

# coinbase DERIVATIVES

October 23, 2024

**VIA Email ([FOIAsubmissions@cftc.gov](mailto:FOIAsubmissions@cftc.gov))**

Assistant Secretary of the Commission for  
FOIA Privacy and Sunshine Acts Compliance  
U.S. Commodity Futures Trading  
Commission Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**RE: FOIA Confidential Treatment Request**

Dear Assistant Secretary:

Coinbase Derivatives, LLC ("COIN" or "Exchange"), hereby requests that the U.S. Commodity Futures Trading Commission (the "CFTC" or "Commission") accord confidential treatment under the Freedom of Information Act (the "FOIA") to the documents identified in the attached appendix ("Appendix A") which was submitted to the Commission staff via CFTC electronic filing on October 23, 2024 and relates to a filing pursuant to Commission Rule 40.6(a). This request pertains to all material set forth in Appendix A and the documents set forth therein. The Exchange requests that confidential treatment be afforded as long as the Commission retains Appendix A and the documents listed therein. In accordance with the Commission's FOIA regulations, Appendix A and the documents listed therein bear the designation "FOIA CONFIDENTIAL TREATMENT REQUESTED BY COINBASE DERIVATIVES, LLC PURSUANT TO 17 CFR PART 145".

This request for confidential treatment under the FOIA is made pursuant to Commission Regulations 40.8 and 145.9(d), as Appendix A and the documents produced contain information that would reveal the trade secrets or confidential commercial or financial information of the Exchange and its affiliates. As required by Commission Regulation 40.8(c)(1), the Exchange has submitted, together with this request, a detailed written justification in support of the confidentiality of Appendix A attached as Appendix B.

This request shall not be construed as a waiver of any protection from disclosure or confidential treatment under Commission Regulations or any other protection from disclosure or confidential treatment accorded by law, and the Exchange will rely on and invoke any such confidentiality protection with respect to Appendix A and the documents produced. The Exchange requests that the Commission advise the undersigned, its representative, in advance of any disclosure of Appendix A and the documents produced pursuant to the FOIA so that this request for confidential treatment may be further substantiated. The Exchange further requests that if any of the Confidential Information is to be disclosed to Congress or any other federal or state governmental agency or department, a request for confidential treatment be made by the Commission on the Exchange's behalf, or that we be permitted to make such a request directly.

If you have any questions or require further information, please contact the undersigned at Jane.Downey@coinbase.com.

Sincerely,

/s/ Jane Downey  
Chief Regulatory Officer

Attachment: Appendix A  
Appendix B

## **APPENDIX A**

The following materials that accompanied COINBASE DERIVATIVES, LLC, submission #2024-51 pursuant to 17 C.F.R. § 40.6(a) dated October 23, 2024:

Documents:

- Appendix A Modifications to Non-Crypto Market Maker Program

## **APPENDIX B**

This detailed written justification for confidential treatment of the attached appendix ("**Appendix A**") under the Freedom of Information Act ("**FOIA**") is made pursuant to U.S. Commodity Futures Trading Commission ("**Commission**") Regulations 40.8 and 145.9(d), as Appendix A contains information that would reveal the trade secrets or confidential commercial or financial information of Coinbase Derivatives, LLC ("**COIN**" or "Exchange").

The general test for determining whether commercial information is exempt from disclosure under FOIA pursuant to this exemption is whether release of the information would "cause substantial harm to the competitive positions of the person from whom the information was obtained." *Acumenics Research & Tech. v. Dep't of Justice*, 843 F.2d 800, 807 (4th Cir. 1988) (quoting *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)). There is no requirement to demonstrate actual competitive harm, rather "[a]ctual competition and the likelihood of substantial competitive injury is all that need to be shown." *Gulf & Western Indus., Inc. v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979). Information is considered confidential where (i) there is actual competition in the relevant market, and (ii) disclosure is likely to cause substantial competitive injury. *Id.* With regard to proof of potential injury, evidence demonstrating the potential for economic harm is sufficient, and neither the omission nor the courts must conduct a sophisticated economic analysis to determine the likely effects of disclosure. *Utah v. Bahe et al.*, 256 F.3d 967, 970 (10th Cir. 2001); *Public Citizen Health Research Group v. Food & Drug Admin.*, 704 F.2d 1280, 1291 (D.C. Cir. 1983).

The information contained in Appendix A includes non-public information regarding confidential commercial and/or financial information. COIN believes that disclosure of this information would provide its competitors with valuable insights regarding COIN's clients, access to its products, and how COIN operates and funds its business. Disclosure of such information would allow other execution facilities insight into the strengths and weaknesses of COIN which could be used to achieve a competitive advantage. Disclosure of Appendix A would thus result in precisely the type of competitive harm to COIN that the provisions of FOIA and 17 C.F.R. § 145.9(d)(ii) are designed to prevent. *See National Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976) (prohibiting disclosure where it would "provide competitors with valuable insights into the operational strengths and weaknesses" of a company). Disclosure of the Confidential Information would provide COIN's competitors with an informational windfall at COIN's expense that they are not entitled to under FOIA. *See Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 52 (D.C. Cir. 1981) ("as a matter basic to our free enterprise system, private business information should be afforded appropriate protection, at least from competitors"). The Confidential Information thus falls squarely within the type of information that the provisions of FOIA and Commission Regulation 145.9(d)(ii) are designed to protect from disclosure.

For the foregoing reasons, COIN respectfully requests that the Commission maintain the confidential privilege afforded to this type of information and refrain from releasing Appendix A as such action could prove harmful to COIN.