

May 5, 2021

VIA CFTC PORTAL

Commodity Futures Trading Commission
Attention: Chris Kirkpatrick, Secretary
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: CFTC Regulation 40.6(a) Certification: Amendments to Nodal Clear Rules to Accommodate Clearing Additional Designated Contract Markets

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“Commission” or “CFTC”) Regulation 40.6(a), Nodal Clear, LLC (“Nodal Clear” or “Clearing House”) hereby notifies the Commission that it is self-certifying amendments to the Nodal Clear Rules (collectively, the “Rule Amendments”).¹ The Rule Amendments are attached hereto. The Rule Amendments document indicates the specific text that is being amended. The Rule Amendments shall become effective on May 19, 2021.

Nodal Clear currently provides clearing services exclusively to Nodal Exchange, LLC, the Rule Amendments are intended to accommodate the clearing of contracts traded on additional designated contract markets (“DCMs”) that have entered into a clearing services agreement with Nodal Clear. The Rule Amendments largely involve the replacement of references to “Nodal Contract” with “Exchange Contract” and similar revisions intended to genericize Nodal Exchange specific language. The Rule Amendments are also consistent with the rulebook changes that accompanied Nodal Clear’s August 11, 2020 request for an amendment to its Order of Registration as a Derivatives Clearing Organization (“DCO”).² There are no material changes to the rulebook.³

Nodal Clear management has assessed the Rule Amendments and their compliance with applicable provisions of the Commodity Exchange Act (“CEA”), including the Commission’s Regulations and DCO Core Principles. Nodal Clear has identified that the Rule Amendments may have some bearing on the following Core Principles:

Core Principle B – Financial Resources

Commission Regulation 39.11 was promulgated to implement Core Principle B and it provides, among other things, that a DCO shall maintain financial resources sufficient 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.⁴ Financial resources that may be used to meet this obligation are set forth in Commission Regulation 39.11(b) and include the DCO’s own capital (i.e., “skin in the game”) and guaranty fund deposits. At this time, if Nodal Clear were to provide clearing services to another DCM, it would expect its skin in the game (i.e., \$20 million) to remain the same and to use its existing guaranty fund (resized as needed) to continue to meet financial resource obligations.⁵ Additionally, if Nodal Clear thought it would be useful or necessary to establish more than one

¹ Capitalized terms not defined herein have the meaning set forth in the Nodal Clear Rulebook.

² Such request was granted November 10, 2020.

³ Further discussion regarding the Nodal Clear Rulebook changes is provided below under Core Principle H.

⁴ 85 FR 4800, 4804 (January 27, 2020). Note that Nodal Clear maintains financial resources sufficient to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members to which Nodal Clear has the largest exposure in an extreme but plausible circumstance (i.e., “Cover 2”).

⁵ Nodal Clear also does not expect any material changes to its default waterfall which is set forth in Nodal Clear Rule 3.35.

guaranty fund, it would of course discuss such a change with the Commission's Division of Clearing and Risk ("DCR") in advance.

Core Principle C – Participant and Product Eligibility

Commission Regulation 39.12 was promulgated to implement Core Principle C and it provides, among other things, that a DCO shall:

*have appropriate requirements for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing, taking into account the derivatives clearing organization's ability to manage the risks associated with such agreements, contracts, or transactions.*⁶

Nodal Clear maintains a New Contract Approval Policy⁷ that provides that the Nodal Clear Risk Management Committee must approve any new contract that presents fundamentally new risks to Nodal Clear. For such contracts, the Risk Management Committee considers various criteria as part of its assessment of the proposed contract's risk profile. Nodal Clear will continue to follow this policy for all contracts Nodal Clear is considering clearing, regardless of whether the contract is being offered by Nodal Exchange or another DCM cleared by Nodal Clear. In the event Nodal Clear offers clearing services to a DCM besides Nodal Exchange, the terms of the agreement with such DCM will provide Nodal Clear absolute discretion as to whether it will clear a product that a DCM wishes to offer.

Core Principle D – Risk Management

Commission Regulation 39.13 was promulgated to implement Core Principle D and it provides, among other things, that a DCO shall:

*ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.*⁸

Nodal Clear uses margin requirements and other risk control mechanisms to limit its exposure to potential losses from defaults by Clearing Members. Nodal Clear's Risk Policies require that the model for setting initial margin levels be risk-based and subjected to appropriate back testing and stress testing. At this time, Nodal Clear does not expect to make any material changes to its margin model in the event it offers clearing services to a DCM besides Nodal Exchange. Nodal Clear will continue to evaluate whether its initial margin model is appropriate for all new products whether such products are offered by Nodal Exchange or another DCM cleared by Nodal Clear.

Core Principle H – Rule Enforcement

Commission Regulation 39.17 was promulgated to implement Core Principle H and it requires a DCO to maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and the resolution of disputes.⁹ In the event Nodal Clear offers clearing services to a DCM besides Nodal Exchange, Nodal Clear's existing Clearing Member monitoring procedures and rule enforcement rules (Section V of the Nodal Clear Rulebook) will continue to apply. Whereby the current Section V of the Nodal Clear Rulebook incorporates by reference relevant Nodal Exchange rules regarding disciplinary and enforcement procedures, such rules (per the Rule Amendments) are restated in the Nodal Clear Rulebook. Therefore, Nodal Clear Clearing Members will remain subject to the same disciplinary and enforcement procedures.

Core Principle L – Public Information: As required by Core Principle L, Nodal Clear is publicly posting this self-certification letter on its website to ensure that market participants receive advance notice of the Rule Amendments. On the effective date of the Rule Amendments, the updated Nodal Clear Rules will be posted on the rulebook page of the Nodal Clear website.

Pursuant to Section 5c(c)(1) of the CEA and the Commission's Regulation 40.6(a), Nodal Clear certifies that the Rule Amendments comply with the CEA and the Commission's Regulations thereunder. Nodal Clear is not aware of any opposing views expressed regarding the Rule Amendments. Nodal Clear certifies that this submission has been concurrently posted on the Nodal Clear website at www.nodalclear.com.

⁶ 17 CFR 39.12(b).

⁷ The New Contract Approval Policy is part of Nodal Clear's Risk Policies which are periodically reviewed during examinations by the Commission's Division of Clearing and Risk.

⁸ 17 CFR 39.13(a).

⁹ 85 FR 4816.

If you have any questions or need additional information regarding this submission, please contact me at 703-962-9864 or alvarez@nodalexchange.com.

Sincerely,

/s/Cody Alvarez

Cody Alvarez
Chief Compliance Officer
Corporate Counsel

Attachments:

Rule Amendments (Redline)