UNITED STATES
COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Mr. Ken McCracken
General Counsel
Nodal Clear, LLC
1921 Gallows Road, 3rd Floor
Tysons Corner, VA 22182

Re: Request for No-Action Position Concerning Commission Regulation 39.14(c) and (d)

Dear Mr. McCracken:

This is in response to a letter from Nodal Clear, LLC ("Nodal") dated October 29, 2026, to the Division of Clearing and Risk ("Division") of the Commodity Futures Trading Commission ("Commission"). In the letter, Nodal requests that the Division issue a no-action letter confirming that the Division will not recommend that the Commission commence enforcement action against a derivatives clearing organization ("DCO") for conducting daily settlement with clearing members using a trust company, notwithstanding Commission Regulation 39.14 defining "settlement bank," in relevant part, as "a bank."

Background and Statement of Facts

Based on the representations made in the letter, the Division understands the relevant facts to be as follows:

The Commission's customer protection framework is set forth in Section 4d of the Commodity Exchange Act (the "Act")[1] and parts 1 and 22 of the Commission's regulations.[2] Throughout these provisions, the statute and regulations consistently require that customer funds be held with a "bank or trust company." Section 4d of the Act and the Commission's implementing regulations establish this requirement as part of the framework for safeguarding money, securities, and other property deposited by customers. Specifically, the Commission adopted Regulation 1.20 to implement Section 4d(a) of the Act, and part 22 to implement Section 4d(f), establishing corresponding protections for futures customers and cleared swaps customers, respectively.[3]

[1] 7 U.S.C. § 6d.

[2] 17 C.F.R. parts 1 and 22.

[3] *See* Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68506 (Nov. 14, 2013).

Nonetheless, Regulation 39.14, which sets forth requirements governing a DCO's settlement procedures, including the handling of funds belonging to clearing members and their customers in connection with those procedures, defines a "settlement bank" in relevant part as "a bank."[4] There are no references to trust companies in Regulation 39.14.

Nodal represents that trust companies are subject to comprehensive state regulatory oversight and supervision. For example, Nodal states that, in New York, the Department of Financial Services applies the same level of scrutiny to banks and trust companies, and that both banks and trust companies are chartered under the same provisions of New York banking law. Nodal adds that the regulation and supervision of banks and trust companies is substantially similar aside from the fact that trust companies, unlike banks, generally are not authorized to offer consumer deposit accounts or to make loans and that, as a result, trust companies can have different capital requirements than banks.

Finally, Nodal represents that state-regulated trust companies are among the leading custodians of digital assets. Nodal further states that clarifying that DCOs may use trust companies to conduct daily settlements with clearing members will facilitate the ability of DCOs to accept such assets as margin collateral by allowing them to seamlessly integrate such assets into their existing daily workflows for collateral movement.

Discussion of Request for No-Action Position

Nodal requests that the Division clarify that a DCO may use a trust company to conduct daily settlements with clearing members in accordance with Regulation 39.14, notwithstanding that Regulation 39.14 does not explicitly make reference to a trust company. In support, Nodal points to the Commission's customer protection requirements in Section 4d of the Act and part 1 of the Commission's regulations, which require that customer funds be held with a bank or trust company.

Nodal argues that the customer protection benefits of using a trust company are consistent with and equivalent to using a bank. Nodal notes that neither the Act nor Regulation 39.14 imposes any requirements directly on settlement banks, instead imposing requirements on DCOs that address how DCOs conduct daily settlements and how they select and monitor their settlement banks.[5] Nodal states that the requirements that the Commission imposes on DCOs for daily settlements can apply equally to daily settlements with trust companies. Nodal adds that a DCO can use its existing procedures and criteria for evaluating and monitoring settlement banks to ensure that the DCO complies with the requirements in Regulation 39.14(c) to evaluate and monitor a trust company it uses for daily settlements with clearing members.

Furthermore, Nodal notes that Regulation 39.14 has not been substantively revised since it was adopted in 2011, and the derivatives markets have evolved significantly since then. As a result, and given that a trust company is an acceptable depository under the Commission's

[4] 17 C.F.R. § 39.14(a)(2).

[5] *See* 7 U.S.C. § 7a-1(c)(2)(E) and 17 C.F.R. § 39.14.

customer protection framework, Nodal argues that a trust company should also be considered acceptable to perform the daily settlement functions required by Regulation 39.14.

No-Action Position

Based on the facts presented and the representations Nodal has made, the Division will not recommend that the Commission take enforcement action against any DCO for using a trust company to conduct daily settlements with clearing members, if the DCO treats the trust company as if it were a settlement bank for the purpose of compliance with Regulations 39.14(c) and (d).

This letter, and the position taken herein, represent the views of the Division only, and do not necessarily reflect the views of the Commission or any other division or office of the Commission. This letter, and the no-action position taken herein, are not binding on the Commission. Further, this letter, and the position taken herein, concern enforcement action only and do not represent a legal conclusion with respect to the applicability of any provision of the Act or the Commission's regulations. Except as explicitly provided in this letter, the no-action position taken in this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Act or the Commission's regulations. Because this position is based on the representations contained in Nodal's request letter, any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of this letter, in their discretion.

Sincerely,

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Richard Haynes
Acting Director
Division of Clearing and Risk