

IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989, C. 418, AS AMENDED (the Act)

- AND -

IN THE MATTER OF
NODAL EXCHANGE, LLC

ORDER
(Section 151A)

WHEREAS:

1. Nodal Exchange, LLC (**Nodal**) seeks an order of the Nova Scotia Securities Commission (the **Commission**) pursuant to section 151A of the Act:
 - (a) exempting Nodal from the requirement to be recognized as an exchange and as a derivatives trading facility under section 30J of the Act;
 - (b) exempting trades in contracts on Nodal by “Nova Scotia Participants”, as defined below, from the dealer registration requirement under section 31(1) of the Act; and
 - (c) exempting Nodal from the requirements in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) pursuant to section 15.1(1) of NI 21-101 and the requirements in National Instrument 23-101 *Trading Rules* (**NI 23-101**) pursuant to section 12.1 of NI 23-101.
2. Terms defined in the Act or in National Instrument 14-101 *Definitions* have the same meaning in this order unless otherwise defined herein.
3. Nodal represents as follows:
 - (a) Nodal is a limited liability company organized under the laws of Delaware and is a wholly-owned indirect subsidiary of European Energy Exchange AG (**EEX**), a stock corporation (*Aktiengesellschaft*) incorporated under German law.
 - (b) Nodal and EEX are indirect subsidiaries of Deutsche Börse AG, a stock corporation (*Aktiengesellschaft*) incorporated under German law.
 - (c) Nodal does not maintain an office or place of business in Nova Scotia.
 - (d) Nodal makes exchange contracts available for trading on an electronic trading platform owned, operated, leased, licensed or otherwise made available by Nodal in accordance with rules promulgated by Nodal (the **Exchange Platform**).

- (e) Nodal is registered as a designated contract market (**DCM**) and is in good standing with the Commodity Futures Trading Commission (**CFTC**). The CFTC reviews, assesses and enforces Nodal's adherence to United States (**US**) regulatory requirements for DCMs.
- (f) CFTC regulation of Nodal addresses similar public interest concerns in respect of the execution and clearing of exchange contracts to those of interest to the Commission in the exercise of its jurisdiction under the Act.
- (g) Nodal offers direct access to the Exchange Platform to participants (**Trading Participants**), including clearing Trading Participants (**Clearing Participants**) and non-Clearing Trading Participants, whereby a Trading Participant has an explicit grant of authority to enter trades directly into the Exchange Platform (**Direct Access**). Nodal intends to offer Direct Access to "qualified parties" (as such term is defined in Commission Blanket Order No. 91-501 *In the Matter of Over-the-Counter Trades in Derivatives*) resident in Nova Scotia on a principal-to-principal basis for their own proprietary accounts that execute a participant agreement with Nodal agreeing to comply with Nodal's rules and all applicable laws pertaining to the use of the Exchange Platform (**Nova Scotia Participants**).
- (h) Nodal Clear, LLC (the **Clearing Agency**) clears, settles and guarantees the performance of all transactions in exchange contracts executed on the Exchange Platform.
- (i) The Clearing Agency is a wholly-owned subsidiary of Nodal.
- (j) The Clearing Agency is registered with the CFTC as a derivatives clearing organization (**DCO**) and is in good standing with the CFTC as a DCO.
- (k) The Clearing Agency complies with the CFTC requirements implementing the Committee on Payments and Market Infrastructures and the Technical Committee of the International Organization of Securities Commissions (**IOSCO**) *Principles for Financial Market Infrastructures* as amended or superseded from time to time.
- (l) Nodal adheres to IOSCO's *Principles for the Oversight of Screen-Based Trading Systems for Derivative Products* as amended or superseded from time to time and IOSCO's *Principles for the Regulation and Supervision of Commodity Derivatives Markets* as amended or superseded from time to time.
- (m) The CFTC is a signatory to:
 - a. IOSCO's *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information*;
 - b. the Futures Industry Association's *Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations* which endorses the *International Information Sharing Memorandum of Understanding and Agreement* (the **Information-Sharing MOU**);

- c. the Tokyo *Communique on Supervision of Commodity Futures Markets*; and
 - d. the *Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities* to which the Commission and certain other Canadian regulatory authorities are also signatories.
- (n) Nodal has executed the Information-Sharing MOU.
4. Nodal undertakes:
- (a) to maintain its status as a DCM in good standing in all material respects with the CFTC;
 - (b) to comply with all requirements applicable to CFTC-regulated DCMs;
 - (c) not to provide, and to take reasonable steps to prevent third parties from providing, Direct Access to persons in Nova Scotia other than Nova Scotia Participants;
 - (d) not to admit any participant in Nova Scotia as a Clearing Participant unless the Clearing Agency has been recognized or exempted from recognition as a clearing agency under the Act;
 - (e) to require each Nova Scotia Participant to file with Nodal:
 - (i) a written representation, executed by persons with the authority to bind the Nova Scotia Participant, stating that as long as the Nova Scotia Participant is granted Direct Access, the Nova Scotia Participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to this order;
 - (ii) a written undertaking, executed by persons with the authority to bind the Nova Scotia Participant, stating that the Nova Scotia Participant will provide promptly to the Commission such information as the Commission may request, and access to all premises in or from which the Nova Scotia Participant operates; and
 - (iii) written confirmation, executed by persons with the authority to bind the Nova Scotia Participant, that the Nova Scotia Participant understands that:
 - A. the Nova Scotia Participant may be unable to enforce any legal rights against Nodal or any of its directors, officers, employees or agents as they are resident outside Nova Scotia and all or substantially all of their assets are situated outside of Nova Scotia; and
 - B. Nodal is subject to primary regulatory oversight of the home jurisdiction under the regulatory regime of that jurisdiction which may not be equivalent in all respects to the regulatory regime administered

by the Commission;

- (f) to file a document evidencing Nodal's submission to the non-exclusive jurisdiction of the courts and administrative tribunals of Nova Scotia in any proceeding arising out of, related to, concerning, or in any other manner connected with, Nodal carrying on business as an exchange or a derivatives trading facility in Nova Scotia;
- (g) to maintain a valid and binding appointment of an agent for service in Nova Scotia upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, relating to, concerning, or in any other manner connected with, Nodal carrying on business as an exchange or a derivatives trading facility in Nova Scotia;
- (h) to report to the Commission in accordance with the reporting requirements set out in the Appendix to this order (the **Reporting Requirements**);
- (i) to provide promptly to the Commission any information that a Commission representative may request;
- (j) to employ reasonable procedures for monitoring and enforcing compliance with the undertakings herein;
- (k) to cooperate with the Commission with respect to arrangements established to address cross-market oversight issues, including surveillance, emergency actions and the monitoring of trading; and
- (l) to continue to ensure the representations herein remain accurate in all material respects except as reported to the Commission under the Reporting Requirements.

AND UPON the Commission being satisfied that to order relief in these circumstances would not be prejudicial to the public interest;

IT IS ORDERED that, based on the representations and undertakings herein, pursuant to subsection 151A(1) of the Act, that:

- (a) Nodal is exempt from the requirement to be recognized as an exchange and as a derivatives trading facility under section 30J of the Act in connection with transactions in exchange contracts on the Exchange Platform;
- (b) trades in contracts on Nodal by Nova Scotia Participants are exempt from the dealer registration requirement under section 31(1) of the Act; and
- (c) Nodal is exempt from the requirements in NI 21-101 and NI 23-101,

provided that, and for so long as, Nodal satisfies its undertakings herein and the Clearing Agency remains in good standing in all material respects as a DCO with the CFTC.

Dated at Halifax, Nova Scotia, this 30th day of August, 2017.

NOVA SCOTIA SECURITIES COMMISSION

(signed) "Paul E. Radford"
Paul E. Radford, Q.C., Chair

(signed) "Shirley P. Lee"
Shirley P. Lee, Q.C., Vice-Chair

Appendix Reporting Requirements

This Appendix forms a part of, and adopts terms defined in, the order exempting Nodal from section 30J and 31(1) of the Act, NI 21-101 and NI 23-101 (the **Order**).

Event reporting

1. Nodal will notify the Commission promptly:
 - (a) if the CFTC revokes, suspends or significantly changes the conditions of Nodal's registration as a DCM;
 - (b) if the CFTC revokes, suspends or significantly changes the conditions of the Clearing Agency's registration as a DCO;
 - (c) of any significant change to any representation in the Order;
 - (d) of any breach of an undertaking in the Order; and
 - (e) of any material disciplinary action commenced against, or any sanctions imposed on, Nodal or a senior officer or director of Nodal, by the CFTC.

Quarterly reporting

2. Nodal will provide to the Commission, within 30 days after the end of each calendar quarter, and at any time promptly upon the request of a Commission representative:
 - (a) a statement setting out:
 - (i) total volumes of exchange contracts traded in the quarter through the Exchange Platform worldwide, and the portion thereof traded through Direct Access in Nova Scotia; and
 - (ii) the names and principal addresses of all Nova Scotia Participants that have Direct Access to the Exchange Platform and their trading volumes computed by separating buy-sides and sell-sides for each contract available to be traded through the Exchange Platform; and
 - (b) a list of all Nova Scotia Participants against whom disciplinary action has been commenced in the last quarter by Nodal or, to the best of Nodal's knowledge, the CFTC, with respect to activities undertaken by the Nova Scotia Participant pursuant to its Direct Access to the Exchange Platform.

Annual reporting

3. Nodal will provide to the Commission, within 30 days after the end of each calendar year:
 - (a) a description of any significant change to the regulatory requirements applicable in the US relevant to Nodal's registration as a DCM;

- (b) a certificate, executed by a senior officer of Nodal, that:
- (i) the representations in the Order remain accurate except to the extent of any change previously disclosed to the Commission under the Order;
 - (ii) Nodal remains compliant with the undertakings in the Order;
 - (iii) Nodal continues to maintain its registration as a DCM in good standing in all material respects with the CFTC; and
 - (iv) the Clearing Agency has advised Nodal that the Clearing Agency continues to maintain its registration as a DCO in good standing with the CFTC.