



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5260  
Facsimile: (202) 418-5527

Division of  
Market Oversight

CFTC Letter No. 13-54  
No-Action  
September 27, 2013  
Division of Market Oversight

Kenneth M. Rosenzweig  
Katten Muchin Rosenman LLP  
525 W. Monroe Street  
Chicago, IL 60661-3693

Re: No-Action Relief with Regard to Commission Regulation 40.2(a)(2)

Dear Mr. Rosenzweig:

This is in response to your letter dated September 19, 2013 (“Letter”), to the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (“Commission”). In the Letter, you request, on behalf of Nodal Exchange, LLC (“Nodal”), that DMO will not recommend that the Commission take enforcement action against Nodal if it lists futures contracts for trading by certification pursuant to Commission Regulation 40.2 on the date on which it commences operating as a designated contract market (“DCM”) and makes those contracts available for trading on such date without waiting one business day, as otherwise required by Regulation 40.2(a)(2).

Nodal has been operating as an exempt commercial market (“ECM”) in compliance with Section 2(h)(3)-(7) of the Commodity Exchange Act (“CEA”) (as that provision was in effect prior to July 16, 2011). Since the repeal of those provisions by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Nodal has continued to operate as an ECM pursuant to applicable Commission exemptive orders and staff no-action letters. Nodal applied for designation as a contract market on October 11, 2012 and the Commission is expected to designate Nodal as such, effective on September 30, 2013. Immediately upon such designation as a contract market, Nodal proposes to list the approximately 1,231 futures contracts that are currently offered on its ECM. Commission Regulation 40.2(a)(2) requires a DCM that proposes to list a new product pursuant to the self-certification procedures set forth in that regulation to provide notice and a copy of the terms and conditions of the futures contract one business day in advance of making the contract available for trading.

Nodal, however, has offered and continues to offer its contracts for trading while operating as an ECM, and substantial open interest currently exists in those contracts, which are cleared by LCH.Clearnet Limited (“LCH”). Therefore, DMO recognizes that applying the

requirements of Commission Regulation 40.2(a)(2) to Nodal would potentially disrupt Nodal's market operations and impact the ability of LCH and Nodal participants to manage the risks associated with those open positions in a material and detrimental manner.

In light of the unique circumstance in applying Commission Regulation 40.2 to Nodal, DMO believes that no-action relief is necessary to prevent such market interruption and to ensure continuity in operations as Nodal transitions from operating as an ECM to operating as a DCM. Accordingly, DMO will not recommend that the Commission initiate an enforcement action against Nodal if it lists products for trading by certification under Commission Regulation 40.2(a)(2) on the first day it operates as a DCM, and offers those products for trading on that date. This relief is provided to Nodal based on its submission of draft versions of the terms and conditions of those futures contracts in advance to Division staff, such that the terms and conditions will be available for review by DMO upon Nodal's first date of operation as a DCM. DMO further notes that Nodal is the only ECM with open interest that will be designated as a contract market between now and October 1, 2013, and that therefore other similarly situated trading platforms may not avail themselves of this relief.

This letter, and the no-action position taken herein, represents the views of DMO only, and does not necessarily represent the positions or views of the Commission or of any other division or office of the Commission's staff. The no-action positions taken herein do not excuse Nodal from compliance with any other applicable requirements of the CEA or the Commission's regulations thereunder. As with all no-action letters, DMO retains the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please contact Duane Andresen, Associate Director, at (202) 418-5492, or Jasmine Lee, Attorney Advisor, at (202) 418-5226.

Sincerely,

David Van Wagner  
Chief Counsel, Division of Market Oversight

Nancy Markowitz  
Deputy Director, Division of Market Oversight