



November 15, 2012

Via electronic mail

Sauntia Warfield
Assistant Secretary
Commodity Futures Trading Commission
3 Lafayette Centre
1151 21st St., N.W.
Washington, D.C. 20581

Re: In the Matter of Petition of Natural Gas Exchange Inc. for Modification of Order of Registration

Dear Assistant Secretary Warfield:

On December 12, 2008, the Commodity Futures Trading Commission (“CFTC” or the “Commission”) issued an Order of Registration (“Registration Order”) to Natural Gas Exchange Inc. (“NGX”) as a Derivatives Clearing Organization (“NGX DCO”). At that time, and continuously thereafter, NGX DCO has cleared contracts in natural gas, oil and electricity executed on the NGX trading facility and corresponding over-the-counter (“OTC”) contracts. NGX DCO has been operating without interruption since its registration as a DCO in compliance with the Commodity Exchange Act, 7 U.S.C. §1 et seq. (“Act”) and Commission regulations thereunder. In this regard, NGX DCO has updated and revised its procedures and operations as required to remain in compliance with the Commission’s newly adopted regulations.¹

The Registration Order, among other things, provides that NGX:

- (1) “[S]hall limit its activities as a DCO to physically delivered or financially settled contracts based on energy products that could qualify as exempt commodities as defined in Section 1a(14) of the CEA, 7 U.S.C. 1a(14).”
- (2) Shall further limit its activities to “over-the-counter derivative instruments, as such term is defined in Section 408(2) of the Federal Deposit Insurance Corporation Improvement Act, 12 U.S.C. 4421(2). NGX may also clear spot contracts not subject to the CEA.”

¹ “Derivatives Clearing Organization General Provisions and Core Principles,” 76 *Fed. Reg.* 69334 (Nov. 8, 2011).

Although there has been no change in NGX DCO's operations, certain terms of the Registration Order are no longer congruent with regulatory developments and the evolving regulatory framework as the Commission implements the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").² Specifically, the terms of NGX's Registration Order were written in light of the fact that NGX operated as an Exempt Commercial Market ("ECM") under Section 2(h) of the Act, prior to its amendment by the Dodd-Frank Act. ECMs were not required to classify the contracts, agreements or transactions traded thereon so long as all participants on the trading facility were Eligible Contract Participants, as defined by the Act. The language of the Registration Order reflects that fact,³ enabling NGX DCO to clear any energy contract traded on NGX as an ECM or permitted to be executed over-the-counter.

The Dodd-Frank Act has replaced the Section 2(h) ECM category for trading facilities, providing that ECMs may continue operating as such for a transitional period. NGX duly notified the Commission that it would continue to operate as an ECM during the permitted transitional period. The Commission, by Order dated July 13, 2012, extended the permitted transitional period until the later of December 31, 2012, or the effective date of the adoption of the rules implementing the regulatory framework for Swap Execution Facilities.⁴ NGX has, during this period, filed with the Commission an Application for Registration as a Foreign Board of Trade ("FBOT") under 17 C.F.R. Part 48. That Application remains pending.

NGX hereby petitions the Commission to amend the DCO Registration Order of NGX DCO to make plain that NGX DCO may clear energy contracts traded on, or subject to the rules of, NGX, which, when its pending application is granted, will be a registered FBOT in place of its status as an ECM. NGX further petitions the Commission to make plain that NGX DCO may clear any OTC energy contract traded bilaterally or any energy swap that is traded on a Designated Contract Market or Swap Execution Facility or any spot or forward contract. These clarifications will not result in any change from NGX DCO's current clearing operations or procedures as permitted under its current Registration Order, nor will it impact in any way NGX DCO's continuing compliance with the rules relating to DCOs.

For the above reasons, and as discussed in greater detail in the attached Form DCO, NGX hereby petitions that the first two numbered paragraphs of the Registration Order be superseded and amended to read as follows:

IT IS FURTHER ORDERED THAT:

- (1) NGX is permitted to engage in activities as a DCO related to physically delivered or financially settled contracts (futures or swaps) based on energy products that could qualify as exempt commodities as defined in Section 1a (20) of the CEA, 7 U.S.C. 1a(20), traded on or subject to the rules of a Foreign Board of Trade.

² Public Law 111-203, 124 Stat. 1376 (2010).

³ Section 408(2) of FDICIA defines an OTC derivative as including, among others, a "swap," "forward," or any contract, agreement or transaction excluded from the Act or "exempted under Section 2(h)."

⁴ "Second Amendment to July 14, 2011 Order for Swap Regulation," 77 *Fed. Reg.* 41260 (July 13, 2012).

(2) NGX is also permitted to engage in activities as a DCO related to physically delivered or financially settled swap contracts as defined in Section 1a(47) of the CEA, 7 U.S.C. 1a(47), based on energy products that could qualify as exempt commodities as defined in Section 1a(20) of the CEA, 7 U.S.C. 1a(20), and which are traded bilaterally or on or subject to the rules of a Designated Contract Market or a registered Swap Execution Facility.

(3) NGX may also engage in activities to clear spot or forward contracts not subject to the CEA.

In addition, NGX previously petitioned the Commission for an Order under Commission Rule 39.14(b) to permit NGX DCO to provide for settlement of variation adjustments to collateral using an accrual, rather than a daily payment and collection, methodology for certain contracts.⁵ NGX requests that the Commission consider that petition under Commission Rule 39.14(b) at the same time as it considers this requested amendment of its Registration Order.

Respectfully submitted,

For Natural Gas Exchange Inc.

A handwritten signature in black ink, appearing to read 'Peter Krenkel', written over a horizontal line.

By: Peter Krenkel
Title: President and Chief Executive Officer
Dated: November 15, 2012

⁵ See petition under Commission Rule 39.14(b) from Paul M. Architzel of WilmerHale on behalf of NGX (March 23, 2012).