



U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 14-86
No-Action
June 25, 2014
Division of Clearing and Risk
Division of Market Oversight

Mr. Jay Iyer
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LCH.Clearnet Limited
33 Aldgate High Street
London EC3N 1EA

Ms. Anita Herrera
Chief Regulatory Officer
Nodal Exchange LLC
8065 Leesburg Pike, 3rd Floor
Vienna, Virginia 22182

Re: Extension of Time-Limited No-Action Relief with Regard to Clearing Futures and Options on Futures Executed on Nodal Exchange

Dear Mr. Iyer and Ms. Herrera:

The purpose of this letter is to inform you that the Division of Clearing and Risk and the Division of Market Oversight (“Divisions”) of the Commodity Futures Trading Commission (“Commission”) are extending the expiration date of the no-action relief granted to LCH.Clearnet Ltd (“LCH”) and Nodal Exchange LLC (“Nodal”) on September 27, 2013 (“No-Action Relief”).¹

By letter dated September 19, 2013 (“Letter”), you requested on behalf of LCH, a derivatives clearing organization (“DCO”) registered under Section 5b of the Commodity Exchange Act (“CEA”),² and Nodal, a platform that was then operating as an exempt commercial market (“ECM”) in compliance with Section 2(h)(3)-(7) of the CEA (as that provision was in effect prior to July 16, 2011),³ that the Divisions confirm that they would not

¹ CFTC Letter No. 13-53.

² 7 U.S.C. § 7a-1.

³ The Commodity Futures Modernization Act of 2000 (“CFMA”) established two categories of exempt markets under the CEA: exempt commercial markets (“ECMs”), under former Section 2(h)(3)-(7) of the CEA, and exempt

recommend that the Commission commence an enforcement action against: (1) LCH and its clearing members, if LCH clears futures contracts and options on futures contracts listed for trading on Nodal (“Nodal Contracts”) before LCH is authorized to provide such clearing services under an amended DCO registration order, in accordance with Section 5b(a) of the CEA and Commission regulations thereunder; or (2) Nodal, if Nodal Contracts are cleared by LCH before it is authorized to clear such transactions, as required by Section 5(d)(11)(A) of the CEA and Commission Regulation 38.601. The Letter requested that the relief be effective until the earlier of March 31, 2014 or the date on which the Commission issues to LCH an amended DCO registration order permitting it to clear Nodal Contracts.

At the time of the Letter, LCH had been clearing energy contracts executed on Nodal, and Nodal had filed an application with the Commission for designation as a contract market.⁴ In its application, Nodal represented that it would list its energy contracts as futures (and options thereon). LCH planned to continue clearing for Nodal, but neither of LCH’s existing DCO registration orders permits it to clear energy futures and options thereon.⁵

Based on LCH’s and Nodal’s representations and the Divisions’ understanding of the relevant facts, the Divisions granted the No-Action Relief to LCH and Nodal. The No-Action Relief was time-limited, set to expire at the earlier of: (i) March 31, 2014; or (ii) the date upon which the Commission approves or denies LCH’s application for an amended DCO registration order that would permit it to clear Nodal Contracts.

On January 10, 2014, LCH submitted to the Commission an application to amend its DCO registration order to, among other things, permit LCH to clear all futures and options on futures listed for trading on, or subject to the rules of, DCMs, including Nodal Contracts. The Division of Clearing and Risk, in reviewing the application and supporting materials, determined that it needed additional information from LCH and, thus, additional time to complete its review. Therefore, in order to avoid a lapse of the No-Action Relief, the Divisions extended the

boards of trade (“EBOTs”), under Section 5d of the CEA. The CFMA also permitted markets to operate pursuant to former Section 2(d)(2) of the CEA, which excluded bilateral transactions in excluded commodities, when entered into on a principal-to-principal basis by parties trading for their own account, from most CEA provisions (“2(d)(2) markets”). Subject to certain conditions, ECMs, EBOTs, and 2(d)(2) markets were exempt from most provisions of the CEA and were neither licensed nor registered with the Commission. *See* Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763 (2000). The Dodd-Frank Wall Street Reform and Consumer Protection Act repealed Sections 2(d)(2), 2(h)(3)-(7) and 5d of the CEA.

⁴ On September 27, 2013, the Commission issued to Nodal an order of designation as a contract market, effective September 30, 2013. *See* In the Matter of the Request of Nodal Exchange, LLC for Designation as a Contract Market Under Section 5 of the Commodity Exchange Act and Part 38 of the Rules of the Commodity Futures Trading Commission, Order of Designation as a Contract Market (Sept. 27, 2013).

⁵ On October 29, 2001, the Commission issued an order granting LCH registration as a DCO for the clearing of over-the-counter derivatives contracts, agreements or transactions that were at the time excluded or exempt from the CEA. On May 11, 2004, the Commission issued an additional order that permits LCH to clear financial futures and options on futures traded on, or subject to the rules of, DCMs, derivatives transaction execution facilities, and EBOTs. As the second order did not replace or supersede the first order, both orders are still in effect and LCH currently is permitted to clear all of the products described therein.

expiration date to the earlier of June 30, 2014, or the date upon which the Commission approves or denies LCH's application.⁶

Staff of the Division of Clearing and Risk continues to review LCH's Nodal margin model for compliance with Core Principle D and Commission Regulation 39.13(g), which require that the model be risk-based. Therefore, the Divisions are further extending the expiration date of the No-Action Relief to the earlier of December 31, 2014, or the date upon which the Commission approves or denies LCH's application. Please be advised that the Divisions do not anticipate providing any further extension of the no-action relief provided herein.

Grant of No-Action Relief

Based on the facts presented and the representations you have made on behalf of LCH and Nodal, and subject to the conditions set forth herein, the Divisions will not recommend that the Commission take enforcement action against: (1) LCH and its clearing members, if LCH clears Nodal Contracts before LCH is authorized to provide such clearing services under an amended order of registration as a DCO, in accordance with Section 5b(a) of the CEA and Commission regulations thereunder; or (2) Nodal, if Nodal Contracts are cleared by LCH before it is authorized to clear such transactions, as required by Section 5(d)(11)(A) of the CEA and Commission Regulation 38.601, subject to the following conditions:⁷

- (1) Product Scope. This relief is limited to the Nodal Contracts currently accepted for clearing by LCH.
- (2) Participant Scope. This relief applies to current and future clearing members of LCH that clear Nodal Contracts.
- (3) Limited Duration. This relief shall expire on the earlier of: (i) December 31, 2014; or (ii) the date upon which the Commission approves or denies LCH's application for an amended DCO registration order to permit it to clear all futures and options on futures, including Nodal Contracts.

The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. In addition, the Divisions' position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this

⁶ CFTC Letter No. 14-39.

⁷ The No-Action Relief as originally granted was subject to the following condition: "As soon as technologically practicable on the effective date of Nodal's designation as a DCM, LCH and all of its clearing members that clear Nodal Contracts must ensure that all customer positions in Nodal Contracts and related customer property are held in segregated accounts as required by, and in accordance with, Section 4d of the CEA and Commission regulations thereunder, as may be amended from time to time." CFTC Letter No. 13-53 at 6. LCH has represented that the condition has been met.

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position is based upon the representations made by and on behalf of LCH and Nodal to the Divisions, including the representations made in the Letter, it should be noted that any materially different, changed, or omitted facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Divisions retain the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in their discretion.

Sincerely,

Ananda Radhakrishnan
Director, Division of Clearing and Risk

Vincent McGonagle
Director, Division of Market Oversight