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Via Electronic Mail
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International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid Spain

Re: Comment on IOSCO's Consultative Report: "Resilience and recovery of central counterparties (CCPs): Further guidance on the PFMI"

Nodal Clear, LLC (Nodal Clear) appreciates the opportunity to submit comments with respect to IOSCO's Further guidance on the PFMI (Guidance) published on August 16, 2016. As introduction, Nodal Clear is a wholly owned subsidiary of Nodal Exchange, LLC (Nodal Exchange) and a privately held company organized in October 2014 as a limited liability company under the laws of the State of Delaware. Nodal Clear was formed to develop, own and operate a registered derivatives clearing organization (DCO) to clear contracts offered by Nodal Exchange including futures, and options on futures contracts, for electricity and natural gas contracts at various locations in the United States and Canada, and locational and time spreads of the forgoing. Nodal Exchange commenced operations as an exempt commercial market in 2009 and became a designated contract market in September 2013. On September 24, 2015, Nodal Clear was granted registration as a DCO by the United States Commodity Futures Trading Commission (CFTC) and elected to become a Subpart C DCO. On October 19, 2015, Nodal Clear commenced clearing Nodal Exchange power and natural gas futures contracts.¹

In general, Nodal Clear supports IOSCO's recommendations and encourages principles based guidance as it provides the flexibility necessary for each uniquely situated CCP to incorporate the Guidance in a manner that is least disruptive to its operation. Nodal Clear would also like to comment on particular paragraphs of the Guidance and respond to questions posed in the Guidance cover note.

Paragraph 2.2.18

Paragraph 2.2.18 of the Guidance discusses feedback mechanisms for reviewing the margin system and stress-testing framework of CCPs, it states:

¹ Prior to October 19, 2015, futures contracts traded on or pursuant to the rules of Nodal Exchange were cleared by LCH.Clearnet, Ltd.

“For the purposes of implementing an effective feedback mechanism, feedback could be reported to the CCP’s risk management function; the risk committee, which typically includes representatives of direct participants; and the board. Other channels for feedback include (i) including direct or indirect participant representatives on the CCP’s risk committee (**where the duties of such representatives are to the participant they represent**); (ii) industry forums; (iii) consulting trade groups when major changes to the CCP are planned; and (iv) public comment periods for proposed changes to a CCP’s rules, procedures or operations.” (emphasis added)

Nodal Clear appreciates that the Guidance provides a range of possible alternatives for feedback mechanisms and permits the CCP to determine the mechanism that is most appropriate given the governance structure of the CCP. However, the language emphasized above is unnecessarily prescriptive, thereby limiting the perspective of risk committee members that are participants. Nodal Clear believes a CCP’s risk committee should not be precluded from having participant committee members that have a responsibility to the CCP. A risk committee is a mechanism for feedback that each CCP board designs in a manner that best fits its needs. Therefore, the perspectives of the participants shouldn’t be dictated by rule or otherwise.

It may also be worth noting, that in speaking with other industry constituents, there may be a need for greater clarity regarding the term “risk committee.” There may be multiple risk committees involved in the governance of a CCP. For example, 1) a risk committee of the Board that is comprised solely of Board Members and that is a decision making body and/or 2) a risk committee that has participant representatives and is an advisory committee that is used to create an effective feedback mechanism. As such, the text quoted above from Paragraph 2.2.18 could be rewritten as follows:

“For the purposes of implementing an effective feedback mechanism, multiple channels of communication should be considered to provide feedback to the CCP’s risk management function including the board. Channels for feedback might include: (i) establishing a CCP risk committee with direct or indirect participant representatives; (ii) participating in industry forums; (iii) consulting trade groups when major changes to the CCP are planned; and (iv) providing public comment periods for proposed major changes to a CCP’s rules, procedures or operations.”

Paragraphs 2.2.9 and 2.2.10

Paragraphs 2.2.9 and 2.2.10 of the Guidance outline practices a CCP’s board should employ when determining the amount and characteristics of the CCP’s contribution to loss absorbing resources (“skin in the game”). Nodal Clear supports the principle that CCPs should contribute to the financial resources available in the event of a participant default, as it incentivizes the CCP to employ proper risk management practices. Nodal Clear also believes that each CCP should continue to be permitted to determine the appropriate size and structure of its contribution to the default resources. Nodal Clear encourages IOSCO to eschew any proposed rules or guidance that suggests a CCP should maintain a prescribed amount of contributed resources/skin in the

game as we believe the principles based approach is more appropriate as it allows the CCP to fulfill the principles while accounting for its unique circumstances.

Cover Note Questions Regarding Governance

“Is the current level of public disclosure by CCPs appropriate? In particular, is there a need for further disclosure related to margin and stress testing methodologies? If so, would the disclosure of the items included in the list (or a subset of the list) suggested by an industry group and attached as an Annex be appropriate and sufficient for disclosure and feedback purposes?”

Nodal Clear believes the current level of public disclosure is appropriate. Nodal Clear currently provides a wealth of information regarding, among other things, its governance, operations, risk management, and resources. Such information is publicly available via Nodal Clear’s PFMI disclosure, quarterly quantitative disclosure, and website. Nodal Clear does not support the compulsory disclosure of the information described in Annex Part A. Items 1 (Scenarios) and 2 (Inputs), or Annex Part B. Items 1 (Stress results), 3 (Reverse stress-testing results), and 4 (Validation) as we believe CCPs should have discretion to determine whether it is appropriate to disclose this information.² Nodal Clear believes that rather than public disclosure, additional information can be conveyed as appropriate in direct confidential discussions with clearing members and other participants. Accordingly, at Nodal Clear, we strive to maintain an open dialogue with our clearing members in order to respond directly to any feedback. We believe this approach provides clearing members with an effective level of assurance and understanding that cannot be achieved through the routine disclosure of stress test results and validation reports, but we also believe each CCP should be permitted to utilize an approach that best suits them. With respect to Annex Part B. Item 2. (Assessments), Nodal Clear agrees that clearing members must have the ability to determine their exposure to a CCP and this can only be accomplished by knowing the assessment limits to a CCP’s powers.

Nodal Clear appreciates the opportunity to comment on the Guidance and welcomes any questions from IOSCO.

Sincerely,

/s/ Paul Cusenza

Paul Cusenza
Chief Executive Officer

CC:

Jeffrey Bandman, Acting Director, Division of Clearing and Risk, CFTC
Robert Wasserman, Chief Counsel, Division of Clearing and Risk, CFTC
Tracey Wingate, Special Counsel, Division of Clearing and Risk, CFTC

² Nodal Clear already provides the information described in Annex Part A. Item 3 (Guarantee Fund) pursuant to CFTC regulation 39.21(c)(4).