

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5,
AS AMENDED (the Act)
AND
IN THE MATTER OF
NODAL CLEAR, LLC
ORDER
(Section 147 of the Act)

WHEREAS Nodal Clear, LLC (**Nodal Clear**) has filed an application (**Application**) with the Ontario Securities Commission (**Commission**) pursuant to section 147 of the Act requesting an order exempting Nodal Clear from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act (**Order**);

AND WHEREAS on October 9, 2015, the Commission issued an order with an effective date of October 19, 2015 which exempted Nodal Clear on an interim basis (**Interim Order**) from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act, until the earlier of (i) July 19, 2016 and (ii) the effective date of a subsequent order exempting Nodal Clear from the requirement to be recognized as a clearing agency under section 147 of the Act;

AND WHEREAS the Interim Order will be replaced by this Order and therefore be automatically revoked upon issuance of this Order;

AND WHEREAS Nodal Clear has represented to the Commission that:

1.1 Nodal Clear is a limited liability company organized under the laws of the State of Delaware in the United States (**US**) and is a wholly owned subsidiary of Nodal Exchange, LLC (**Nodal Exchange**), a limited liability company organized under the laws of Delaware that is a designated contract market within the meaning of that term under the US Commodity Exchange Act (**CEA**) subject to the regulatory supervision by the US Commodity Futures Trading Commission (**CFTC**), a US federal regulatory agency. Nodal Exchange was exempted from recognition as an exchange and from registration as a commodity futures exchange in Ontario by an order of the Commission pursuant to section 147 of the Act and sections 38 and 80 of the Commodity Futures Act, R.S.O. 1990, Chapter C.20, as amended;

1.2 Nodal Clear is a derivatives clearing organization (**DCO**), within the meaning of that term under the CEA, as of September 24, 2015. Nodal Clear is subject to regulatory supervision by the CFTC and 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 a DCO's adherence to the CEA and the regulations thereunder on an ongoing basis, including but not limited to, the DCO's compliance with "Core Principles" relating to financial

resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement and system safeguards. Nodal Clear is subject to ongoing examination and inspection by the CFTC;

1.3 Although Nodal Clear has not been designated by the Financial Stability Oversight Council as a systematically important financial utility under Title VIII of the Dodd Frank Act, Nodal Clear elected to be subject to the provisions of Subpart C of Part 39 of the CFTC's regulations (**Subpart C election**).

1.4 On October 19, 2015, following Nodal Clear's registration as a DCO, Nodal Clear commenced clearing nodal contracts (as defined below) as a DCO upon the transfer of the existing open contracts from LCH.Clearnet Ltd, a clearing agency recognized by the Commission under section 21.2 of the Act to Nodal Clear (the **Transfer Date**);

1.5 Nodal Clear provides clearing and settlement services for commodity futures contracts offered by Nodal Exchange that are based on electric power and natural gas (**Nodal Contracts**). Nodal Contracts are executed on a principal-to-principal basis either on Nodal Exchange, or are negotiated off-exchange pursuant to the rules of Nodal Exchange and submitted for clearing by Nodal Clear. Nodal Exchange's customers are commercial entities comprised of both buy and sell side investors, generally including commercial and investment banks, corporations, money managers, proprietary trading firms, hedge funds, and other institutional customers;

1.6 Clearing members of Nodal Clear that hold customer accounts to guarantee the clearing of Nodal Contracts are registered futures commission merchants (**FCM**) with the CFTC, while those that solely hold proprietary accounts are not required to be registered as FCMs (collectively, **Clearing Members**). FCMs are regulated by the CFTC typically for the purpose of conducting customer business in the US. Clearing Members generally consist of banks, financial institutions, and securities houses/investment banks;

1.7 Nodal Clear currently has one Clearing Member that has a head office or principal place of business in Ontario, with privileges to clear Nodal Contracts on its own behalf (**Ontario Clearing Member**);

1.8 Nodal Clear's risk model includes certain rules and procedures (and other aspects of its legal framework) governing Nodal Clear's role as central counterparty, as well as appropriate membership criteria that are risk-based. Nodal Clear operates a robust pricing and margining/collateral methodology. Nodal Clear also has in place appropriate banking and custody arrangements, default resources and management processes. These components are linked by daily monitoring and oversight, undertaken by an experienced risk management team, with appropriate oversight by the Risk Management Committee;

1.9 The membership requirements of Nodal Clear are publicly disclosed and are designed to permit fair and open access, while protecting Nodal Clear and its Clearing Members. The clearing membership requirements include fitness criteria, financial standards, operational standards and appropriate registration qualifications with applicable statutory regulatory authorities. Nodal Clear applies a due diligence process to ensure that all applicants meet the required criteria and conducts on-going monitoring of Clearing Members;

1.10 All applicants seeking to become a Clearing Member must complete an application for membership and make deposits into a Nodal Clear guaranty fund;

1.11 Nodal Clear does not have any offices or maintain other physical installations in Ontario or any other Canadian province or territory;

1.12 Nodal Clear implements and maintains a system of financial safeguards designed to anticipate potential market exposures and ensure sufficient resources are available to cover future obligations;

1.13 Nodal Clear submits that it does not pose a significant risk to the Ontario capital markets and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction;

AND WHEREAS Nodal Clear has agreed to the respective terms and conditions as set out in Schedule “A” to this order;

AND WHEREAS based on the Application and the representations Nodal Clear has made to the Commission, the Commission has determined that Nodal Clear is subject to regulatory requirements in the US that is comparable to the requirements set out in National Instrument 24-102 *Clearing Agency Requirements* and is subject to CFTC's supervision, and that granting an Order to exempt Nodal Clear from the requirement to be recognized as a clearing agency would not be prejudicial to the public interest;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and Nodal Clear's activities on an ongoing basis to determine whether it is appropriate that Nodal Clear continue to be exempted from the requirement to be recognized as a clearing agency and, if so, whether it is appropriate that it continue to be exempted subject to the terms and conditions in this order;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the Act, Nodal Clear is exempt from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act;

PROVIDED THAT Nodal Clear complies with the terms and conditions attached hereto as Schedule “A”.

DATED July 11, 2016.

“Judith Robertson”

“Deborah Leckman”

SCHEDULE “A”

Terms and Conditions

Definitions

For the purposes of this Schedule “A”:

“client clearing” means the ability of a Clearing Member to clear transactions at Nodal Clear for and on behalf of a client who is not a Clearing Member.

Unless the context requires otherwise, other terms used in this Schedule “A” shall have the meanings ascribed to them in Ontario securities law (including terms defined elsewhere in this Order).

Clearing agency activities

1. Nodal Clear's clearing agency activities in Ontario shall be limited to the clearing of Nodal Contracts for Ontario participants on Nodal Exchange.

Regulation of Nodal Clear

2. Nodal Clear shall maintain its registration, including its Subpart C election, with the CFTC as a DCO under the CEA, and continue to be subject to the regulatory oversight of the CFTC.
3. Nodal Clear shall continue to comply with its ongoing regulatory requirements as a DCO under the CEA.

Governance

4. Nodal Clear shall promote within Nodal Clear a governance structure that minimizes the potential for any conflict of interest between Nodal Clear and its shareholder(s) that could adversely affect the clearing of products cleared by Nodal Clear or the effectiveness of Nodal Clear's risk management policies, controls and standards.

Filings with CFTC

5. Nodal Clear will promptly provide staff of the Commission the following information, to the extent that it is required to file such information with the CFTC:

- (a) details of any material legal proceeding instituted against Nodal Clear;
- (b) notification that Nodal Clear has failed to comply with an undisputed obligation to pay money or deliver property to a Clearing Member for a period of thirty days after receiving notice from the Clearing Member of Nodal Clear's past due obligation;
- (c) notification that Nodal Clear has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate Nodal Clear or has a proceeding for any such petition instituted against it;
- (d) the appointment of a receiver or the making of any voluntary arrangement with creditors; and
- (e) material changes to its bylaws and rules where such changes would impact Ontario Clearing Members or Ontario residents whose trades are cleared and settled through Clearing Members.

Prompt Notice

6. Nodal Clear shall promptly notify staff of the Commission of any of the following:

- (a) any material change or proposed material change to its status as a DCO or in its regulatory oversight by the CFTC;
- (b) any material problems with the clearing and settlement of transactions that could materially affect the safety and efficiency of Nodal Clear;
- (c) the admission of any new Ontario Clearing Members;
- (d) any event of default by an Ontario Clearing Member or a Clearing Member that provides client clearing to Ontario residents; and
- (e) any material system failure of a clearing service utilized by an Ontario Clearing Member.

Quarterly Reporting

7. Nodal Clear shall maintain and submit the following information to the Commission in a manner and form acceptable to the Commission on at least a quarterly basis within 30 days of the end of the quarter, and at any time promptly upon the request of staff of the Commission:

- (a) a current list of all Ontario Clearing Members and their legal entity identifier (LEI);
- (b) a list of all Ontario Clearing Members against whom disciplinary action has been taken in the quarter by Nodal Clear with respect to activities at Nodal Clear, or to the best of Nodal Clear's knowledge, by the CFTC or any other authority in the US that has or may have jurisdiction over Nodal Clear's Clearing Members with respect to such Ontario Clearing Members' clearing activities at Nodal Clear;
- (c) a list of all investigations by Nodal Clear in the quarter relating to Ontario Clearing Members;
- (d) a list of all Ontario-resident applicants who have been denied Clearing Member status in the quarter by Nodal Clear;
- (e) the maximum and average daily open interest, number of transactions and notional value of Nodal Contracts cleared by type of Nodal Contract during the quarter, for each Ontario Clearing Member;
- (f) the percentage of average daily open interest, number of transactions and the notional value of Nodal Contracts cleared by type of Nodal Contract during the quarter for all Clearing Members that represents the average daily open interest, total transactions and notional value of trades cleared during the quarter for each Ontario Clearing Member;
- (g) the aggregate total margin amount required by Nodal Clear ending on the last trading day during the quarter for each Ontario Clearing Member;
- (h) the portion of the total margin required by Nodal Clear ending on the last trading day of the quarter for all Clearing Members that represents the total margin required during the quarter for each Ontario Clearing Member; and
- (i) the guaranty fund contribution, for each Ontario Clearing Member on the last trading day during the quarter, and its proportion of the total guaranty fund contributions;

(j) for each Clearing Member (identified by its LEI) offering client clearing to Ontario residents, the identity of the Ontario resident client (including LEI) receiving such services, and the value and volume by type of Nodal Contracts cleared during the quarter for and on behalf of each Ontario resident client; and

(k) a copy of Nodal Clear's bylaws and rules showing all cumulative changes made during the quarter.

Information Sharing

8. Nodal Clear shall promptly provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to applicable privacy or other laws governing the sharing of information and the protection of personal information.

9. Unless otherwise prohibited under applicable law, Nodal Clear shall share information relating to regulatory and enforcement matters and otherwise cooperate with other recognized and exempt clearing agencies on such matters, as appropriate.