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September 16, 2024

BY FEDEX AND ELECTRONIC MAIL

Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581
FOIAsubmissions@cftc.gov

Re: FOIA Request for Confidential Treatment

Dear Assistant Secretary:

FMX Futures Exchange, L.P. (“FMX”) hereby requests that the Commodity Futures Trading Commission (“CFTC”) accord confidential treatment under 17 C.F.R. §§ 40.8 and 145.9 to the documents and information submitted today to the Division of Market Oversight under cover of this same letter (such documents and information, and all information derived therefrom together, the “Confidential Information”). The Confidential Information bears the legend “FOIA Confidential Treatment Requested By FMX Futures Exchange” and is numbered with the Bates range MMP00001 to MMP00016. FMX requests that the Confidential Information be afforded confidential treatment for the maximum time period permitted by applicable law, but in any case for no less than five years from the date of this letter as first set forth above.

This request for confidential treatment is made pursuant to 17 C.F.R. § 145.9(d)(1) because FMX believes that the Confidential Information is covered by one or more exemptions in the Freedom of Information Act, 5 U.S.C. §552(b) (“FOIA”), and is therefore exempt from the CFTC’s public disclosure requirements pursuant to 17 C.F.R. §§ 40.8(a) and 145.5.

In particular, FOIA Section 552(b)(4) (“Exemption 4”) and CFTC Regulation 145.9(d)(1)(ii) both exempt from public disclosure all documents and information that, if publicly disclosed, would reveal trade secrets or confidential commercial or financial information. Exemption 4, on which CFTC Regulation 145.9(d)(1)(ii) is modeled, requires that the information in question be: (1) a trade secret or financial or commercial in nature; (2) obtained from a person

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outside the government structure; and (3) confidential or privileged. *Burke Energy Corp. v. Dep't of Energy for the U.S.*, 583 F. Supp. 507, 510-11 (D. Kan. 1984). Courts use the words “commercial” and “financial” in accordance with their ordinary meanings and as broadly encompassing information relating to commerce or compiled in pursuit of profit. *Critical Mass Energy Project v. Nuclear Regul. Comm'n*, 644 F. Supp. 344 (D.D.C. 1986), *vacated on other grounds*, 830 F.2d 278 (D.C. Cir. 1987), *vacated*, 975 F.2d 871 (D.C. Cir. 1992); *Burke*, 583 F. Supp. at 511. Information is “confidential” within the meaning of Exemption 4 if it is not customarily released to the public by the person from whom it was obtained, and disclosure of such information is likely to impair the government’s ability to obtain voluntary disclosure of similar information in the future or would cause substantial harm to the competitive position of the person from whom the information was obtained. *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); *Burke*, 583 F. Supp. at 511.

FMX believes that the Confidential Information contains such confidential commercial and financial information, as well as proprietary information regarding its business analyses and research that is protected from public disclosure pursuant to Exemption 4 and CFTC Regulation 145.9(d)(1)(ii). Accordingly, the Confidential Information has been submitted pursuant to this request for confidential treatment.

FMX has also submitted to the Commission a copy of its submission from which the Confidential Information has been redacted (“Redacted Version”). FMX understands and requests that only the Redacted Version be made publicly available by the Commission pursuant to 17 C.F.R. §§ 40.8(a) and 145.5.

If the CFTC or its staff transmit any of the Confidential Information to another governmental body, FMX requests that you: (a) forward a copy of this letter to such governmental body; and (b) advise such governmental body of FMX’s request that the Confidential Information be accorded confidential treatment under FOIA.

The requests set forth in the preceding paragraphs also apply to any memoranda, notes, transcripts, or other writings or recordings that: (a) are made by or at the request of any Commissioner or CFTC staff member (or any other governmental body or its staff); and (b) either (i) incorporate, include or relate to any aspect of the Confidential Information, or (ii) refer to any conference, meeting or telephone conversation between FMX, its current or former employees, representatives, agents, auditors or counsel on the one hand, and any Commissioner or CFTC staff member (or any other governmental body or its staff) on the other, relating to the Confidential Information.

The requests set forth in this letter are not to be construed as a waiver of any other protection from disclosure or right to confidential treatment accorded by applicable law. In this regard, FMX will rely on and invoke any such other protection to the maximum extent possible.

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FMX requests that the CFTC advise the undersigned, pursuant to 17 C.F.R. §145.9(e)(1), in advance of any disclosure of the Confidential Information to any third party, whether pursuant to FOIA or otherwise, so that this request for confidential treatment may be substantiated. Please also contact the undersigned at jsterling@milbank.com or 202-835-7535 should you have any questions or if you require additional information from FMX concerning this request.

Best regards,

A handwritten signature in black ink, appearing to read 'Joshua Sterling', with a long horizontal line extending to the right.

Joshua Sterling
Milbank LLP

cc: Thomas Thompson
Chief Compliance Officer
FMX Futures Exchange, L.P.

Megha Kalbag
Milbank LLP