive, fraudulent, noncompetitive and unfair conduct and trade practices. All Participants must comply with the Nodal Exchange Rulebook, which is enforced by the Compliance Department. Section VI of the Exchange Rulebook outlines the Participant Code of Conduct ("**Code**"). The Code defines and reaffirms the values, principles and internal controls that Participants, their representatives (including Authorized Users) and Authorized Brokers, as applicable, must follow in conducting their business activities on the Exchange. The Code is intended to complement the internal principles and practices of a Participant and to guide a Participant as it submits bids and offers, executes Transactions, and uses other services on the Exchange. Compliance with the Code allows Participants to assure the Exchange, regulators, the public and

other market Participants that their business activities on the Exchange are, and will continue to be, conducted with integrity. In addition, compliance with the Code by Participants gives Participants assurance that unlawful and unethical trading practices are not tolerated, that public disclosures of trading information are accurate, and that they and other Participants will abide by these ethical standards and maintain sound trading practices. Violations of this Code may result in penalties including, but not limited to, temporary or permanent loss of access to the Exchange.

- 2.4.14 In accordance with DCM Core Principles 2, 4, and 12, Section VI of the Nodal Exchange Rulebook imposes the Code, which is 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).
- 2.4.15 In accordance with DCM Core Principle 19, the Code 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 products.
- 2.4.16 The Nodal Exchange Compliance Department, in accordance with DCM Core Principles 2, 4, and 12, and Exchange Rule 7.2.1, is responsible for ensuring that the Exchange's Rules are followed by Participants. 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. The Exchange maintains an automated trade practice surveillance system that monitors trading activity on a trade day plus one (T+1) basis, which captures, loads and processes all trade and order data, including modifications and cancellations, within 24 hours of completion of each trade day. The automated trade surveillance system has the capability to: (i) detect and flag specific trade execution patterns and trade anomalies; (ii) compute, retain and compare trading statistics; (iii) compute trade gains, losses and futures-equivalent positions; (iv) reconstruct market activity; (v) perform market analysis; and (vi) support system users to perform in-depth analyses and inquiries related to

trades. Under Exchange Rule 4.9.1, the Exchange may adjust trade prices or cancel (bust) trades in appropriate circumstances.

- 2.4.17 In accordance with DCM Core Principle 13, Nodal Exchange Participants are subject to disciplinary action in the event of failure to comply with Nodal Exchange Rules. As provided for in Section VII of the Rules (Discipline and Enforcement), disciplinary action may result in suspension, expulsion, and/or penalties. Nodal Exchange Participants are accountable for the actions of its users accessing Nodal Exchange.
- 2.4.18 In accordance with DCM Core Principle 2 and 13, Section VII of the Exchange Rules, authorizes the Compliance Manager 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 Compliance Manager commences 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 Compliance Manager 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 Compliance Manager will submit a written report of each investigation to the Chief Regulatory Officer and maintain a log of all investigations and their disposition in accordance with Exchange Rule 7.3.2. Disciplinary sanctions imposed by the Exchange shall be commensurate with the violations committed, and shall be clearly sufficient to deter recidivism or other violations. All sanctions must take into account the respondent's disciplinary history and may include limitation on trading privileges, suspension or termination of trading privileges, fines or other sanctions deemed appropriate.
- 2.4.19 In accordance with DCM Core Principle 13, the Compliance Department enforces the Exchange Rules. In accordance with Rule 7.2.1(a), the Compliance Department shall consist of Exchange employees whose interests do not conflict with their enforcement duties. The Compliance Department may issue notice of Rulebook violations to Exchange Participants who may respond to charges by written submission, request for formal hearing, and/or an offer in settlement.
- 2.4.20 In accordance with DCM Core Principle 13 and Rule 7.3.8(c), Participants charged with violations may request a formal hearing before a Hearing Panel composed of at least three individuals, appointed by the Board at the recommendation of the Chief Regulatory Officer, from among Participants and/or individuals knowledgeable and experienced in electric power or financial markets. The Hearing Panel may not include members of the Compliance Department or anyone involved in any other stage of the same proceeding or the conduct giving rise to the alleged Rule violations.

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. Participants may appeal Hearing Panel decisions and summary actions to the Appeals Committee composed of at least three individuals, appointed by the Board at the recommendation of the Chief Regulatory Officer, from among Participants and/or individuals knowledgeable and experienced in electric power or financial markets. The Appeals Committee may not include members of the Compliance Department or anyone involved in any other stage of the same proceeding or the conduct giving rise to the alleged Rule violations. 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. A Participant may request that the CFTC review an Exchange's disciplinary decision; however, it is in the CFTC's discretion to review the decision pursuant to section 8c of the CEA.

- 2.4.21 In compliance with DCM Core Principles 2 and 16, the Exchange Board's ROC prepares an annual report assessing the Exchange's regulatory program for the Exchange's Board. The ROC's annual report (i) describes the Exchange's regulatory program, (ii) sets forth the expenses of the regulatory program, (iii) describes the staffing and structure of the regulatory program, (iv) catalogues investigations and disciplinary actions taken during the year, and (v) reviews the performance of disciplinary committees and panels, as well as the performance of the Exchange's Chief Regulatory Officer.
- 2.4.22 Consistent with DCM Core Principle 14, Section VIII of the Rules establishes rules concerning alternative dispute resolution, which provide for the resolution of disputes between or among Participants through the National Futures Association ("NFA") arbitration. Arbitration is a process where the parties present their arguments and supporting evidence before an impartial third party (or panel) who decides how the matter should be resolved. The NFA provides arbitration services to entities subject to U.S. Futures Regulations. NFA arbitration is generally faster and less expensive than formal litigation. A party does not need a lawyer to pursue a claim at NFA. NFA offers two separate arbitration programs:
- (a) Customer Arbitration is designed for disputes involving customers and NFA Members, their employees and Associates. This includes disputes NFA Members initiate against current or former customers.
 - (b) Member Arbitration is designed for disputes between and among NFA Members and Associates. As stated above, disputes between an NFA Member or Associate and a customer are handled through the Customer Arbitration program.

v) market operations

- 2.5.1 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. Section IV of the Rules apply to market operations.
- 2.5.2 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.
- 2.5.3 Nodal Exchange provides all of its Participants access to all listed active order information and timely reporting of any trades during the trading day.
- 2.5.4 All Nodal Contracts are settled and cleared through Nodal Clear, a derivatives clearing organization regulated by the CFTC. The membership of Nodal Clear, known as "Clearing Members," consists typically of large financial institutions.
- 2.5.5 Nodal Exchange requires all Participants to establish a relationship with a Clearing Member of Nodal Clear who is a Nodal Clear 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 Nodal Clear. Nodal Clear 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 Nodal Clear assumes the central counterparty risk to each Nodal Contract.
- 2.5.6 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.
- 2.5.7 Nodal Exchange provides Nodal Clear with the settlement prices twice per day for use in settling trades and positions. Based on these prices, Nodal Clear 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.

- 2.5.8 Nodal Exchange reviews all settlement prices that fluctuate more than a predetermined percentage within a trading day.
- 2.5.9 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.
- 2.5.10 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.
- 2.5.11 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.¹⁰ 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.
- 2.5.12 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).
- 2.5.13 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 Exchange has spot month position limits and single month and all-months-combined position accountability and reportable levels

¹⁰ 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.

commensurate with the levels in place at the other trading facilities. The Exchange may grant exemptions from position limits for bona fide hedging activity.

2.5.14 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.

2.5.15 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.

2.5.16 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.

vi) systems and technology

2.6.1 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.

- 2.6.2 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.
- 2.6.3 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.
- 2.6.4 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.
- 2.6.5 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.
- 2.6.6 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.
- 2.6.7 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.
- 2.6.8 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.
- 2.6.9 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:

- *Testing by Qualified Personnel.* Testing is performed by qualified professionals, which may be Exchange employees or independent third parties.
- *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.

- 2.6.10 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.
- 2.6.11 Before employment, employees are required to authorize the Exchange to obtain background reports that could include information concerning character, general reputation, personal characteristics, mode of living, and credit standing. The types of information that may be obtained include, but are not limited to: social security number verifications; address history; credit reports and history; criminal records and history; public court records; driving records; accident history; worker's compensation claims; bankruptcy filings; educational history verifications (e.g., dates of attendance, degrees obtained); employment history verifications (e.g., dates of employment, salary information, reasons for termination, etc.); personal and professional references checks; professional licensing and certification checks; drug/alcohol testing results, and drug/alcohol history in violation of law and/or company policy; and other information bearing on character, general reputation, personal characteristics, mode of living and credit standing. If Nodal Exchange obtains information regarding credit worthiness, credit standing or credit capacity for reasons other than as required by law, then Nodal Exchange will use such credit information to evaluate whether such person would present an unacceptable risk of theft or other dishonest behavior in the job for which they are being evaluated. At a minimum, Nodal Exchange shall request a social security number verification and trace, a criminal background check for felonies and misdemeanors, a federal criminal records search, a national criminal search, a global sanctions and enforcements check, and a check for prohibited parties on the terrorist watchlist. Nodal Exchange uses HireRight, Inc., an external provider of background investigation services.
- 2.6.12 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.

- 2.6.13 Nodal Exchange employs a suite of performance tests to ensure that Nodal LiveTrade will withstand extreme user and trading volumes relative to the levels the system is currently experiencing in production.
- 2.6.14 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.
- 2.6.15 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.
- 2.6.16 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.
- 2.6.17 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.

- 2.6.18 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.
- 2.6.19 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.
- 2.6.20 Emergency actions taken pursuant to Rule 4.1.3 are subject to the conflict of interest provisions set forth in Rule 2.6.

vii) clearing and settlement

- 2.7.1 Nodal Exchange is not a clearing house¹¹. All trades in Nodal Contracts are settled and cleared through its clearing house, Nodal Clear, in accordance with the clearing agreement between Nodal Exchange and Nodal Clear.
- 2.7.2 Nodal Clear is an entity formed in Delaware, U.S.A. and is a wholly owned subsidiary of Nodal Exchange.
- 2.7.3 Nodal Clear is regulated by the CFTC as a derivatives clearing organization, referred to herein as DCO. To maintain its registration, Nodal Clear must comply with the DCO core principles established in 5b of the CEA. Nodal Exchange relies on compliance policies and procedures developed and enforced by the Nodal Clear Chief Compliance Officer pursuant to CFTC Regulations Part 39 *Derivatives Clearing Organizations*, which is subject to the oversight of the CFTC.
- 2.7.4 As appropriate and/or upon request and in a form and manner specified by the

¹¹ For the purposes of these criteria, "clearing house" also means a "clearing agency".

CFTC, Nodal Clear 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. Nodal Clear is required to make available to the CFTC information regarding its activities including information regarding stress test results, internal governance, and legal proceedings.

- 2.7.5 Nodal Clear 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 and remit minimum contributions upon approval. Membership criteria is available on the Nodal Clear website; such criteria is deemed to be applied reasonably and fairly on all applicants.
- 2.7.6 Nodal Exchange is assured of the level of secure, safe, and reliable technology solutions maintained by Nodal Clear as Nodal Exchange provides those services to Nodal Clear. Nodal Exchange and Nodal Clear conduct joint testing of new capabilities.
- 2.7.7 The CFTC subjects Nodal Clear's technology and risk management systems to scrutiny and oversight and requires Nodal Clear to demonstrate that it has adequate operational resources to complete settlements on a timely basis under varying circumstances. Nodal Clear must also comply with the applicable CFTC core principles requiring adequate and appropriate systems safeguards, emergency procedures, and plan for disaster recovery.
- 2.7.8 Nodal Exchange is assured that Nodal Clear has appropriate risk management policies and procedures that include default protections, valuation and variation margining, intra-day risk monitoring, operational risk management, risk committees, and management of risks in payments, settlement, and delivery. As a wholly owned subsidiary of the Exchange, Nodal Clear's risk management policies and procedures are overseen by the Exchange.
- 2.7.9 The DCO core principles regulated by the CFTC require that Nodal Clear maintain adequate and appropriate risk management capabilities. The clearing house 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. Nodal Exchange sees and reviews such documentation and management tools. The Nodal Clear Chief Compliance Officer has procedures to enforce appropriate compliance policies and procedures to implement the requirements of the CEA and the CFTC Regulations, including risk management. The Nodal Clear

Compliance Officer reports to the Chief Executive Officer of the Exchange and Nodal Clear, and the Board of Nodal Clear.

- 2.7.10 The clearing house 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.
- 2.7.11 Nodal Exchange and Nodal Clear closely coordinate their activities. Nodal Exchange and Nodal Clear 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 and Nodal Clear conduct coordinated "default fire drills" simulating the default of a clearing member to test our default management plans. Nodal Exchange and Nodal Clear also conduct coordinated disaster recovery failover tests. Nodal Exchange and Nodal Clear routinely discuss risk management matters, with Nodal Exchange personnel providing data and market insight as inputs to Nodal Clear's risk management determinations.

(3) POWERS OF THE EXCHANGE RESPECTING CO-OPERATION

- i) the power to co-operate fully with the AMF and to provide information and documents respecting its operations, including the following:**
- ii) the power to co-operate and share information with a self-regulatory organization in Québec.**

- 3.1.1 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.
- 3.1.2 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.

3.1.3 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.

3.1.4 Nodal Exchange confirms that it has the power to co-operate fully with the AMF and to provide information and documents respecting its operations, including the following:

- (a) its annual report and its quarterly and annual financial statements;
- (b) any amendment to the laws or regulations governing its activities in its home jurisdiction;
- (c) any amendment to its internal by-laws, rules, policies or other similar instruments;
- (d) any change respecting its right to operate in its home jurisdiction;
- (e) notice of any situation that could have an impact on its financial viability or its ability to operate and may result, in particular, from the bankruptcy or financial difficulties of a member dealer;
- (f) any disciplinary or administrative action taken by the exchange

(4) POWERS RESPECTING CO-OPERATION OF REGULATOR IN HOME JURISDICTION

4.1.1 Nodal Exchange is a signatory to the International Information Sharing Memorandum of Understanding and Agreement (March 15, 1996), which establishes a framework for participating exchanges and clearing organizations worldwide to share information relevant to managing global market emergencies.

4.1.2 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, trading facilities, and clearing organizations worldwide to share information relevant to managing global market emergencies.

- 4.1.3 The AMF, the Ontario Securities Commission, the Alberta Securities Commission and the British Columbia Securities Commission, entered into a Memorandum of Understanding with the CFTC 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 AMF's ability to supervise these entities. The Supervisory MOU became effective on March 25, 2014.

(5) CONDITIONS OF COMPLIANCE

The Québec Policy Statement takes into account the regulatory structure of the regulator in the home jurisdiction in granting authorization, the oversight that the AMF intends to exercise must also be adjusted to avoid duplications and burdens. Nodal Exchange understands that once it has been authorized, it may be required to comply with a certain number of conditions, including:

- i) providing the AMF with the following information:**
- (a) its annual report and annual financial statements;
 - (b) any material amendment to the laws or regulations governing its activities;
 - (c) any amendment to its internal by-laws;
 - (d) any change respecting its right to operate or the existence of conditions respecting the performance of activities in the home jurisdiction;
 - (e) notice of any situation that could have an impact on its financial viability or its ability to operate.
- (ii) complying with any other applicable Québec law, including An Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (R.S.Q., c. P-45)**

- 
- (iii) maintaining its recognition or authorization in the home jurisdiction;**
 - (iv) abiding by any AMF decision.**

Part III Submissions

Submissions Concerning Exchange and Published Markets Relief

1. All contracts traded on Nodal Exchange fall under the definitions of “derivative” or “standardized derivative” under Article 3 of the DA. Nodal Exchange is therefore engaged in doing business as an exchange and published market as defined in Article 3 of the DA and is prohibited from carrying on business in Québec unless it is recognized or otherwise exempt from recognition as required by Article 12 of the DA. Nodal Exchange seeks to provide Québec market participants with direct, electronic access to trading in Nodal Contracts and would therefore be considered to be “carrying on derivatives activities in Québec” as an exchange and published market.
2. Nodal Exchange has created a market in derivatives that it seeks to offer to Québec residents; however, Nodal Exchange is prohibited from offering its derivatives unless the Exchange is a recognized regulated entity or qualified by the AMF as prescribed by regulation.
3. Nodal Exchange has applied the *AMF Policy Statement Respecting the Authorization of Foreign-Based Exchanges* to demonstrate that the regulatory regime of the CFTC is equivalent to that of the AMF. Nodal Exchange has provided the basis for its authority to provide information and cooperate with the AMF as reinforced by the CFTC’s ability to cooperate with the AMF. Accordingly, Nodal Exchange acknowledges that it may be required to comply with certain conditions as directed by the AMF in order to obtain the requested relief.
4. Nodal Exchange satisfies all the criteria for registration or exemption from registration as an exchange and published market, as described under Part II of this application and Form 21-101F1. Québec 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. Nodal Exchange would offer its Québec 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 Québec users are adequately protected in accordance with international standards set by IOSCO. We therefore submit that the requested relief is not prejudicial to the public interest.



Part IV Other Matters

1. In support of this application, we are submitting 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; and
 - b. a list of the Nodal Contracts that trade on Nodal Exchange as Appendix B.

Appendix A
Verification Certificate

To: Autorité des marchés financiers

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 Autorité des marchés financiers is authorized and confirm the truth of the facts contained therein as they relate to Nodal Exchange.

DATED: January 9, 2017

/s/ 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/products-services/contracts/>



**Application to the Autorité des marchés financiers for Exemption from
Recognition as a Clearing House and Exemption from the Qualification
Requirement**

January 9, 2017

Nodal Clear – Application for Exemption from Recognition as a Clearing House in Québec

Nodal Clear, LLC (“**Nodal Clear**”) submits this application (“**Application**”) to the Autorité des marchés financiers (“**AMF**”) for an order, pursuant to section 86 of the *Derivatives Act* (Québec) (the “**QDA**”), exempting Nodal Clear from the clearing house recognition requirement under section 12 of the QDA and the derivatives qualification requirement under section 82 of the QDA (“**Nodal Clear Exemption**”).

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1 Introduction

1.1 Current Regulatory Status

Nodal Clear is currently registered as a derivatives clearing organization (“**DCO**”) within the meaning of that term under the U.S. Commodity Exchange Act (“**CEA**”). Nodal Clear is subject to regulatory supervision by the US Commodity Futures Trading Commission (“**CFTC**”). Nodal Clear has elected to be subject to, and comply with, Subpart C of Part 39 of the CFTC’s regulations, which applies additional requirements on a DCO consistent with the international risk management standards set forth in the Principles of Financial Market Infrastructure (“**PFMIs**”). Nodal Clear 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. Nodal Clear submits this application for exemption from recognition as a clearing house and exemption from the derivatives qualification requirement in order to continue to provide clearing services for Nodal Exchange, LLC (“**Nodal Exchange**”) and its participants in Québec.

1.2 Legal Ownership and Structure

Nodal Clear is a wholly owned subsidiary of Nodal Exchange and a privately held company organized as a limited liability company under the laws of the State of Delaware in the United States. The holding company and sole shareholder of Nodal Exchange, Nodal Exchange Holdings (“**Nodal Holdings**”), is a privately held company, does not have any operations of its own, and relies on the distributions of its subsidiaries. Nodal Holdings does not have any employees and 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 of five individuals on the board of directors of both Nodal Exchange and Nodal Clear, each with one vote. However, Nodal Exchange, Nodal Clear, and Nodal Holdings are separate entities. Membership on the Holdings Board does not confer any trading rights on Nodal Exchange nor membership rights on Nodal Clear. Nodal Holding’s primary governance obligations are to set the strategic direction of Nodal Exchange and Nodal Clear, approve the annual operating budget, approve employee compensation, and to approve significant commitments and transactions involving Nodal Exchange and Nodal Clear.

Nodal Clear was formed to develop, own and operate a registered DCO to clear contracts offered by Nodal Exchange (“**Nodal Contracts**”). Nodal Exchange is regulated by the CFTC as a designated contract market and is currently applying to the AMF for exemption from recognition as an exchange and published market, and from the requirement to be qualified by the AMF as a person who creates or markets a derivative. Nodal Exchange maintains arrangements for clearing and settlement of Nodal Contracts through Nodal Clear. Without the Nodal Clear

Exemption, Nodal Exchange must cease providing services to its Québec participants.

1.3 Description of Nodal Clear's Clearing Activities

Nodal Clear provides clearing services for futures traded on or pursuant to the rules of Nodal Exchange, a designated contract market registered with the CFTC. Nodal Clear provides such services pursuant to a Clearing Services Agreement with Nodal Exchange.

As described in the Clearing Services Agreement, Nodal Clear provides clearing services for all contracts traded on or pursuant to the rules of Nodal Exchange. These products currently include financially settled electric power and natural gas futures contracts. Nodal Exchange currently offers power futures contracts based on the price of power at specified hubs, zones and nodes across seven organized Regional Transmission Organization (RTO) or Independent System Operator (ISO) markets: ISO New England, Inc. (ISO-NE), New York Independent System Operator (NYISO), PJM Interconnection, LLC (PJM), Midcontinent Independent System Operator (MISO), Electric Reliability Council of Texas (ERCOT), California Independent System Operator (CAISO), and Southwest Power Pool (SPP). These power futures contracts are monthly contracts that are financially settled based on the average price of power at the designated location, as published by the Regional Transmission Organization (RTO) or Independent System Operator (ISO) for peak or off-peak hours of the contract month. Nodal Clear also provides clearing services for Nodal Exchange's Henry Hub natural gas contract, which is financially settled based on the price of the New York Mercantile Exchange physical Henry Hub natural gas contract. Nodal Clear provides clearing services for all Nodal Contracts which may include futures and options on futures.

Until October 19, 2015, futures contracts traded on or pursuant to the rules of Nodal Exchange were cleared by LCH.Clearnet Ltd ("**LCH**"), a clearing house recognized by the AMF. On October 19, 2015, following Nodal Clear's registration as a DCO, the existing open interest in Nodal Contracts was transferred from LCH to Nodal Clear.

Nodal Clear offers clearing services to clearing members for their proprietary or house accounts and customers of clearing members that are registered with the CFTC as futures commission merchants. Nodal Clear's clearing services are provided to its clearing members pursuant to the rules established, maintained, and enforced by Nodal Clear ("**Nodal Clear Rules**") to comply with the CEA and the regulations of the CFTC that include the DCO Core Principles. The Nodal Clear Rules and a list of Nodal Clear clearing members are maintained on Nodal Clear's website.

2 Criteria for Exemption from Recognition as a Foreign Clearing House

2.1 Application

Part 2 of Regulation 24-102 *Respecting Clearing Agency Requirements* (the "**Regulation**") sets forth the criteria that an applicant must meet in order to be exempt from recognition as a clearing house.¹ Accordingly, Nodal Clear submits its Application pursuant to the criteria set forth in Part 2 of the Regulation.

2.2 Most Recently Completed PFMI Disclosure Framework Document

Pursuant to Section 2.1(1)(a) of the Regulation, Nodal Clear's most recently completed PFMI Disclosure Framework Document can be found on Nodal Clear's website at www.nodalclear.com and is also included as Appendix A to this Application.

2.3 Sufficient Information to Demonstrate Compliance with Regulatory Regime of a Foreign Jurisdiction

Nodal Clear is a limited liability company organized under the laws of the State of Delaware in the United States with its headquarter offices located in Tysons Corner, Virginia. As a registered DCO within the meaning of that term under the CEA, Nodal Clear is subject to regulatory supervision by the CFTC. In order to demonstrate that it is in compliance with the CFTC's regulatory regime, Nodal Clear provided the AMF with Nodal Clear's Order of Registration from the CFTC stating that "Nodal Clear has demonstrated compliance with the requirements of the Act and applicable Commission regulations thereunder." Additionally, Nodal Clear is providing a comparability discussion in Section 2.3.1 of this Application that describes the regulatory regime of the CFTC and the requirements imposed, including how such requirements are similar to the requirements in Parts 3 and 4 of the Regulation.

2.3.1 Comparability Discussion

As explained in the Policy Statement to the Regulation, applicants that operate a central counterparty ("**CCP**") must describe how they meet the requirements of Parts 3 and 4 of the Regulation. Additionally, applicants based in a foreign jurisdiction should "provide a detailed description of the regulatory regime of its home jurisdiction and the requirements imposed on the clearing agency, including how such requirements are similar to the requirements in Parts 3 and 4." Accordingly, Nodal Clear has prepared: I) A description of the CFTC's regulatory regime for DCOs, and II) A discussion that: A) States the requirements of Parts 3 and 4; B) Describes the comparable CFTC requirements; and C) Describes how Nodal Clear meets such comparable CFTC requirements.

¹ For purposes of this Application, "clearing house" also means "clearing agency".

I. Description of CFTC Regulatory Regime

As a registered DCO, Nodal Clear is subject to ongoing oversight by the CFTC, a U.S. federal regulatory agency.² The CFTC's Division of Clearing and Risk ("**DCR**") is responsible for overseeing and registering DCOs. DCR reviews and assesses a DCO's adherence to the CEA and CFTC regulations³ on an ongoing basis, including the DCO's compliance with DCO Core Principles ("**Core Principles**") set forth in Section 5b of the CEA. DCR similarly reviews and assesses whether an entity seeking registration as a DCO adheres to the CEA, Core Principles, and CFTC regulations.

Provided below are summaries of each of the 18 Core Principles that a DCO must comply with along with the identification of relevant CFTC regulations that codify the requirements of each Core Principle:⁴

Core Principle A - Compliance: Requires a DCO to comply with the DCO Core Principles and any requirement that the CFTC may impose by rule or regulation. Core Principle A also provides a DCO with reasonable discretion in establishing the manner by which it complies with each core principle. CFTC Regulation 39.10 codifies these requirements and establishes minimum requirements that a DCO must meet in order to comply with DCO Core Principle A, including the requirement that each DCO designate an individual as its Chief Compliance Officer who is responsible for ensuring the DCO's compliance with the CEA and CFTC regulations.

Core Principle B - Financial Resources: Requires a DCO to possess financial resources that, at a minimum, exceed the total amount that would enable the DCO to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions and to cover its operating costs for a period of one year, as calculated on a rolling basis. CFTC Regulation 39.11 codifies these requirements and establishes minimum requirements that a DCO must meet in order to comply with DCO Core Principle B.

Core Principle C - Participant and Product Eligibility: Requires a DCO to establish appropriate admission and continuing eligibility standards for members of, and participants in, the DCO, including sufficient financial resources and operational capacity to meet the obligations arising from participation. Core Principle C further requires that such participation and membership requirements be objective, be publicly disclosed, and permit fair and open access. Core Principle C also requires that each DCO establish and implement procedures to verify compliance with each participation and membership requirement, on an ongoing basis. Core Principle C

² Nodal Clear has elected to be subject to, and comply with, Subpart C of Part 39 of the CFTC's regulations.

³ The majority of CFTC DCO regulations are found in 17 CFR. § 39 2015.

⁴ Core Principle summaries are derived from the CFTC's Final Rule titled "Derivatives Clearing Organizations General Provisions and Core Principles" 76 FR 69334 (Nov. 8, 2011).

also requires that each DCO establish appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing. CFTC Regulation 39.12 codifies these requirements and establishes minimum requirements that a DCO must meet in order to comply with DCO Core Principle C.

Core Principle D - Risk Management: Requires a DCO to ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures. It further requires each DCO to measure its credit exposures to each clearing member not less than once during each business day and to monitor each such exposure periodically during the business day. Core Principle D also requires each DCO to limit its exposure to potential losses from defaults by clearing members through margin requirements and other risk control mechanisms, to ensure that its operations would not be disrupted and that non-defaulting clearing members would not be exposed to losses that non-defaulting clearing members cannot anticipate or control. Finally, Core Principle D provides that a DCO must require margin from each clearing member sufficient to cover potential exposures in normal market conditions and that each model and parameter used in setting such margin requirements must be risk-based and reviewed on a regular basis. CFTC Regulation 39.13 establishes the requirements that a DCO would have to meet in order to comply with DCO Core Principle D.

Core Principle E - Settlement Procedures: Requires a DCO to (1) complete money settlements on a timely basis, but not less frequently than once each business day; (2) employ money settlement arrangements to eliminate or strictly limit its exposure to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements); (3) ensure that money settlements are final when effected; (4) maintain an accurate record of the flow of funds associated with money settlements; (5) possess the ability to comply with the terms and conditions of any permitted netting or offset arrangement with another clearing organization; (6) establish rules that clearly state each obligation of the DCO with respect to physical deliveries; and (7) ensure that it identifies and manages each risk arising from any of its obligations with respect to physical deliveries. CFTC Regulation 39.14 establishes the requirements that a DCO would have to meet in order to comply with DCO Core Principle E.

Core Principle F - Treatment of Funds: Requires a DCO to (i) establish standards and procedures that are designed to protect and ensure the safety of its clearing members' funds and assets; (ii) hold such funds and assets in a manner by which to minimize the risk of loss or of delay in the DCO's access to the assets and funds; and (iii) only invest such funds and assets in instruments with minimal credit, market, and liquidity risks. CFTC Regulation 39.15 establishes the requirements that a DCO would have to meet in order to comply with DCO Core Principle F.

Core Principle G - Default Rules and Procedures: Requires a DCO to have rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or otherwise default on their obligations to the DCO. In addition, DCO Core Principle G requires each DCO to clearly state its default procedures, make its default rules publicly available, and ensure that it may take timely action to contain losses and liquidity pressures and to continue meeting its obligations. CFTC Regulation 39.16 establishes requirements that a DCO would have to meet in order to comply with DCO Core Principle G.

Core Principle H - Rule Enforcement: A DCO is required to (1) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and for the resolution of disputes; and (2) have the authority and ability to discipline, limit, suspend or terminate a member's or participant's activities for violations of its rules. CFTC Regulation 39.17 codifies the requirements of DCO Core Principle H and further requires a DCO to report the initiation of a rule enforcement action against a clearing member or the imposition of sanctions against a clearing member, no later than two business days after the DCO takes such action.

Core Principle I - System Safeguards: Requires a DCO to establish and maintain a program of risk analysis and oversight that identifies and minimizes sources of operational risk through the development of appropriate controls and procedures, and automated systems that are reliable, secure and have adequate scalable capacity. DCO Core Principle I also requires that the emergency procedures, back-up facilities, and disaster recovery plans that a DCO is obligated to establish and maintain specifically allow for the timely recovery and resumption of the DCO's operations and the fulfillment of each obligation and responsibility of the DCO. Finally, DCO Core Principle I requires that a DCO periodically conduct tests to verify that the DCO's back-up resources are sufficient to ensure daily processing, clearing, and settlement. CFTC Regulation 39.18 codifies these requirements and delineates the minimum requirements a DCO would have to satisfy in order to comply with DCO Core Principle I.

Core Principle J - Reporting: Requires a DCO to provide the Commission with all information that the CFTC determines to be necessary to conduct oversight of the DCO including daily, quarterly and annual reporting. CFTC Regulation 39.19 establishes the requirements a DCO would have to meet in order to comply with DCO Core Principle J, namely periodic reporting to the CFTC.

Core Principle K - Recordkeeping: Requires a DCO to maintain records of all activities related to the business of the DCO, in a form and manner that is acceptable to the CFTC and for a period of not less than five years. CFTC Regulation 39.20 establishes the requirements a DCO would have to meet in order to comply with DCO Core Principle K.

Core Principle L - Public Information: Requires a DCO to provide market participants sufficient information to enable them to identify and evaluate accurately the risks and costs associated with using the DCO's services. Specifically, a DCO is required to make available to market participants: information concerning the rules, operating and default procedures governing its clearing and settlement systems; and also to disclose publicly and to the CFTC the terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO; each clearing and other fee charged to members, the DCO's margin-setting methodology, daily settlement prices, and other matters relevant to participation in the DCO's clearing and settlement activities. CFTC Regulation 39.21 requires a DCO to provide market participants with sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the DCO.

Core Principle M - Information Sharing: Requires a DCO to enter into and abide by the terms of each appropriate and applicable domestic and international information-sharing agreement that it enters into and to use relevant information obtained under such agreements in carrying out its risk management program. CFTC Regulation 39.22 codifies the requirements of DCO Core Principle M.

Core Principle N - Antitrust Considerations: Unless appropriate to achieve the purposes of the CEA, the DCO is required to avoid (1) adopting any rule or taking any action that results in any unreasonable restraint of trade; or (2) imposing any material anticompetitive burden on trading on the contract market. CFTC Regulation 39.23 codifies the requirements of DCO Core Principle N.

Core Principle O - Governance Fitness Standards: Requires a DCO to (1) establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants and (2) establish and enforce appropriate fitness standards for (A) directors, (B) members of any disciplinary committee, (C) members of the DCO, (D) any other individual or entity with direct access to the settlement or clearing activities of the DCO, and (E) any party affiliated with any entity mentioned above. As of the submission of this application, the CFTC has not finalized regulations implementing DCO Core Principle O.

Core Principle P - Conflicts of Interest: Requires a DCO to establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCO and to establish a process for resolving such conflicts of interest. As of the submission of this application, the CFTC has not finalized regulations implementing DCO Core Principle P.

Core Principle Q - Composition of Governing Boards: Requires a DCO to ensure that the composition of the governing board or committee of the DCO includes market participants. As of the submission of this application, the CFTC has not finalized regulations implementing DCO Core Principle Q.

Core Principle R - Legal Risk: Requires a DCO to have a well-founded, transparent, and enforceable legal framework for each aspect of the DCO's activities. CFTC Regulation 39.27 sets forth the required elements of such a legal framework.

II. Regulation Section 3.1 - PFMI Principles

A. Section 3.1 Requirements

A recognized clearing agency must establish, implement and maintain rules, procedures, policies or operations designed to ensure that it meets or exceeds PFMI Principles 1 to 3, 10, 13, 15 to 19, 20 other than key consideration 9, 21 to 23 and the following:

- (a) if the clearing agency operates as a central counterparty, PFMI Principles 4 to 9, 12 and 14;
- (b) if the clearing agency operates as a securities settlement system, PFMI Principles 4, 5, 7 to 9 and 12; and
- (c) if the clearing agency operates as a central securities depository, PFMI Principle 11.

B. Comparable CFTC Requirements

The CFTC requirements that relate to Regulation Section 3.1 apply to DCOs that have elected to be subject to, and comply with, Subpart C of Part 39 of the CFTC's regulations. Subpart C imposes additional requirements on a DCO that are consistent with the international risk management standards set forth in the PFMI Principles. Specifically, CFTC Regulation 39.37 provides that each subpart C DCO must complete and publicly disclose its responses to the Disclosure Framework for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions.

In addition, as provided in CFTC Regulation 39.40, Subpart C of the CFTC's Part 39 regulations are intended "to establish standards which, together with subparts A and B of this part, are consistent with section 5b(c) of the Act and the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions and should be interpreted in that context."

C. Nodal Clear Satisfaction of CFTC Requirements

Nodal Clear has elected to be subject to, and comply with, Subpart C of Part 39 of the CFTC's regulations, which applies additional requirements on a DCO consistent with the international risk management standards set forth in the PFMIs pursuant to CFTC regulation §39.40. Accordingly, Nodal Clear maintains rules, procedures, policies and operations designed to ensure that it meets or exceeds all applicable PFMI Principles. The Nodal Clear PFMI Disclosure Framework Document

demonstrating how it complies with PFMI Principles is published on Nodal Clear's website at www.nodalclear.com and is included in this Application.

III. Regulation Section 4.1 - Board of directors

A. Section 4.1 Requirements

(1) A recognized clearing agency must have a board of directors.

(2) The board of directors must include appropriate representation by individuals who are

(a) independent of the clearing agency, and

(b) not employees or executive officers of a participant or their immediate family members.

(3) For the purposes of paragraph (2)(a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.

(4) For the purposes of subsection (3), a “material relationship” is a relationship that could, in the view of the clearing agency’s board of directors, be reasonably expected to interfere with the exercise of a member’s independent judgment.

B. Comparable CFTC Requirements

The CFTC requirements that are comparable to the Section 4.1 requirements relate to Core Principle O which establishes governance fitness standards and CFTC regulations that describe criteria for appropriate representation on the board and require procedures for managing conflicts of interest. Core Principle O provides that each DCO must (1) establish governance arrangements that are transparent to fulfill public interest requirements and to permit the consideration of the views of owners and participants and (2) establish and enforce appropriate fitness standards for (a) directors, (b) members of any disciplinary committee, (c) members of the DCO, (d) any other individual or entity with direct access to the settlement or clearing activities of the DCO, and (e) any party affiliated with any entity described above. In addition, CFTC Regulation 39.32 requires a DCO have governance arrangements that: support the stability of the broader financial system; describe procedures for managing conflicts of interest; and provide for a board that consists of suitable individuals having appropriate skills. In particular, 39.32(c)(2) requires that the board of directors include individuals who are not executives, officers or employees of the subpart C DCO.

C. Nodal Clear Satisfaction of CFTC Requirements

Nodal Clear Rule 2.1 sets out the composition of the board of directors of Nodal Clear (“**Board**”). In accordance with Nodal Clear Rule 2.1.4, to serve as a director of Nodal Clear, an individual must possess the ability to contribute to the effective

oversight and management of Nodal Clear, taking into account the needs of Nodal Clear and such factors as the individual's experience, perspective, skills and knowledge of the cleared derivatives industry.

In accordance with Section 7.3 of the Nodal Clear Limited Liability Company Agreement ("**LLC Agreement**") and Nodal Clear Rule 2.1.5, at least 35%, and no fewer than two, of Nodal Clear's Board members must be "**Public Directors**" as such term is defined in Appendix B of Part 38 of the CFTC regulations. In accordance with Nodal Clear Rule 2.1.6, to qualify as a Public Director, the Board must find that the individual has no material relationship with Nodal Clear. The Board must make such finding upon the nomination or appointment of the Public Director and as often as necessary in light of all circumstances relevant to such Public Director, but in no case less than annually. For these purposes, a "material relationship" is one that reasonably could affect the independent judgment or decision-making of the Public Director. In accordance with Nodal Clear Rule 2.1.6(a), Public Directors may not be officers or employees of Nodal Clear. This restriction applies to the immediate family of such individuals as stated in Nodal Clear Rule 2.1.6(e).

In accordance with Nodal Clear Rule 2.1.6, an individual would be considered to have a "material relationship" with Nodal Clear if any of the following circumstances exist or have existed within the past year:

- a) such individual is an officer or an employee of Nodal Clear, or an officer or an employee of an affiliate of Nodal Clear;
- b) such individual has an ownership interest in Nodal Clear;
- c) such individual is a director, officer, or employee of a clearing member of Nodal Clear, a participant on Nodal Exchange, or of any entity with an ownership interest in Nodal Clear;
- d) such individual, or an entity of which such individual is a partner, officer or director, receives more than \$100,000 in combined annual payments for legal, accounting, or consulting services from Nodal Clear or any of its affiliates.

Compensation for services as a member of the Board or as a member of the board of directors of an affiliate thereof does not count toward the \$100,000 payment limit, nor does deferred compensation for services rendered prior to becoming a member of the Board, so long as such compensation is in no way contingent, conditioned or revocable. Any of the "material relationships" set forth above apply to the "immediate family" of such individual (*i.e.*, spouse, parents, children, and siblings, in each case, whether by blood, marriage or adoption). A Public Director of Nodal Clear may serve as a director of an affiliate of Nodal Clear if he or she otherwise qualifies as a Public Director in accordance with this Nodal Clear Rule 2.1.6.

IV. Regulation Section 4.2 - Documented procedures regarding risk spill-overs

A. Section 4.2 Requirements

The board of directors and management of a recognized clearing agency must have documented procedures to manage possible risk spill over where the clearing agency provides services with a different risk profile than its depository, clearing and settlement services.

B. Comparable CFTC Requirements

The CFTC requirements that are comparable to Section 4.2 provide standards for the board and management so that the operations of the DCO are consistent with the risk management framework established by the board. These standards require the DCO to demonstrate to the CFTC that the DCO board has the appropriate skills, incentives, and independence to oversee management's implementation of operational and risk management responsibilities.

Specifically, CFTC Regulation 39.32(a) provides that a subpart C DCO have governance arrangements that place a high priority on the safety and efficiency of a subpart C DCO so that the decisions of affiliates are not detrimental to the DCO. Accordingly, CFTC Regulation 39.32(b) requires clearly specified roles and responsibilities of the members of the board and its committees, including the establishment of a clear and documented risk management framework and procedures for identifying, addressing, and managing conflicts of interest involving members of the board. In addition, DCO Core Principle P requires a DCO to establish and enforce rules to minimize conflicts of interest in the decision-making process of the DCO and to establish a process for resolving such conflicts of interest.

C. Nodal Clear Satisfaction of CFTC Requirements

Pursuant to Core Principle P, Nodal Clear has established procedures to manage any conflicts of interest of the Board and management that could be detrimental to the DCO. However, the potential for risk spill over is minimal because Nodal Clear's services are limited to clearing; depository and settlement services are provided by unaffiliated and legally separate entities. Since Nodal Clear only offers clearing services, Nodal Clear does not face risk from product offerings, such as functioning as a securities repository, swap data repository or payment infrastructure provider that may have a distinct risk profile from clearing.

Nodal Clear complies with Core Principle P to broadly address any possible conflicts of interest that could include affiliates, all of which are legally separate entities. Nodal Clear has governance arrangements in place, pursuant to CFTC Regulation 39.32, that address conflicts of interest and support the stability of the broader financial system. Nodal Clear Rule 2.7.2 prohibits members of the Board from participating in deliberations or voting on any significant action if such member has

a direct and substantial financial interest in the matter. The member of the Board must disclose information regarding such conflict of interest to the chief compliance officer who will determine whether such member is subject to a conflicts restriction based on all available relevant information.

V. Regulation Section 4.3 - Chief Risk Officer and Chief Compliance Officer**A. Section 4.3 Requirements**

(1) A recognized clearing agency must designate a chief risk officer and a chief compliance officer, who must report directly to the board of directors or, if determined by the board of directors, to the chief executive officer of the clearing agency.

(2) The chief risk officer must

- (a) have full responsibility and authority to maintain, implement and enforce the risk management framework established by the clearing agency,
- (b) make recommendations to the clearing agency's board of directors regarding the clearing agency's risk management framework,
- (c) monitor the effectiveness of the clearing agency's risk management framework, and
- (d) report to the clearing agency's board of directors on a timely basis upon becoming aware of any significant deficiency with the risk management framework.

(3) The chief compliance officer must

- (a) establish, implement, maintain and enforce written policies and procedures to identify and resolve conflicts of interest and ensure that the clearing agency complies with securities legislation,
- (b) monitor compliance with the policies and procedures described in paragraph (a),
- (c) report to the board of directors of the clearing agency as soon as practicable upon becoming aware of any circumstance indicating that the clearing agency, or any individual acting on its behalf, is not in compliance with securities legislation and one or more of the following apply:
 - (i) the non-compliance creates a risk of harm to a participant,
 - (ii) the non-compliance creates a risk of harm to the broader financial system,
 - (iii) the non-compliance is part of a pattern of non-compliance, or

- (iv) the non-compliance may have an impact on the ability of the clearing agency to carry on business in compliance with securities legislation,
- (d) prepare and certify an annual report assessing compliance by the clearing agency, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors,
- (e) report to the clearing agency's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a participant or to the capital markets, and
- (f) concurrently with submitting a report under paragraphs (c), (d) or (e), file a copy of such report with the securities regulatory authority.

B. Comparable CFTC Requirements

The CFTC requirements comparable to Regulation Section 4.3 are in Part 39 of the CFTC regulations. CFTC Regulation 39.13 requires that a DCO have a chief risk officer ("**CRO**") who, pursuant to 39.32(b)(8), must be overseen by the board of directors. CFTC Regulation 39.10 requires that a DCO have a chief compliance officer ("**CCO**") who reports to the board of directors or a senior officer of the DCO.

The Chief Risk Officer

Pursuant to CFTC Regulation 39.13(c), the CRO shall be responsible for implementing the risk management framework, including the procedures, policies and controls, and for making appropriate recommendations to the DCO's risk management committee or board of directors, as applicable, regarding the DCO's risk management functions. The CRO is responsible for the implementation of the DCO's policies, procedures, and controls approved by the board that establish, in accordance with CFTC Regulation 39.13(b), "an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the DCO is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit. The risk management framework shall be regularly reviewed and updated as necessary." Accordingly, any significant deficiency with the risk management framework would be identified by the CRO and appropriate amendments would be presented to the Board for approval. In addition, the DCO must maintain procedures, in accordance with CFTC Regulation 39.32(b)(8), pursuant to which the Board oversees the CRO, the RMC, and material risk decisions.

The Chief Compliance Officer

Pursuant to 39.10(c)(2), a CCO's duties include, but are not limited to:

- a) Reviewing the DCO's compliance with the Core Principles;

- b) Resolving any conflicts of interest that may arise;
- c) Establishing and administering written policies and procedures reasonably designed to prevent violation of the CEA;
- d) Establishing procedures for the remediation of noncompliance issues identified by the CCO through any compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint; and
- e) Establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

Additionally, in accordance with CFTC Regulation 39.10(c)(3), the CCO is required to prepare and sign an annual report that covers the most recently completed fiscal year of the DCO, and provide the annual report to the board or senior officer of the DCO. At a minimum, the annual report shall include the following:

- a) A description of the DCO's written policies and procedures, including the code of ethics and conflict of interest policies;
- b) Review of each Core Principle and applicable CFTC regulation, and with respect to each:
 - a. Identify the compliance policies and procedures that are designed to ensure compliance with the Core Principle;
 - b. Provide an assessment as to the effectiveness of these policies and procedures;
 - c. Discuss areas for improvement, and recommend potential or prospective changes or improvements to the DCO's compliance program and resources allocated to compliance;
- c) List any material changes to compliance policies and procedures since the last annual report;
- d) Describe the financial, managerial, and operational resources set aside for compliance with the CEA and CFTC regulations; and
- e) Describe any material compliance matters and corresponding actions taken, including incidents of noncompliance, since the last annual report.

Pursuant to CFTC Regulation 39.10(4), the CCO must submit the annual report to the CFTC after presenting the annual report to the board or senior officer of the DCO. Presentation of the annual report to the Board must be recorded in the Board minutes or otherwise as evidence of compliance with this requirement.

Pursuant to CFTC Regulation 39.10(c)(2)(iv), the CCO is responsible for "[t]aking reasonable steps to ensure compliance with the Act and Commission regulations relating to agreements, contracts, or transactions, and with Commission regulations

prescribed under section 5b of the Act." Also, pursuant to CFTC Regulation 39.10(c)(1)(ii) and (iii), the CCO reports to the board or senior officer and shall meet with the board or senior officer at least annually. Accordingly, any substantive non-compliance event is communicated to the board/senior officer by the CCO.

There are two CFTC requirements that would achieve a similar outcome to Regulation Section 4.3(3)(e):

1. Section 5b(i)(2)(C) of the CEA states that a CCO shall "in consultation with the board of the derivatives clearing organization, a body performing a function similar to the board of the derivatives clearing organization, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise."
2. CFTC Regulation 39.10(c)(2)(ii), states that the CCO is responsible for "[i]n consultation with the board of directors or the senior officer, resolving any conflicts of interest that may arise."

C. Nodal Clear Satisfaction of CFTC Requirements

In accordance with Nodal Clear Rule 2.2.1, the Board appoints individuals with appropriate experience, skills and integrity to serve as the CRO and the CCO. The duties and responsibilities of the CRO are set forth in Section 7.5 of the LLC Agreement subject to the oversight of the Board. The CRO reports to the Chief Executive Officer of Nodal Clear ("**Chief Executive Officer**") and the Risk Management Committee, a Board committee solely comprised of Board members ("**RMC**"), in accordance with Nodal Clear Rule 2.4.3(e). The duties and responsibilities of the CCO are as prescribed in CFTC Regulation 39.10(c). Pursuant to CFTC Regulation 39.10(c)(ii), the CCO reports to the Chief Executive Officer of Nodal Clear and ultimately the Board.

The Chief Risk Officer

As set forth in Section 7.5.1(c) of the LLC Agreement, the CRO is responsible for implementing Nodal Clear's risk management policies, procedures and controls which establish an appropriate risk management framework. The risk management framework, at a minimum, clearly identifies and documents the range of risks to which Nodal Clear is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit. The risk management framework must be reviewed regularly and updated as necessary. The CRO is responsible for making recommendations regarding risk management functions to the RMC and the Board, as applicable, regarding Nodal Clear's risk management functions. Accordingly, any recommendations to address significant deficiencies with the risk management framework, as identified by the CRO, would also be presented to the Board for approval.

Nodal Clear's CRO and Risk, Market Administration, & Surveillance ("RMAS") Group are responsible, with assistance from the CCO, for monitoring Nodal Clear's clearing members and their compliance with Nodal Clear Rules, policies and procedures. This monitoring process includes (i) periodic reviews of the risk management policies, procedures, and operational practices, (ii) reviews to assess each clearing member's continued compliance with Nodal Clear's financial requirements, and (iii) ongoing monitoring to assess compliance with Nodal Clear's risk management and operational performance standards. Additionally, RMAS monitors clearing members' compliance with margin requirements on a daily basis and reviews the monthly financial reports required to be filed by clearing members for compliance with Nodal Clear's capital requirements.

The Chief Compliance Officer

In accordance with Nodal Clear Rule 2.2.4, the CCO, in consultation with the RMC and the Board, is responsible for developing and enforcing appropriate compliance policies and procedures, to fulfill the duties and obligations of the Nodal Clear set forth in the CEA and CFTC Regulations. As provided in Section 1.2.1 of the Nodal Clear Compliance Policies and Procedures Manual (the "**Compliance Manual**"), the Board vests the CCO with the required authority to develop, implement and enforce, in consultation with the RMC and the Chief Executive Officer, appropriate compliance policies and procedures, to fulfill the duties set forth in the CEA and CFTC Regulations. The CCO is responsible for implementing and enforcing Nodal Clear Rule 2.7 Conflicts of Interest.

The CCO of Nodal Clear is responsible for Nodal Clear maintaining adequate arrangements and resources to effectively monitor the compliance of its clearing members with Nodal Clear Rules. The CCO further is responsible for ensuring that Nodal Clear implements and maintains monitoring procedures that are effective, that the monitoring resources are adequate, and that the necessary rules and clearing member agreements to support monitoring are in place. The CCO assesses the adequacy and effectiveness of these monitoring procedures, makes recommendations for improvements, and works with the CRO and RMAS to implement the recommendations where appropriate.

The CCO may choose to conduct his or her own independent reviews of clearing members as deemed appropriate. Items subject to review may include, but are not limited to:

- Reports or information the clearing member has submitted to Nodal Clear and/or the CFTC;
- Audit reports or findings related to the business practices, risk management programs or regulatory performance of a clearing member;
- Disciplinary actions initiated against a clearing member by the CFTC or a self-regulatory organization; and

- Such other items and activities as the CCO may deem appropriate from time to time.

As provided in Section 2.6 of the Compliance Manual, the CCO is responsible for preparing Nodal Clear's annual compliance report, reviewing the report with the RMC and Chief Executive Officer, and submitting the report to the CFTC. The annual report is designed to provide CFTC staff with an understanding of how Nodal Clear has complied with applicable provisions of the CEA and CFTC Regulations for the year. The annual report shall, at a minimum, address the following topics:

- a) Policies and Procedures. The annual report will contain a summary of Nodal Clear's written policies and procedures, including the General Principles and Goals of Conduct Policy (which consist of Nodal Clear's code of ethics and conflicts of interest policies).
- b) Compliance with Core Principles. The annual report will also contain a review of the Core Principles and CFTC regulations applicable to DCOs and with respect to each:
 - Identify the compliance policies and procedures that are designed to ensure compliance with the Core Principle or CFTC regulation;
 - Provide an assessment as to the effectiveness of these policies and procedures; and
 - Discuss areas for improvement, and recommend potential or prospective changes or improvements to Nodal Clear's compliance program and resources allocated to compliance.
- c) Material Changes. The annual report will include a list of any material changes to Nodal Clear's compliance policies and procedures since the submission of the prior annual report.
- d) Compliance Resources. The annual report will set out the various resources available to the CCO in order to execute the duties imposed by the CEA and the CFTC regulations. Such description will include information regarding the staffing and organization of the compliance function as well as an explanation of the financial, managerial, and operational resources dedicated to compliance.
- e) Non-Compliance and Disciplinary Matters. The annual report will discuss material compliance matters arising in the previous year, including instances of non-compliance and actions taken to remediate any such instance of non-compliance.

The CCO will present the annual report to the RMC and the Chief Executive Officer of Nodal Clear for review as recorded in the minutes of the RMC or otherwise. Prior to submission to the CFTC, the CCO will sign and certify that the annual report is accurate and complete to the best of the CCO's knowledge and reasonable belief. While the annual report provides for formal annual communication between the CCO and the RMC, Nodal Clear's CCO also prepares regular reports to the Board regarding compliance matters in accordance with Section 2.4(10) of the Compliance Manual, and addresses these matters with the Board and RMC on a quarterly basis. Also, in accordance with Section 2.4(2) of the Compliance Manual, the CCO is responsible for resolving conflicts of interest in consultation with the Board or the CEO. Such regular direct communication with the Board allows the CCO to disclose and discuss non-compliance matters or conflicts of interest in a timely manner.

VI. Regulation Section 4.4 - Board or advisory committees

A. Section 4.4 Requirements

(1) The board of directors of a recognized clearing agency must, at a minimum, establish and maintain committees on risk management, finance and audit.

(2) If a committee is a board committee, it must be chaired by a sufficiently knowledgeable individual who is independent of the clearing agency.

(3) Subject to subsection (4), a committee must have an appropriate representation by individuals who are independent of the clearing agency.

(4) An audit or risk committee must have an appropriate representation by individuals who are:

- (a) independent of the clearing agency, and
- (b) not employees or executive officers of a participant or their immediate family members.

B. Comparable CFTC Requirements

The CFTC requirements that are comparable to Regulation Section 4.4 enable the DCO board of directors to establish an RMC pursuant to CFTC Regulation 39.13(c). Pursuant to the requirements for DCO registration in Appendix A of Part 39 of the CFTC Regulations, DCO applicants must provide a description of the composition and responsibilities of the RMC. CFTC Regulation 39.32(c) provides the fitness standards for the board of directors, which includes the RMC, such that a subpart C DCO shall have governance policies to make certain that:

- a) The board of directors consists of suitable individuals having appropriate skills and incentives;
- b) The board of directors include individuals who are not executives, officers or employees of the subpart C DCO or an affiliate thereof;
- c) The performance of the board of directors and the performance of individual directors are reviewed on a regular basis;
- d) Managers have the appropriate experience, skills, and integrity necessary to discharge operational and risk management responsibilities; and
- e) Risk management and internal control personnel have sufficient independence, authority, resources, and access to the board of directors so that the operations of the subpart C DCO are consistent with the risk management framework established by the board of directors.

C. Nodal Clear Satisfaction of CFTC Requirements

To meet the requirements of the CFTC, the Board has established the RMC, in accordance with Nodal Clear Rule 2.4.1, to oversee the Nodal Clear risk program on behalf of the Board. In accordance with Nodal Clear Rule 2.4.3, the RMC has the authority to (i) monitor the risk program of Nodal Clear for sufficiency, effectiveness and independence; and (ii) oversee all facets of the risk program, including:

- a) clearing member membership criteria;
- b) risk management policy, financial safeguards and financial surveillance;
- c) surveillance, audits, examinations, and other regulatory responsibilities with respect to clearing members (including compliance with, as applicable, financial integrity, financial reporting, recordkeeping and other requirements);
- d) reviewing the size and allocation of the risk and compliance budgets and resources, and the number, hiring, termination and compensation of risk and compliance personnel;
- e) supervising the CRO, who will report to the RMC in addition to the Chief Executive Officer;
- f) supervising the CCO, who will report to the RMC in addition to the Chief Executive Officer;
- g) authorizing its Chairman and the CRO to establish a Risk Advisory Committee to meet as needed and to be chaired by the CRO, which Committee will include clearing member representation in order to provide recommendations to Nodal Clear and the RMC upon request;
- h) recommending changes to ensure fair, vigorous, and effective regulation and risk management; and
- i) reviewing regulatory proposals prior to implementation and advising the Board as to whether and how such changes may impact regulation.

As required by Nodal Clear Rule 2.1.4, all members of the Board must possess the ability to contribute to the effective oversight and management of Nodal Clear. In appointing the chairman of the RMC, the Board takes into account such factors as the individual's experience, perspective, skills and knowledge of the industry in which Nodal Clear operates. This shall include sufficient expertise, where applicable, in financial services, risk management and clearing services. Based on these criteria, the Board has appointed the Chief Executive Officer as the individual to chair the RMC.

To ensure effective independence of the RMC, there are at least two Public Directors on the RMC. In accordance with Nodal Clear Rule 2.4.3, the RMC shall consist of at least 35% Public Directors. In accordance with Nodal Clear Rule 2.1.6, to qualify as a Public Director, the Board must find that such individuals have no material relationship with Nodal Clear. For these purposes, a "material relationship" is one that reasonably could affect the independent judgment or decision-making of the

Public Director. In accordance with Nodal Clear Rule 2.1.6(c), a material relationship would exist if an individual is a director, officer, or employee of a clearing member of Nodal Clear, a participant on Nodal Exchange, or of any entity with an ownership interest in Nodal Clear. Such "material relationship" applies to the "immediate family" of such individual (*i.e.*, spouse, parents, children, and siblings, in each case, whether by blood, marriage or adoption). Conflicts of interest are managed by the CCO in accordance with Nodal Clear Rule 2.7.

As the ultimate parent of both Nodal Clear and Nodal Exchange, Nodal Holdings has an established audit committee. The independent auditors issue an audit report for Nodal Clear and Nodal Exchange (consolidated) and are then required to report to the audit committee of the Nodal Holdings board on behalf of Nodal Clear and Nodal Exchange. The board of Nodal Clear, which includes two independent Public Directors, receives the financial results of Nodal Clear on a quarterly basis. Finance and internal audit functions are carried out by the Nodal Clear treasury team under the direction of the Chief Financial Officer. The Nodal Clear treasury team is responsible for monitoring transactions in real-time and performing daily reconciliations with financial institutions.

VII. Regulation Section 4.5 - Use of own capital

A. Section 4.5 Requirements

A recognized clearing agency that operates as a central counterparty must dedicate and use a reasonable portion of its own capital to cover losses resulting from one or more participant defaults.

B. Comparable CFTC Requirements

Nodal Clear is not aware of a Core Principle or CFTC regulation comparable to the Section 4.5 requirements.

C. Nodal Clear Satisfaction of CFTC Requirements

While not required by the CFTC, Nodal Clear provides a priority Nodal Clear contribution of \$20 million to be used in the event of default by one or more clearing members. As described in Nodal Clear Rule 3.35, Nodal Clear's default waterfall provides that the defaulting clearing member's resources are first used to cure the default. If the defaulting clearing member's resources are exhausted before the default has been cured, then Nodal Clear may next use in the following order as described in Nodal Clear Rule 3.35(b):

1. Any surpluses of Nodal Clear that the Board determines are available for such purpose,
2. A loan or repurchase agreement or similar transaction, and
3. The Nodal Clear contribution (currently \$20 million as posted on the Nodal Clear website under the default resources section of risk management).

Should these resources be exhausted before the default has been cured, Nodal Clear would next apply the "**Guaranty Fund**"⁵ resources from non-defaulting clearing members. Should the resources of the Guaranty Fund be exhausted before the default has been cured, Nodal Clear will assess the surviving clearing members for additional contributions. These assessments cannot exceed 200% of a clearing member's prior Guaranty Fund contribution for a single default, or 550% of a clearing member's prior Guaranty Fund contribution for multiple defaults occurring within a six month period. These assessments are due and payable at the end-of-day Settlement Time for the day on which the assessment is levied. The default waterfall is also described in a visual diagram on the Nodal Clear website.

⁵ As defined in the Nodal Clear Rulebook, the Guaranty Fund consists of monies, securities, and instruments deposited by clearing members in accordance with the Rules, which fund shall be used to reimburse Nodal Clear for losses sustained by Nodal Clear as a result of the failure of any clearing member to discharge its obligations in accordance with the Rules.

VIII. Regulation Section 4.6 - Systems requirements

A. Section 4.6 Requirements

For each system operated by or on behalf of a recognized clearing agency that supports the clearing agency's clearing, settlement and depository functions, the clearing agency must

- (a) develop and maintain
 - (i) an adequate system of internal controls over that system, and
 - (ii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support,
- (b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually
 - (i) make reasonable current and future capacity estimates, and
 - (ii) conduct capacity stress tests to determine the ability of that system to process transactions in an accurate, timely and efficient manner, and
- (c) promptly notify the regulator or, in Québec, the securities regulatory authority of any material systems failure, malfunction, delay or security breach, and provide timely updates on the status of the failure, malfunction, delay or security breach, the resumption of service, and the results of the clearing agency's internal review of the failure, malfunction, delay or security breach.

B. Comparable CFTC Requirements

Comparable to the Section 4.6 requirements, Core Principle I (System Safeguards) provides that each DCO must:

- a) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;
- b) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for
 - a. the timely recovery and resumption of operations of the DCO; and
 - b. the fulfillment of each obligation and responsibility of the DCO; and

- c) periodically conduct tests to verify that the backup resources of the DCO are sufficient to ensure daily processing, clearing, and settlement.

To implement Core Principle I, CFTC Regulation 39.18 provides for system safeguards that each DCO must implement. Among other things, CFTC Regulation 39.18 calls for a program of risk analysis and oversight with respect to operations and automated systems that identifies and minimizes 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. In accordance with CFTC Regulation 39.18(b)(2), this risk analysis program must specifically address the following categories of risk analysis and oversight:

1. Information security;
2. Business continuity and disaster recovery planning and resources;
3. Capacity and performance planning;
4. Systems operations;
5. Systems development and quality assurance; and
6. Physical security and environmental controls.

In addressing these categories of risk analysis and oversight, the DCO must follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of the automated systems. Regulation 39.18 further provides that DCOs shall establish and maintain resources that allow for the fulfillment of each obligation and responsibility of the DCO in light of the risks identified as part of the program of risk analysis and oversight.

Regulation 39.18(g) provides that the DCO shall notify staff of the CFTC's Division of Clearing and Risk promptly of 1) Any hardware or software malfunction, security incident or targeted threat that materially impairs, or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or 2) Any activation of the DCO's business continuity and disaster recovery plan.

C. Nodal Clear Satisfaction of CFTC Requirements

Nodal Clear has a program of risk analysis in compliance with the CFTC requirements in Core Principle I and CFTC Regulation 39.18. Nodal Clear maintains a technology risk catalog that identifies key technology risks across all technology platforms operated by Nodal Clear. The Nodal Clear technology teams have developed a series of customized risk mitigation strategies to eliminate or reduce specific risks using specific best practices to ensure the automated systems are reliable, secure, and have adequate scalable capacity. Independent professionals conduct audits to verify that mitigation strategies are being followed.

In accordance with section 7.2 of the Compliance Manual, Nodal Clear must report any system disruption that materially impairs, or creates a significant likelihood of material impairment, to the CFTC. Nodal Clear must submit a report to the CFTC promptly upon the occurrence of: (1) any hardware or software malfunction, cybersecurity incident, or targeted threat that materially impairs, or is significantly likely to materially impair, an automated system operation, reliability, security or capacity; or (2) the activation of Nodal Clear's business continuity and disaster recovery plan. The CFTC shall also be provided with timely advance notice of any planned changes to automated systems if such changes are likely to have a significant impact on the reliability, security or adequate scalable capacity of such systems and in respect of any planned changes to Nodal Clear's program of risk analysis and oversight.

IX. Regulation Section 4.7 - Systems reviews

A. Section 4.7 Requirements

(1) A recognized clearing agency must annually engage a qualified party to conduct an independent systems review and vulnerability assessment and prepare a report in accordance with established audit standards and best industry practices to ensure that the clearing agency is in compliance with paragraph 4.6(a) and section 4.9.

(2) The clearing agency must provide the report resulting from the review conducted under subsection (1) to

(a) its board of directors, or audit committee, promptly upon the report's completion, and

(b) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end.

B. Comparable CFTC Requirements

Comparable to the Regulation Section 4.7 requirements, CFTC Regulation 39.18 requires DCOs to establish and maintain risk analysis and oversight programs as part of their systems, which includes regular testing to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement. Specifically, a DCO must follow "generally accepted standards and industry best practices with respect to the development, operation, reliability, security, and capacity of automated systems" when establishing risk analysis and oversight programs. In addition, on September 19, 2016, the CFTC issued new system safeguards rules that enhance CFTC Regulation 39.18 and require DCOs to conduct various types of systems testing and assessment, such as: 1) vulnerability testing, 2) penetration testing, 3) controls testing, 4) security incident response plan testing, and 5) enterprise technology risk assessment.⁶

C. Nodal Clear Satisfaction of CFTC Requirements

In compliance with CFTC Regulation 39.18, Nodal Clear conducts periodic audits to confirm that the defined linkages between identified technology risks and their associated risk mitigation strategies are occurring regularly and as designed. These audits focus on interviews and artifact sampling to match day-to-day practice against the implementation plan and ensure that key Nodal mitigation strategies are being followed. The audits are led by Nodal Clear Controller Myshel Guillory, CPA,

⁶ System Safeguards Testing Requirements for Derivatives Clearing Organizations, 81 FR 64322 (September 19, 2016).

to assess the adequacy of the internal controls over the system, with support from Nodal Clear technology and compliance staff. Nodal Clear also engages a qualified independent third party to conduct systems security reviews, and, in particular, penetration testing. The reports of these audits are reviewed regularly by the Board.

X. Regulation Section 4.8 - Clearing agency technology requirements and testing facilities

A. Section 4.8 Requirements

(1) A recognized clearing agency must make available to participants, in their final form, all technology requirements regarding interfacing with or accessing the clearing agency

- (a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and
- (b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(2) After complying with subsection (1), the clearing agency must make available testing facilities for interfacing with or accessing the clearing agency

- (a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and
- (b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(3) The clearing agency must not begin operations before

- (a) it has complied with paragraphs (1)(a) and (2)(a), and
- (b) the chief information officer of the clearing agency, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that all information technology systems used by the clearing agency have been tested according to prudent business practices and are operating as designed.

(4) The clearing agency must not implement a material change to the systems referred to in section 4.6 before

- (a) it has complied with paragraphs (1)(b) and (2)(b), and
- (b) the chief information officer of the clearing agency, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.

(5) Subsection (4) does not apply to the clearing agency if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and if

- (a) the clearing agency immediately notifies the regulator or, in Québec, the securities regulatory authority, of its intention to make the change, and
- (b) the clearing agency discloses to its participants the changed technology requirements as soon as practicable.

B. Comparable CFTC Requirements

Nodal Clear is not aware of comparable CFTC requirements.

C. Nodal Clear Satisfaction of CFTC Requirements

While Nodal Clear is not subject to specific CFTC requirements containing the testing provisions outlined above, Nodal Clear generally adheres to the Regulation Section 4.8 requirements other than certifying in writing to its regulator that testing has been completed as this is not required. Before launching Nodal Clear on October 19, 2015, Nodal Clear provided all clearing members with interface specifications and provided access to test systems so that clearing members could verify that their systems worked properly with those of Nodal Clear. In the event Nodal Clear were to implement a material change to the technology requirements for these interfaces, Nodal Clear would provide its clearing members with updated specifications and access to test systems materially in advance of the transition to ensure that the transition will not disrupt clearing member operations. Interface specifications do not disclose the proprietary information of Nodal Clear clearing members.

XI. Regulation Section 4.9 - Testing of business continuity plans

A. Section 4.9 Requirements

A recognized clearing agency must

- (a) develop and maintain reasonable business continuity plans, including disaster recovery plans, and
- (b) test its business continuity plans, including its disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually.

B. Comparable CFTC Requirements

Comparable to the Regulation Section 4.9 requirements, the relevant requirements of Core Principle I (System Safeguards) require a DCO to establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations of the DCO and the fulfillment of each obligation and responsibility of the DCO. In addition, Core Principle I requires the DCO conduct tests periodically to verify that the backup resources of the DCO are sufficient to ensure daily processing, clearing, and settlement. CFTC Regulation 39.18(c) implements Core Principle I by requiring a DCO maintain a business continuity and disaster recovery plan, emergency procedures, and physical, technological, and personnel resources sufficient to enable the timely recovery and resumption of operations and the fulfillment of each obligation and responsibility of the DCO following any disruption of its operations. Such obligations and responsibilities of the DCO include, without limitation, daily processing, clearing, and settlement of transactions. The objective of the DCO's business continuity and disaster recovery plan is to enable the DCO to resume daily processing, clearing, and settlement no later than the next business day following a disruption.

CFTC Regulation 39.18(e) provides that a DCO shall conduct "regular, periodic, and objective testing and review of ... its business continuity and disaster recovery capabilities." The DCO will use testing protocols adequate to ensure that the DCO's backup resources are sufficient to meet the requirements of its business continuity and disaster recovery plan. CFTC Regulation 39.18(d)(3) requires that where testing must be conducted by an independent contractor, such persons must be independent from those used to design, develop, or maintain the resources being tested. The reports setting forth the results of such tests must be presented to and reviewed by the DCO's senior management and board of directors.

In accordance with CFTC Regulation 39.18(c)(3), the DCO shall, to the extent practicable:

- a) Coordinate its business continuity and disaster recovery plan with those of its clearing members, in a manner adequate to enable effective resumption of daily processing, clearing, and settlement of transactions following a disruption;
- b) Initiate and coordinate periodic, synchronized testing of its business continuity and disaster recovery plan with those of its clearing members; and
- c) Ensure that its business continuity and disaster recovery plan takes into account the plans of its providers of essential services, including telecommunications, power, and water.

C. Nodal Clear Satisfaction of CFTC Requirements

Nodal Clear maintains a Business Continuity and Disaster Recovery Plan, which pursuant to CFTC Regulation 39.18 establishes procedures to respond to a significant business disruption by restoring the market as quickly as possible without sacrificing the accuracy and integrity of order, trade, position, and market data. The clearing services recovery time objective is 2 hours. The Business Continuity and Disaster Recovery Plan includes procedures for communicating with clearing members.

Nodal Clear tests the Business Continuity and Disaster Recovery Plan at least twice annually. Such tests address various scenarios that simulate wide-scale disasters and inter-site switchovers. Nodal Clear's employees are thoroughly trained to execute the Business Continuity and Disaster Recovery Plan. Nodal Clear plans to participate in the industry wide Business Continuity/Disaster Recovery testing process of the Futures Industry Association ("FIA"). The FIA testing process involves testing key failover procedures with a DCO's clearing members.

XII. Regulation Section 4.10 - Outsourcing

A. Section 4.10 Requirements

If a recognized clearing agency outsources a critical service or system to a service provider, including to an affiliated entity of the clearing agency, the clearing agency must do all of the following:

- (a) establish, implement, maintain and enforce written policies and procedures to conduct suitable due diligence for selecting service providers to which a critical service and system may be outsourced and for the evaluation and approval of those outsourcing arrangements;
- (b) identify any conflicts of interest between the clearing agency and the service provider to which a critical service and system is outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest;
- (c) enter into a written contract with the service provider to which a critical service or system is outsourced that
 - (i) is appropriate for the materiality and nature of the outsourced activities,
 - (ii) includes service level provisions, and
 - (iii) provides for adequate termination procedures;
- (d) maintain access to the books and records of the service provider relating to the outsourced activities;
- (e) ensure that the securities regulatory authority has the same access to all data, information and systems maintained by the service provider on behalf of the clearing agency that it would have absent the outsourcing arrangements;
- (f) ensure that all persons conducting audits or independent reviews of the clearing agency under this Regulation have appropriate access to all data, information and systems maintained by the service provider on behalf of the clearing agency that such persons would have absent the outsourcing arrangements;
- (g) take appropriate measures to determine that the service provider to which a critical service or system is outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan;

- (h) take appropriate measures to ensure that the service provider protects the clearing agency's proprietary information and participants' confidential information, including taking measures to protect information from loss, thefts, vulnerabilities, threats, unauthorized access, copying, use and modification, and discloses it only in circumstances where legislation or an order of a court or tribunal of competent jurisdiction requires the disclosure of such information;
- (i) establish, implement, maintain and enforce written policies and procedures to monitor the ongoing performance of the service provider's contractual obligations under the outsourcing arrangements.

B. Comparable CFTC Requirements

Consistent with the requirements of Regulation Section 4.10, the CFTC permits the DCO to use the services of outside service providers to comply with any of the Core Principles. Pursuant to the requirements for DCO registration in Appendix A of Part 39 of the CFTC regulations regarding Exhibit A-10, DCO applicants that intend to use such services of an outside service provider to comply with the Core Principles must submit to the CFTC all agreements entered into between the applicant and the outside service provider, and identify:

1. The services that will be provided;
2. The staff who will provide the services; and
3. The Core Principles addressed by such arrangement.

In addition, CFTC Regulation 39.18(d) permits a DCO to maintain its required business continuity and disaster recovery resources through written contractual arrangements with a service provider; provided, however that the DCO must:

- a) retain complete liability for any failure to meet its business continuity and disaster recovery responsibilities, and
- b) employ personnel with the expertise necessary to enable it to supervise the service provider's delivery of the services.

C. Nodal Clear Satisfaction of CFTC Requirements

Nodal Exchange

Nodal Clear entered into an Operating Services Agreement with its parent, Nodal Exchange, on October 1, 2014. Exhibit A to the Operating Services Agreement identifies the personnel, systems, operational support and other services that Nodal Exchange provides to Nodal Clear pursuant to the Operating Services Agreement.⁷ Several Nodal Exchange employees perform functions related to the provision of clearing services, including similar clearing services it provided to LCH pursuant to an outsourcing agreement with LCH until the transition to Nodal Clear. When Nodal Clear launched on October 19, 2015, Nodal Exchange continued to provide these services and other clearing support services to Nodal Clear pursuant to the Operating Services Agreement.

Compliance with the following Core Principles is accomplished, in whole or in part, through the provision of services and personnel pursuant to the Operating Services Agreement:

Core Principle D – Risk Management. Core Principle D and CFTC Regulation 39.13 require Nodal Clear to ensure that it possesses the ability to manage the risks associated with discharging its responsibilities as a DCO through the use of appropriate tools and procedures. The Operating Services Agreement documents the systems, staffing, resources and services related to the assessment and management of risks that are provided by Nodal Exchange to Nodal Clear.

Core Principle E – Settlement Procedures. Core Principle E and CFTC Regulation 39.14 require Nodal Clear to ensure that settlements are effected with each clearing member at least once each business day and that Nodal Clear has the operational capacity to effect a settlement with each Clearing member on an intraday basis, either routinely, when thresholds specified by Nodal Clear are breached, or in times of extreme market volatility. Pursuant to the Operating Services Agreement, Nodal Exchange provides resources that enable Nodal Clear to effect settlements with each clearing member at least once each business day and more frequently if warranted by market volatility.

Core Principle H – Rule Enforcement. Core Principle H and CFTC Regulation 39.17 require Nodal Clear to maintain adequate arrangements and resources to effectively monitor and enforce compliance with Nodal Clear Rules. Nodal Exchange provides personnel, systems and other resources to conduct inquiries, investigations, disciplinary proceedings, appeals and summary actions on behalf of Nodal Clear.

Core Principle I – System Safeguards. Core Principle I and CFTC Regulation 39.18 require Nodal Clear to establish and maintain a program of risk analysis and oversight with respect to its operations and automated systems to identify and minimize sources of operational risk. As set forth in the Operating Services

⁷ As relevant, certain Nodal Exchange personnel take on duties for and, as appropriate, serve as officers of Nodal Clear. These “dual hatted” employees, therefore, are authorized to act for Nodal Clear to the same extent as if they were employed exclusively by Nodal Clear.

Agreement, Nodal Exchange provides systems that have appropriate controls for the clearing services provided by Nodal Clear and are adequately reliable, secure and scalable and support the business continuity and disaster recovery plan of Nodal Clear.

Core Principle J – Reporting. Core Principle J and CFTC Regulation 39.19 require Nodal Clear to provide the CFTC with certain reports and any other information that the CFTC deems necessary to conduct its oversight of Nodal Clear. The Operating Services Agreement requires the Exchange to provide human, technical and other resources necessary to provide the CFTC with the reports specified in CFTC Regulation 39.19 and any other requested information.

Core Principle K – Recordkeeping. Consistent with Core Principle K and CFTC Regulation 39.20, Nodal Clear maintains records of all activities related to its business as a DCO. The services provided by Nodal Exchange pursuant to the Operating Services Agreement enable Nodal Clear to maintain all records related to the clearing services provided by Nodal Clear. In addition, Nodal Exchange maintains appropriate records regarding the services the Exchange provides to Nodal Clear.

Patrina Corporation

To meet the recordkeeping requirements outlined in Core Principle K and CFTC Regulations 1.31 and 39.20, Nodal Clear has entered into the Operating Services Agreement with Nodal Exchange. Nodal Exchange, in turn, has engaged Patrina Corporation (“**Patrina**”) to store Nodal Clear’s records related to its business as a DCO utilizing electronic storage media in a non-erasable, non-rewritable format. Nodal Clear sends data through Nodal Exchange to Patrina on a daily basis, and Patrina automatically verifies the quality and accuracy of the storage media recording process, serializes the original data (and, if applicable, duplicates units of storage media) and creates a time-date record for the required period of retention for the information placed on Patrina’s electronic storage media.

Patrina acts as Nodal Clear’s Technical Consultant in accordance with CFTC Regulation 1.31(b)(4) and, in that capacity, has the ability to immediately access and download Nodal Clear information upon request by representatives of the CFTC or the Department of Justice. Patrina has provided Nodal Clear with the undertaking letter required by Regulation 1.31.

National Futures Association

Nodal Clear has entered into an Arbitration Services Agreement with the National Futures Association (“**NFA**”). Pursuant to the Arbitration Services Agreement and Section VI of the Nodal Clear Rulebook, NFA administers arbitration proceedings for disputes, controversies or claims between or among clearing members. Arbitration proceedings are to be conducted in accordance with the NFA Member Arbitration Rules, as if each clearing member that is party to such arbitration were an “NFA Member,” and references in such Member Arbitration Rules to the “Associates” of an “NFA Member” shall mean and include any Authorized User and any individual who is employed by or is an agent of a clearing member and who has been authorized to

access Nodal Clear under the Rules. The Arbitration Services Agreement permits Nodal Clear to achieve compliance with Core Principle H and CFTC Regulation 39.17, which require Nodal Clear to maintain adequate arrangements and resources to effectively resolve disputes.

XIII. Regulation Section 4.11 - Access requirements and due process

A. Section 4.11 Requirements

(1) A recognized clearing agency must not

- (a) unreasonably prohibit, condition or limit access by a person or company to the services offered by the clearing agency,
- (b) unreasonably discriminate among its participants or indirect participants,
- (c) impose any burden on competition that is not reasonably necessary and appropriate,
- (d) unreasonably require the use or purchase of another service for a person or company to utilize the clearing agency's services offered by it, and
- (e) impose fees or other material costs on its participants that are unfairly or inequitably allocated among the participants.

(2) For any decision made by the clearing agency that terminates, suspends or restricts a participant's membership in the clearing agency or that declines entry to membership to an applicant that applies to become a participant, the clearing agency must ensure that

- (a) the participant or applicant is given an opportunity to be heard or make representations, and
- (b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting access or for denying or limiting access to the applicant, as the case may be.

(3) Nothing in subsection (2) limits or prevents the clearing agency from taking timely action in accordance with its rules and procedures to manage the default of one or more participants or in connection with the clearing agency's recovery or orderly wind-down, whether or not such action adversely affects a participant.

B. Comparable CFTC Requirements

The requirements of Core Principle C – Participant and Product Eligibility, are comparable to the requirements of Regulation Section 4.11. CFTC Core Principle C requires that the participation and membership requirements of each DCO:

- a) be objective;
- b) be publicly disclosed; and
- c) permit fair and open access.

In implementing Core Principle C, applicable subsections of CFTC Regulation 39.12(a)(1) provide that:

- a) the DCO may not adopt restrictive clearing member standards if less restrictive requirements that achieve the same objective and that would not materially increase risk to the DCO or clearing members could be adopted;
- b) the DCO shall allow all market participants who satisfy participation requirements to become clearing members; and
- c) a DCO shall not exclude or limit clearing membership of certain types of market participants unless the DCO can demonstrate that the restriction is necessary to address credit risk or deficiencies in the participants' operational capabilities that would prevent them from fulfilling their obligations as clearing members.

CFTC Regulation 39.12(a)(6) requires DCOs to have the ability to enforce compliance with its participation requirements. The DCO must demonstrate the ability to enforce compliance with its participation requirements and establish procedures for the orderly removal of clearing members that no longer meet the requirements. As required in the Appendix A to Part 39 regarding the rule enforcement procedures, the DCO must establish standards and provide procedural protections when imposing any such enforcement measures.

C. Nodal Clear Satisfaction of CFTC Requirements

In accordance with CFTC Core Principle C, Nodal Clear has established participation and membership requirements that are objective, publicly disclosed, and permit fair and open access to the DCO. Pursuant to Nodal Clear Rule 3.2, each applicant for clearing membership must meet certain objective qualification criteria that are designed to ensure that clearing members meet appropriate financial, credit, operational and risk management requirements. The qualifications for clearing members of Nodal Clear are as follows:

- a) it shall be a corporation, limited liability company, partnership or other entity in good standing in its jurisdiction of formation;
- b) it shall be qualified to conduct business in the State of New York or have an agency agreement in place with an entity qualified in the State of New York that provides an agent for service of process and other communications from Nodal Clear in connection with the business of Nodal Clear;
- c) it shall be engaged in or demonstrate its capacity to engage in the conduct of the business of a clearing member;
- d) it shall have received all necessary registrations, approvals and consents from all applicable regulatory authorities and governmental authorities to permit it to conduct the business of a clearing member;

- e) it shall demonstrate such fiscal integrity as would justify Nodal Clear's assumption of the risks inherent in clearing Nodal Contracts;
- f) it shall demonstrate financial capitalization commensurate with Nodal Clear requirements as set by the RMC from time to time, provided that the minimum capital requirement shall not be more than \$50,000,000;
- g) if it is clearing on behalf of customers, it shall be registered as an FCM;
- h) it shall have established satisfactory relationships with, and designated to Nodal Clear, a financial institution approved by Nodal Clear for confirmation and payment of all initial margin, variation margin and other settlements with Nodal Clear;
- i) it shall maintain back-office facilities staffed with experienced and competent personnel or have entered into a facilities management agreement in form and substance acceptable to Nodal Clear; and
- j) it shall have adequate operational capacity, including the ability to process expected peak volumes and values within required time frames, fulfill collateral payment and delivery obligations imposed by Nodal Clear and participate in default management activities.

Once admitted, clearing members must continue to meet these criteria on an ongoing basis. The membership criteria established by Nodal Clear Rule 3.2 are clear and objective and permit fair and open access. Any clearing member that ceases to qualify for membership must notify Nodal Clear. The Rules setting forth Nodal Clear membership criteria and the membership application process are available on the Nodal Clear website. In addition, Nodal Clear makes public all fees charged by Nodal Clear for its clearing services, the margin-setting methodology used by Nodal Clear, and the size and composition of the Guaranty Fund.

In the event an applicant fails to be approved for membership, in accordance with Nodal Rule 3.4, the applicant shall have seven (7) business days to file an appeal to the Board seeking further consideration. The Board may approve the applicant by a majority vote if it determines that the decision to deny the application was in error.

Any action taken by Nodal Clear during an emergency that terminates, suspends or restricts a clearing member's membership in Nodal Clear shall provide such clearing member with notice and the opportunity to be heard in accordance with Nodal Clear Rule 5.3.2. However, Nodal Clear may take immediate action against a clearing member in accordance with Nodal Clear Rule 5.3.2(a) in the event an emergency exists as determined by the Chief Executive Officer or, in his or her absence, the Chief Risk Officer or the Board, whereby the opportunity to be heard before taking action is not practicable under the circumstances and there is reason to believe that immediate action is necessary to protect the best interests of Nodal Clear. In the event such immediate action is taken, Nodal Clear will give the clearing member(s) notice and an opportunity to be heard by the Board promptly thereafter. Such

notice, to be provided no less than one (1) hour before the hearing, will state the action that has been taken, the reasons therefor, and the effective date, time, and anticipated duration thereof.

Upon conclusion of a hearing, the Board shall issue a written decision, with a copy to the CRO and the clearing member, in accordance with Nodal Clear Rule 5.3.2(c). The decision will include a copy of any transcript of the hearing (if previously transcribed) and citations, as appropriate, to any documents presented at the hearing. The Board decision shall state: (i) the Board's determination as to whether an emergency exists or there is a substantial question as to whether an emergency exists regarding the clearing member; and (ii) the Board's decision whether to affirm, modify, or reverse any action theretofore taken and the effective date and duration of the action. The Board's decision shall be the final action of Nodal Clear and will not be subject to appeal within Nodal Clear.

2.4 Additional Information to Demonstrate that it is in the Public Interest for the AMF to Exempt the Applicant

Nodal Clear is committed to operating a clearing agency in accordance with relevant public interest considerations. Nodal Clear has published the following mission statement on its website: "To provide a safe, effective, and efficient clearing house that supports financial stability and earns all stakeholders' trust." In addition, Nodal Clear's RMC Charter explicitly supports the stability of the broader financial system and other relevant public interest considerations, which may include considerations relating to clearing members, customers and other relevant stakeholders. The full text of the charter is available on Nodal Clear's website at www.nodalclear.com.

2.5 Certification Regarding Books and Records as well as Onsite Inspection and Examination

Pursuant to Section 2.1(2)(a) of the Regulation, Nodal Clear will provide certification that it will assist the AMF in accessing Nodal Clear's books and records and in undertaking an onsite inspection and examination at Nodal Clear's premises.

2.6 Form 24-102F1 Submission to Jurisdiction and Appointment of Agent for Service

Pursuant to Section 2.1(3) of the Regulation, Nodal Clear will prepare a draft Form 24-102F1 *Clearing Agency Submission to Jurisdiction and Appointment of Agent for Service of Process*. A fully executed Form 24-102F1 shall be filed with the AMF once the Nodal Clear Exemption is issued.

2.7 Notice Regarding Material Change to Information Provided in Application

Pursuant to Section 2.1(4) of the Regulation, Nodal Clear agrees to inform the AMF in writing of any material change to the information provided in its application, or if any of the information becomes materially inaccurate for any reason, as soon as the change occurs or Nodal Clear becomes aware of any inaccuracy.

2.8 Filing of Audited Financial Statements

Pursuant to Section 2.4(1) of the Regulation, Nodal Clear will provide audited financials for the most recently completed financial year. Such audited financial statements and the accompanying auditor's report will meet the standards prescribed in Sections 2.4(2) and (3) of the Regulation, respectively.

I, Paul Cusenza as Chief Executive Officer and Chairman of the Board of Nodal Clear, do hereby certify that to the best of my knowledge the preparation and compilation of the attached application to the Autorité des marchés financiers is authorized and confirm the truth of the facts contained therein as they relate to Nodal Clear.

DATED: January 9, 2017

/s/ Paul Cusenza

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

7.3.2 Publication

Conformément à la décision n° 2012-PDG-0142 prononcée le 4 juillet 2012 par l'Autorité des marchés financiers reconnaissant Groupe TMX Limitée, La Caisse canadienne de dépôt de valeurs limitée et Services de dépôt et de compensation CDS inc. (ces deux dernières, collectivement désignées, la « CDS ») à titre de chambre de compensation en vertu des articles 169 et 170 de la *Loi sur les valeurs mobilières*, RLRQ, c. V-1.1, vous trouverez, ci-après, un résumé des observations du public et des réponses de la CDS à la suite de la publication au Bulletin de l'Autorité le 4 août 2016 du projet de modifications importantes des Procédés et méthodes de la CDS – Normes de la CDS applicables aux agents des transferts [(2016) vol. 13, n° 31, B.A.M.F., section 7.3]

Services de dépôt et de compensation CDS inc. Modifications importantes des Procédés et méthodes de la CDS - Normes de la CDS applicables aux agents des transferts

Vu la décision n° 2012-PDG-0142 prononcée le 4 juillet 2012 par l'Autorité des marchés financiers (l'« Autorité ») reconnaissant Groupe TMX Limitée, ayant alors la dénomination sociale de Corporation d'Acquisition Groupe Maple, La Caisse canadienne de dépôt de valeurs limitée et sa filiale à part entière Services de dépôt et de compensation CDS inc. (ces deux dernières entités étant collectivement désignées la « CDS »), à titre de chambre de compensation en vertu de l'article 169 de la *Loi sur les valeurs mobilières*, RLRQ., c. V-1.1 (la « décision de reconnaissance »);

Vu la nécessité, pour la CDS, d'obtenir l'approbation de l'Autorité pour toutes modifications importantes aux procédés et méthodes de la CDS en vertu du paragraphe 32.2 de la décision de reconnaissance;

Vu la demande, complétée le 15 novembre 2016 par la CDS, afin d'obtenir l'approbation par l'Autorité de modifications importantes aux procédés et méthodes visant à actualiser les normes auxquelles les agents des transferts doivent se conformer afin d'interagir avec la CDS et ses systèmes (les « modifications »);

Vu la déclaration de la CDS selon laquelle les modifications ont été dûment approuvées par son conseil d'administration le 5 mai 2016;

Vu l'article 74 de la *Loi sur l'Autorité des marchés financiers*, RLRQ, c. A-33.2 (la « Loi »);

Vu les pouvoirs délégués conformément à l'article 24 de la Loi;

Vu l'analyse effectuée par la Direction principale de l'encadrement des structures de marché et sa recommandation d'approuver les modifications du fait qu'elles favoriseront le bon fonctionnement du marché;

En conséquence, l'Autorité approuve les modifications.

Fait à Montréal, le 16 janvier 2017.

Gilles Leclerc
Surintendant des marchés de valeurs

Décision n°: 2017-SMV-0001

RÉSUMÉ DES COMMENTAIRES

Avis et sollicitation de commentaires – Modifications proposées des normes de la CDS applicables aux agents des transferts

Commentaires	Réponses de la CDS
Un intervenant a demandé que la CDS explique dans quelle mesure les normes proposées préviennent les risques indiqués dans les PIMF qui ont été particulièrement soulignés et de quelle façon elles peuvent contribuer à atténuer ces risques.	La CDS fait directement référence au Principe 17 des PIMF et au risque qu'elle assume à l'égard de la fiabilité des services sous la rubrique Description des modifications proposées et la rubrique Contexte de l'avis. Les normes proposées atténuent ce risque lié à la fiabilité.
Un intervenant a demandé que la CDS confirme que les exemptions proposées dans l'avis ne seront pas modifiées ou annulées.	La CDS ne peut garantir qu'elle ne modifiera ni n'annulera les exemptions prévues à l'égard de certaines exigences consenties aux agents des transferts autorisés de la CDS actuels. Bien qu'elle ait pris des mesures d'exception pour les agents des transferts actuels, la CDS doit toujours être apte à modifier ses normes pour répondre aux exigences d'éventuelles règles ou directives nationales ou internationales.
Un intervenant a fait remarquer que l'exigence visant à obtenir une preuve de régularité de la part d'un organisme de réglementation échappe au contrôle de l'agent des transferts.	La CDS est consciente des préoccupations que suscite l'obligation pour les agents des transferts d'obtenir une preuve de régularité de leur organisme de réglementation principal. Quoi qu'il en soit, cette exigence constitue un élément essentiel des modifications proposées des normes de la CDS, d'autant plus que tous les adhérents de la CDS doivent s'y conformer.
Un intervenant a demandé des éclaircissements au sujet de l'exigence visant à détenir une assurance d'institution financière (AIF).	Les agents des transferts ne sont assujettis à aucune règle prudentielle. L'exigence visant à détenir une AIF, qui est stipulée dans la Convention d'adhésion à la CDS (et qui n'est donc pas une nouvelle exigence pour les agents des transferts adhérents à mandat restreint), s'attaque aux risques financiers et opérationnels indirects inhérents à l'interaction de la CDS avec l'ensemble des agents des transferts. Contrairement à la Règle 11.2.4, l'exigence visant à détenir une AIF (qui figure actuellement dans la Convention d'adhésion à la CDS) a pour but de couvrir les risques tels que la confirmation de dépôts erronés ainsi que les retards ou les omissions de paiement de droits et privilèges.

<p>Un intervenant a demandé des éclaircissements visant à établir s'il était acceptable de fournir les états financiers audités de la société mère d'un agent des transferts.</p>	<p>La CDS examinera au cas par cas les situations dans lesquelles seule la société mère peut fournir des états financiers audités. Nous n'envisageons pas pour l'instant de modifier cette exigence proposée.</p>
<p>Un intervenant a souligné l'absence de proposition d'un échéancier selon lequel les agents des transferts autorisés de la CDS actuels qui ne sont pas des sociétés de fiducie devront fournir un rapport annuel de vérification par une tierce partie, une AIF et des états financiers annuels audités.</p>	<p>La CDS n'a présenté aucun échéancier précis afin d'assurer que la mise en œuvre des exigences et la remise des documents pertinents ne nuisent pas indûment aux activités des agents des transferts. La CDS tiendra compte de la réponse et des demandes de chacune des entités dans l'établissement d'un tel échéancier.</p>
<p>Un intervenant a demandé de préciser si le fait d'être régi par une commission des valeurs mobilières étrangère dont le mandat englobe la supervision des agents des transferts pouvait constituer une mesure de contrôle interne satisfaisante.</p>	<p>La CDS examinera au cas par cas si la supervision réglementaire d'un agent des transferts par une commission des valeurs mobilières étrangère constitue une mesure de contrôle interne satisfaisante. Cependant, la CDS n'est pas en mesure de faire référence à des organismes de réglementation ou à des territoires en particulier.</p>

Le 4 octobre 2016



AVIS DE CONFORMITÉ

EN VERTU DE L'ARTICLE 22 DE LA LOI SUR LES INSTRUMENTS DÉRIVÉS

**MODIFICATION DES ARTICLES 6676, 6791, 6795 ET 6795.2 DES RÈGLES DE BOURSE DE
MONTRÉAL INC. VISANT À ADOPTER UN NOUVEAU TAUX DE RÉFÉRENCE POUR
ÉTABLIR LE PRIX DE RÈGLEMENT FINAL DES OPTIONS SUR DEVISES**

Le soussigné confirme que les modifications et, s'il y a lieu, les ajouts et les abrogations aux règles, politiques et procédures de Bourse de Montréal inc. ont été apportés conformément à la *Loi sur les instruments dérivés* (RLRQ, chapitre I-14.01).

FAIT à MONTRÉAL le 9 janvier 20 17

(s) Martin Jannelle

Martin Jannelle, conseiller juridique
BOURSE DE MONTRÉAL INC.