

August 10, 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 Arbitration Rules and Risk Management Framework

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 Rulebook and Nodal Clear Risk Management Framework (collectively, the “Rule Amendments”).¹ The Rule Amendments are attached hereto. The Rule Amendments documents indicate the specific text that is being amended. The Rule Amendments shall become effective on August 24, 2021.

Nodal Clear proposes to adopt the following Rule Amendments that:

- (i) remove Section VI - Arbitration and references to Section VI from the Nodal Clear Rulebook;
- (ii) correct the CFTC regulation cited in the definition of Self-Regulatory Organization in the Nodal Clear Rulebook; and
- (iii) enhance the Nodal Clear Risk Management Framework.

Arbitration Rule Amendments

When Nodal Clear applied to be a Derivatives Clearing Organization (“DCO”) in 2014, Exhibit H of Form DCO required, in part, that a DCO applicant have arrangements for managing disputes between customers and clearing members, and between clearing members. In order to meet this requirement, Nodal Clear included rules (i.e., Section VI – Arbitration) that provided for the arbitration of claims between or among clearing members and Authorized Users (customers are referred to as Authorized Users in Nodal Clear’s rules). On January 27, 2020, the Commission published final rules that revised Exhibit H of Form DCO as well as Commission Regulation 39.17 to make clear that the DCOs must provide for dispute resolution for disputes between the DCO and clearing members, not Authorized Users/customers.² Specifically, Exhibit H of Form DCO now states that a DCO applicant must “describe or otherwise document arrangements for resolution of disputes between clearing members and [a]pplicant.” Similarly, 39.17 was revised to explicitly state that the DCO requirement to maintain arrangements and resources for the effective monitoring and enforcement of compliance with its rules and the resolution of disputes, applies to both the DCO’s and its members’ compliance with the DCO’s rules.³ Accordingly, Nodal Clear is removing its Section VI – Arbitration rules as there is no longer a regulatory requirement that a DCO maintain dispute resolution procedures for managing disputes between customers and clearing members, and between clearing members. Nodal Clear will continue to maintain rules to address the resolution of disputes between Nodal Clear and its clearing members. Specifically, Nodal Clear Rule 7.8

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

² 85 Fed. Reg. 4800 (January 27, 2020).

³ 85 Fed. Reg. 4800 at 4817.

– Governing Law; Legal Proceedings, which has provisions regarding the applicable law and forum governing disputes between Nodal Clear and its clearing members.

Reference Change

The Nodal Clear Rulebook definition of Self-Regulatory Organization cites the definition in Commission Regulation 1.3(ee). Commission Regulation 1.3 has been revised and the term Self-Regulatory Organization no longer has a specific citation so Nodal Clear is removing the (ee) citation.

Risk Management Framework Amendments

The Nodal Clear Risk Management Framework is being enhanced to better specify certain risks managed by Nodal Clear.

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 D – Risk Management: The Rule Amendments continue to ensure Nodal Clear’s ability to identify and manage the risks associated with discharging the responsibilities of a DCO.

Core Principle H – Rule Enforcement: The Rule Amendments are consistent with rules and procedures designed to allow for the effective monitoring and enforcement of compliance with its rules and the resolution of disputes.

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.

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:

- Nodal Clear Rulebook redline
- Nodal Clear Risk Management Framework redline (confidential treatment requested)