

Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Nodal Exchange, LLC. – Notice of Commission Order – Application for Exemptive Relief

NODAL EXCHANGE, LLC

APPLICATION FOR EXEMPTIVE RELIEF

NOTICE OF COMMISSION ORDER

On October 7, 2014, the Commission issued an order (**Order**) to Nodal Exchange, LLC. (**Nodal Exchange**) whereby the following relief has been provided:

- (a) pursuant to section 147 of the *Securities Act* (Ontario) (**OSA**) Nodal Exchange is exempt from the requirement to be recognized as an exchange under section 21 of the OSA;
- (b) pursuant to section 80 of the *Commodity Futures Act* (Ontario) (**CFA**) Nodal Exchange is exempt from the requirement to be registered as a commodity futures exchange under subsection 15(1) of the CFA; and
- (c) pursuant to section 38 of the CFA, trades in Nodal Contracts by Hedgers who are Ontario Participants (as those terms are defined in issued order) are exempt from the registration requirement under section 22 of the CFA..

A copy of the Order is published in Chapter 2 of this Bulletin. In issuing the Order, no substantive amendments were made to the draft exemption order published for comment.

The Commission published Nodal Exchange's application and draft exemption order for comment on August 7, 2014 on the OSC website at www.osc.gov.on.ca and in the OSC Bulletin. A comment letter was received from TMX Group Limited which is also available on the OSC website. We summarize below the main comments and Staff's responses.

Comment

Response

The Commenter believes that the Order should be amended to require approval or self-certification of new products similar to the review process performed by the Commodity Futures Trading Commission (**CFTC**) in the United States with respect to Foreign Boards of Trades (**FBOTs**). Exchanges for commodity futures contracts that are appropriately regulated in a foreign jurisdiction such as Canada must be registered with the CFTC as a FBOT.

As noted in *OSC Staff Notice 21-702 Regulatory Approach for Foreign-Based Stock Exchanges*, staff have been prepared to recommend that the Commission exempt an exchange if it is subject to an appropriate regulatory and oversight regime in another jurisdiction by its home regulator, subject to any terms and conditions necessary to protect Ontario investors, and subject to terms and conditions allowing the Commission to have access to information on the operations of the foreign-based securities exchange and the trading activity of Ontario participants.

The Commenter notes that in the interest of maintaining a level playing field among domestic exchanges and their U.S. competitors, the Commission should not place greater reliance upon CFTC oversight than the CFTC places on Canadian regulatory oversight. This puts Canadian exchanges at a disadvantage and provides Canadian investors with less protection.

The Commission has issued orders exempting the Natural Gas Exchange Inc., Bourse de Montreal Inc. and ICE Futures Canada, Inc., three Canadian exchanges, from the requirement to be recognised as exchanges. The exemptions are based in part on our reliance on their primary regulators, the Alberta Securities Commission, Autorité des marchés financiers and Manitoba Securities Commission, respectively and the Commission does not approve contract specifications or amended contract specifications offered by these exchanges. The approach that is applied to Canadian exchanges is consistent with our approach to Nodal Exchange and to other foreign exchanges.