



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S. 5, AS AMENDED (THE OSA)
AND**

**IN THE MATTER OF
THE COMMODITY FUTURES ACT, R.S.O. 1990, CHAPTER C.20, AS AMENDED
(THE CFA)**

AND

**IN THE MATTER OF
NODAL EXCHANGE, LLC**

ORDER

(Section 144 of the OSA and sections 38 and 78 of the CFA)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order (**Exemption Order**) dated October 7, 2014 exempting Nodal Exchange, LLC (**Nodal Exchange**) from the requirement to be recognized as an exchange under subsection 21(1) of the OSA and the requirement to be registered as a commodity futures exchange under subsection 15(1) of the CFA (**Exchange Relief**);

AND WHEREAS the Exemption Order also exempts trades in Nodal Contracts (as defined below) by a “hedger” as defined in subsection 1(1) of the CFA from the registration requirement under section 22 of the CFA (**Hedger Relief**);

AND WHEREAS Nodal Exchange has filed an application under section 144 of the OSA and under section 78 of the CFA requesting that the Commission issue an order varying the Exemption Order to remove references to LCH.Clearnet Ltd.;

AND WHEREAS Nodal Exchange has also applied for an order pursuant to section 38 of the CFA exempting trades in Nodal Contracts by a bank listed in Schedule I to the *Bank Act* (Canada) (**Bank**) entering orders as principal and only for its own account from the registration requirement under section 22 of the CFA (**Bank Relief** and, together with the Hedger Relief, **Registration Relief**);

AND WHEREAS, based on the application and the representations made to the Commission by Nodal Exchange, the Commission has determined that it is not prejudicial to the public interest to vary the Exemption Order and to grant the Bank Relief;

IT IS ORDERED, pursuant to section 144 of the Act and Sections 38 and 78 of the CFA, that the Exemption Order is varied and restated as follows:

IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S. 5, AS AMENDED (THE OSA)

AND

IN THE MATTER OF
THE COMMODITY FUTURES ACT, R.S.O. 1990, CHAPTER C.20, AS AMENDED
(THE CFA)

AND

IN THE MATTER OF
NODAL EXCHANGE, LLC

ORDER

(Section 147 of the OSA and sections 38 and 80 of the CFA)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order (**Exemption Order**) dated October 7, 2014 exempting Nodal Exchange, LLC (**Nodal Exchange**) from the requirement to be recognized as an exchange under subsection 21(1) of the OSA and the requirement to be registered as a commodity futures exchange under subsection 15(1) of the CFA (**Exchange Relief**);

AND WHEREAS the Exemption Order also exempts trades in Nodal Contracts (as defined below) by a “hedger” as defined in subsection 1(1) of the CFA (**Hedger**) from the registration requirement under section 22 of the CFA (**Hedger Relief**);

AND WHEREAS Nodal Exchange has filed an application under section 144 of the OSA and under section 80 of the CFA requesting that the Commission issue an order varying the Exemption Order to remove references to LCH.Clearnet Ltd.;

AND WHEREAS Nodal Exchange has also applied for an order pursuant to section 38 of the CFA exempting trades in Nodal Contracts by a bank listed in Schedule I to the *Bank Act* (Canada) (**Bank**) entering orders as principal and only for its own account from the registration requirement under section 22 of the CFA (**Bank Relief** and, together with the Hedger Relief, **Registration Relief**);

AND WHEREAS OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* (**Rule 91-503**) exempts trades of commodity futures contracts or commodity futures options made on commodity futures exchanges not registered with or recognized by the Commission under the CFA from sections 25 and 53 of the OSA;

AND WHEREAS the deemed rule titled *In the Matter of Trading in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges in the United States of America* provides that section 33 of the CFA does not apply to trades entered into a commodity futures exchange designated by the United States (U.S.) Commodity Futures Trading Commission (CFTC) under the U.S. Commodity Exchange Act (CEA);

AND WHEREAS Nodal Exchange has represented to the Commission that:

1. Nodal Exchange is a limited liability company organized under the laws of the State of Delaware in the U.S. and is a wholly owned subsidiary of Nodal Exchange Holdings, LLC, a privately held limited liability company organized under the laws of the State of Delaware;
2. Nodal Exchange receives a majority of its revenue from transaction fees, which include electronic trading fees, surcharges for privately-negotiated transactions and other volume-related charges for contracts executed through the Nodal Exchange trading venue;
3. Nodal Exchange Holdings, LLC, as the holding company for Nodal Exchange, does not have operations of its own, does not have employees, relies upon the profits paid by its subsidiary and has limited contractual arrangements. Nodal Exchange is the primary employer and retains operational control;
4. Nodal Exchange is a designated contract market (**DCM**) by the CFTC, within the meaning of that term under the CEA. Nodal Exchange is subject to regulatory supervision by the CFTC, a U.S. federal regulatory agency. Nodal Exchange 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 Nodal Exchange's adherence to the CEA and regulations thereunder on an ongoing basis, including DCM core principles (**DCM Core Principles**) relating to the operation and oversight of Nodal Exchange's markets, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection;
5. The CFTC's Division of Market Oversight, Market Compliance Section conducts regular in-depth reviews of each DCM's ongoing compliance with CFTC regulations in order to enforce its rules, prevent market manipulation and customer and market abuses, and to ensure the recording and safe storage of trade information. The results of these rule enforcement reviews are in most cases summarized in reports by the CFTC which are made available to the public and posted on the CFTC's website;
6. Nodal Exchange provides trading services for sophisticated commercial entities transacting in cash settled commodity futures contracts offered by Nodal Exchange that are based on electric power and natural gas (**Nodal Contracts**). Nodal Exchange offers over 1,000 power contracts settling to monthly peak or off-peak hours for hub, zone, or node locations within the organized power markets in the U.S. Nodal Exchange's commercial customers are comprised of both buy and sell side investors, including commercial and investment banks, corporations, money managers, proprietary trading firms, hedge funds, and other institutional customers. Until October 19, 2015, all Nodal Contracts were cleared through LCH.Clearnet Ltd. (**LCH.Clearnet**), which is recognized by the Commission as a clearing agency under section 21.2 of the OSA, by LCH.Clearnet clearing members. Since October 19, 2015, all Nodal Contracts are cleared through Nodal Clear, LLC (**Nodal Clear**), by Nodal Clear clearing members (**Nodal Clear Clearing Member**). Nodal Clear is currently carrying on business pursuant to an order of the Commission dated July 11, 2016 exempting it from the requirement to be recognized as a clearing agency under section 21.2 of the OSA;

7. Nodal Exchange maintains and operates an electronic trading system known as Nodal LiveTrade, that functions as the electronic central limit order book (**Trading System**) where entities trade Nodal Contracts on a principal-to-principal basis for their proprietary accounts without the capability to trade through an intermediary in a fiduciary capacity such as a dealer or futures commission merchant (**FCM**);
8. Nodal Exchange also performs clearing support services that are administrative processes that enable participants to access Nodal Clear in order to clear Nodal Contracts that were executed off-exchange (**Block Trades**) and on the Trading System. These clearing support services are administrative roles that consist of two primary functions: 1) verifying that each account holder's trading activity does not cause their account to exceed the trade risk limit (**TRL**) provided by the Nodal Clear Clearing Member and 2) systems support for position keeping and clearinghouse administration;
9. Nodal Exchange does not have any offices or maintain other physical installations in Ontario or any other Canadian province or territory;
10. Nodal Exchange offers direct access in Ontario to its Trading System and facilities to prospective participants in Ontario (**Ontario Participants**). To obtain direct access to the Trading System and facilities of Nodal Exchange, an Ontario Participant must execute (i) a participant agreement with Nodal Exchange that requires, among other things, compliance with the rules of Nodal Exchange and all applicable laws relating to the use of Nodal Exchange, and (ii) a clearing agreement with a Nodal Clear Clearing Member unless the Ontario Participant is a Nodal Clear Clearing Member clearing for their own proprietary account (such participants on Nodal Exchange shall herein be referred to as **Nodal Exchange Participants**). Nodal Exchange Participants can transmit orders and trades directly into Nodal Exchange with the guarantee of a Nodal Clear Clearing Member;
11. Nodal Exchange expects that Ontario Participants will be certain Canadian financial institutions (within the meaning of such term in subsection 1.1(3) of National Instrument 14-101 *Definitions*) and certain other market participants that have a head office or principal place of business in Ontario, such as (i) dealers that are engaged in the business of trading commodity futures contracts in Ontario; (ii) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity; and (iii) institutional investors and proprietary trading firms. In each case, Nodal Exchange expects that Ontario Participants will be (i) dealers that are engaged in the business of trading commodity futures contracts and commodity futures options in Ontario for their proprietary accounts, (ii) Hedgers, or (iii) Banks;
12. Nodal Contracts fall within the definition of "commodity futures contract" as defined in section 1 of the CFA. As a result, Nodal Exchange is considered a "commodity futures exchange" as defined in section 1 of the CFA. Therefore, Nodal Exchange is prohibited from carrying on business in Ontario unless it is registered or exempt from registration as a commodity futures exchange under subsection 15(1) of the CFA;
13. As Nodal Exchange intends to provide Ontario Participants with access in Ontario to its Trading System and facilities to trade Nodal Contracts, Nodal Exchange is considered to be "carrying on business as a commodity futures exchange in Ontario";

14. Nodal Exchange is not registered with or recognized by the Commission as a commodity futures exchange under the CFA and none of the Nodal Contracts have been accepted by the Director (as defined in the OSA) under the CFA. As a result, Nodal Contracts are also considered “securities” under paragraph (p) of the definition of “security” in section 1 of the OSA and Nodal Exchange is considered to be an “exchange” under the OSA. Therefore, Nodal Exchange is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under subsection 21(1) of the OSA;
15. Further, while Nodal Contracts are also considered “securities” under paragraph (p) of the definition of “security” in section 1 of the OSA for the reasons outlined in the preceding paragraph, Nodal Contracts would not be considered “securities” under any other paragraph contained in that definition, nor would any Nodal Contract be considered a “derivative” as defined in section 1(1) of the OSA;
16. Similar to paragraph 12 above, since Nodal Exchange seeks to provide Ontario Participants with access in Ontario to trade Nodal Contracts, Nodal Exchange is considered to be “carrying on business as an exchange in Ontario”;
17. Additionally, the exemption from registration in subsection 32(a) of the CFA applies for trades “by a hedger through a dealer”. This exemption will not be available for trades in Nodal Contracts by Ontario resident Hedgers that become Nodal Exchange Participants since they will have direct access to Nodal Exchange but will not be considered to be executing “through a dealer”. For this reason, Nodal Exchange is seeking Commission approval for the Hedger Relief;
18. Section 35.1 of the OSA provides that financial institutions are exempt from the requirement to be registered under the OSA to act as dealers provided that the conditions of the exemption are met. However, there is no corresponding exemption from registration for trades by financial institutions in the CFA. For this reason, Nodal Exchange is seeking Commission approval for the Bank Relief.
19. Nodal Exchange ensures that all applicants to become Nodal Exchange Participants must satisfy certain criteria, including, among other things: validly organized and in good standing, good reputation, business integrity and adequate financial resources to assume the responsibilities and privileges of being a Nodal Exchange Participant;
20. All Nodal Clear Clearing Members holding customer accounts to guarantee the trades of Nodal Exchange Participants under paragraph 10 will be registered FCMs with the CFTC. Such Nodal Clear Clearing Members are subject to the compliance requirements of the CEA, the CFTC, and the National Futures Association as they relate to customer accounts, including various know-your-client, suitability, risk disclosure, anti-money laundering and anti-fraud requirements. These requirements, in conjunction with the margin requirements for Nodal Contracts applicable to Nodal Clear Clearing Members, and subsequently to their clients whose trades they guarantee, ensure that Ontario Participants seeking to become Nodal Exchange Participants that are not also Nodal Clear Clearing Members are subjected to appropriate due diligence procedures and fitness criteria. In addition, Nodal Exchange Participants are responsible for, among other things, compliance with the rules of Nodal Exchange, as those rules relate to the entering and executing of transactions, and to comply with all applicable laws pertaining to the use of Nodal Exchange;

21. Based on the facts set out in the Application, Nodal Exchange satisfies the criteria for exemption set out in Appendix 1 of Schedule A to this order;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and Nodal Exchange's activities on an ongoing basis to determine whether it is appropriate for the Commission to continue to grant the Exchange Relief or Registration Relief and, if so, whether it is appropriate for the Exchange Relief and Registration Relief to continue to be granted subject to the terms and conditions set out in Schedule A to this order;

AND WHEREAS Nodal Exchange has acknowledged to the Commission that the scope of the Exchange Relief or Registration Relief and the terms and conditions imposed by the Commission set out in Schedule A to this order may change as a result of its monitoring of developments in international and domestic capital markets or Nodal Exchange's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives, commodity futures contracts, commodity futures options or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgements of Nodal Exchange to the Commission, the Commission has determined that:

- a. Nodal Exchange satisfies the criteria for exemption set out in Appendix 1 of Schedule A;
- b. The granting of the Exchange Relief would not be prejudicial to the public interest; and
- c. The granting of the Registration Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that:

- a. Pursuant to section 147 of the OSA, Nodal Exchange continues to be exempt from recognition as an exchange under subsection 21(1) of the OSA;
- b. Pursuant to section 80 of the CFA, Nodal Exchange continues to be exempt from registration as a commodity futures exchange under subsection 15(1) of the CFA;
- c. Pursuant to section 38 of the CFA, trades in Nodal Contracts by Hedgers who are Ontario Participants continue to be exempt from the registration requirement under section 22 of the CFA; and
- d. Pursuant to section 38 of the CFA, trades in Nodal Contracts by Banks who are Ontario Participants entering orders as principal and only for their own accounts are exempt from the registration requirement under section 22 of the CFA;

PROVIDED THAT

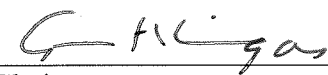
- a. Nodal Exchange complies with the terms and conditions attached hereto as Schedule A.
- b. The Bank Relief shall expire on the earliest of:
 - (i) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

- (ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA; and
- (iii) five years after the date of this order.

DATED October 7, 2014 as varied and restated on August 5, 2016.



Vice-Chair
Ontario Securities Commission



Vice-Chair
Ontario Securities Commission

SCHEDULE "A"

TERMS AND CONDITIONS

Meeting Criteria for Exemption

1. Nodal Exchange will continue to meet the criteria for exemption included in Appendix 1 to this schedule.

Regulation and Oversight of Nodal Exchange

2. Nodal Exchange will maintain its registration as a DCM with the CFTC and will continue to be subject to the regulatory oversight of the CFTC.
3. Nodal Exchange will continue to comply with the ongoing requirements applicable to it as a DCM registered with the CFTC.
4. Nodal Exchange must do everything within its control, which would include cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the OSA, as a commodity futures exchange exempted from registration under subsection 15(1) of the CFA, and in compliance with Ontario securities law and Ontario commodity futures law.

Access

5. Nodal Exchange will maintain and operate a Trading System where Nodal Exchange Participants trade on a principal-to-principal basis for their own proprietary accounts without the capability to trade through an intermediary in a fiduciary capacity such as a dealer or FCM.
6. Nodal Exchange will not provide direct access to an Ontario Participant unless the Ontario Participant is appropriately registered to trade in Nodal Contracts, is a Hedger, or is a Bank; in making this determination, Nodal Exchange may reasonably rely on a written representation from the Ontario Participant that specifies either that it is appropriately registered to trade in Nodal Contracts, is a Hedger, or is a Bank, and Nodal Exchange will notify such Ontario Participant that this representation is deemed to be repeated each time it enters an order for a Nodal Contract.
7. Each Ontario Participant that intends to rely on the Hedger Relief will be required to, as part of its application documentation or continued access to trading in Nodal Contracts:
 - (a) represent that it is a Hedger;
 - (b) acknowledge that Nodal Exchange deems the Hedger representation to be repeated by the Ontario Participant each time it enters an order for a Nodal Contract and that the Ontario Participant must be a Hedger for the

purposes of each trade resulting from such an order;

- (c) agree to notify Nodal Exchange if it ceases to be a Hedger;
 - (d) represent that it will only enter orders for its own account;
 - (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements; and
 - (f) acknowledge that its ability to continue to rely on the Hedger Relief in accessing trading on Nodal Exchange will be dependent on the Commission continuing to grant the relief and may be affected by changes to the terms and conditions imposed in connection with the Hedger Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities.
8. Each Ontario Participant that intends to rely on the Bank Relief will be required to, as part of its application documentation or continued access to trading in Nodal Contracts:
- (a) represent that it will only enter orders as principal and for its own account only;
 - (b) represent that it is a Bank;
 - (c) acknowledge that the Bank Relief may be affected by changes to the terms and conditions imposed in connection with the Bank Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities; and
 - (d) represent that it is not engaging in activities prohibited by its governing legislation.
9. Nodal Exchange will require Ontario Participants to notify Nodal Exchange if their applicable registration has been revoked, suspended or amended by the Commission or if they have ceased to be eligible for the Registration Relief and, following notice from the Ontario Participant or the Commission and subject to applicable laws, Nodal Exchange will promptly restrict the Ontario Participant's access to Nodal Exchange if the Ontario Participant is no longer appropriately registered with the Commission, or is no longer eligible for the Registration Relief.
10. Nodal Exchange must make available to Ontario Participants appropriate training for each person who has access to trade in Nodal Contracts.

Trading by Ontario Participants

11. Nodal Exchange will not provide access to an Ontario Participant to trading in exchange-traded products of an exchange other than those of Nodal Exchange, unless such other exchange has sought and received appropriate regulatory standing in Ontario.
12. Nodal Exchange will not provide access to an Ontario Participant to trading in Nodal Contracts other than those that meet the definition of “commodity futures contract” or “commodity futures option” as defined in subsection 1(1) of the CFA, and which also fall under paragraph (p) of the definition of “security” in subsection 1(1) of the OSA, without prior Commission approval.

Submission to Jurisdiction and Agent for Service

13. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission’s regulation and oversight of the activities of Nodal Exchange in Ontario, Nodal Exchange will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
14. Nodal Exchange will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Commission’s regulation and oversight of Nodal Exchange’s activities in Ontario.

Disclosure

15. Nodal Exchange will provide to its Ontario Participants disclosure that states that:
 - (a) rights and remedies against Nodal Exchange may only be governed by the laws of the U.S., rather than the laws of Ontario, and may be required to be pursued in the U.S. rather than in Ontario; and
 - (b) the rules applicable to trading on Nodal Exchange may be governed by the laws of the U.S., rather than the laws of Ontario.

Filings with the CFTC

16. Nodal Exchange will promptly provide staff of the Commission copies of all material rules of Nodal Exchange, and material amendments to those rules, that it files with the CFTC under the regulations pertaining to self-certification and/or approval.
17. Nodal Exchange will promptly provide staff of the Commission copies of all material contract specifications and material amended contract specifications that it files with the CFTC under the regulations pertaining to self-certification and/or

approval.

18. Nodal Exchange will promptly provide staff of the Commission the following information to the extent it is required to file such information with the CFTC:
 - (a) the annual Board of Directors' report regarding the activities of the Board and its committees;
 - (b) the annual financial statements of Nodal Exchange;
 - (c) details of any material legal proceeding instituted against Nodal Exchange;
 - (d) notification that Nodal Exchange has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate Nodal Exchange or has a proceeding for any such petition instituted against it; and
 - (e) the appointment of a receiver or the making of any voluntary arrangement with creditors.

Prompt Notice or Filing

19. Nodal Exchange will promptly notify staff of the Commission of any of the following:
 - (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:
 - (i) changes to the regulatory oversight by the CFTC;
 - (ii) the corporate governance structure of Nodal Exchange;
 - (iii) the access model, including eligibility criteria, for Ontario Participants;
 - (iv) systems and technology; and
 - (v) the clearing and settlement arrangements for Nodal Exchange;
 - (b) any change in Nodal Exchange's regulations or the laws, rules and regulations in the U.S. relevant to futures and options where such change may materially affect its ability to meet the criteria set out in Appendix 1 to this schedule;
 - (c) any condition or change in circumstances whereby Nodal Exchange is unable or anticipates it will not be able to continue to meet the DCM Core Principles or any applicable requirements of the CEA or CFTC regulations;

- (d) any revocation or suspension of, or amendment to, Nodal Exchange's registration as a DCM by the CFTC or if the basis on which Nodal Exchange's registration as a DCM was granted has significantly changed;
 - (e) any known investigations of, or disciplinary action against, Nodal Exchange by the CFTC or any other regulatory authority to which it is subject;
 - (f) any matter known to Nodal Exchange that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and
 - (g) any default, insolvency, or bankruptcy of any Nodal Exchange Participant known to Nodal Exchange or its representatives that may have a material, adverse impact upon Nodal Exchange or any Ontario Participant.
20. Nodal Exchange will promptly file with staff of the Commission copies of any Rule Enforcement Review report regarding Nodal Exchange once issued as final by the CFTC.

Quarterly Reporting

21. Nodal Exchange will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a quarterly basis (within 30 days of the end of each calendar quarter), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Participants, specifically identifying for each Ontario Participant:
 - (i) its status as a Nodal Exchange Participant for Nodal Exchange, and
 - (ii) the basis upon which it represented to Nodal Exchange that it could be provided with direct access (i.e., that it is appropriately registered to trade in Nodal Contracts, is a Hedger, or is a Bank);
 - (b) a list of all Ontario Participants against whom disciplinary action has been taken in the last quarter by Nodal Exchange or, to the best of Nodal Exchange's knowledge, by the CFTC with respect to such Ontario Participants' activities on Nodal Exchange;
 - (c) a list of all referrals to the Nodal Exchange Chief Regulatory Officer by the Nodal Exchange Surveillance Team concerning Ontario Participants;
 - (d) a list of all Ontario applicants for status as an Ontario Participant who were denied such status or access to Nodal Exchange during the quarter;
 - (e) a list of all new by-laws, rules, and contract specifications, and changes to

by-laws, rules and contract specifications, not already reported under sections 15 and 16 of this schedule;

- (f) a list of all Nodal Contracts available for trading during the quarter, identifying any additions, deletions or changes since the prior quarter;
- (g) for each Nodal Contract,
 - (i) the total trading volume and value originating from Ontario Participants, presented on a per Ontario Participant basis, and
 - (ii) the proportion of worldwide trading volume and value on Nodal Exchange conducted by Ontario Participants, presented in the aggregate for such Ontario Participants; and
- (h) a list outlining each incident of a significant system outage that occurred at any time during the quarter for any system impacting Ontario Participants' trading activity, including trading, routing or data, specifically identifying the date, duration and reason for the outage, and noting any corrective action taken.

Annual Reporting

- 22. Nodal Exchange will arrange to have the annual audited financial statements of Nodal Exchange filed with the Commission promptly after their issuance.

Reporting

- 23. If an IT Service Auditor's Report (**Report**) is prepared for Nodal Exchange, Nodal Exchange will promptly file with the Commission the Report after the Report is issued as final by its independent auditor.

Information Sharing

- 24. Nodal Exchange will provide information (including additional periodic reporting) as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

APPENDIX 1

CRITERIA FOR EXEMPTION

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange,
- (b) that business and regulatory decisions are in keeping with its public interest mandate,
- (c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:
 - (i) appropriate representation of independent directors, and
 - (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest, and
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

PART 3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are reviewed by the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

PART 4 ACCESS

4.1 Fair Access

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure
 - (i) participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,
 - (ii) the competence, integrity and authority of systems users, and
 - (iii) systems users are adequately supervised.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.
- (c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.
- (d) The exchange does not
 - (i) permit unreasonable discrimination among participants, or

- (ii) impose any burden on competition that is not reasonably necessary and appropriate.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

- (a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants.
- (b) The Rules are not contrary to the public interest and are designed to
 - (i) ensure compliance with applicable legislation,
 - (ii) prevent fraudulent and manipulative acts and practices,
 - (iii) promote just and equitable principles of trade,
 - (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,
 - (v) provide a framework for disciplinary and enforcement actions, and
 - (vi) ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

- (a) parties are given an opportunity to be heard or make representations, and
- (b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing house.

8.2 Regulation of the Clearing House

The clearing house is subject to acceptable regulation.

8.3 Authority of Regulator

A foreign regulator has the appropriate authority and procedures for oversight of the clearing house. This includes regular, periodic regulatory examinations of the clearing house by the foreign regulator.

8.4 Access to the Clearing House

- (a) The clearing house has established appropriate written standards for access to its services.
- (b) The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

8.5 Sophistication of Technology of Clearing House

The exchange has assured itself that the information technology used by the clearing house has been adequately reviewed and tested and provides at least the same level of safeguards as required of the exchange.

8.6 Risk Management of Clearing House

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

- (a) order entry,
- (b) order routing,

- (c) execution,
- (d) trade reporting,
- (e) trade comparison,
- (f) data feeds,
- (g) market surveillance,
- (h) trade clearing, and
- (i) financial reporting.

9.2 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

PART 10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 TRANSPARENCY

11.1 Transparency

The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

PART 12 RECORD KEEPING

12.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

PART 13 OUTSOURCING

13.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 14 FEES

14.1 Fees

- (a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.
- (b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 15 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

15.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

15.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Ontario Securities Commission and the Foreign Regulator.

PART 16 IOSCO PRINCIPLES

16.1 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivative Markets” (2011).

