May 5, 2021

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

RE: Freedom of Information Act ("FOIA") Confidential Treatment Request: Appendix A to MGEX Submission No. 21-32

Dear Assistant Secretary,

Pursuant to the requirements set forth in Commodity Futures Trading Commission ("CFTC" or "Commission") Regulations 40.8 and 145.9(d), the Minneapolis Grain Exchange, Inc. ("MGEX" or the "Exchange") hereby requests that the Commission afford confidential treatment under FOIA for the information listed in Appendix A. As discussed further in the detailed written justification below, the attached appendix ("Appendix A") contains information therein that would reveal the trade secrets or confidential commercial or financial information of MGEX. Therefore, MGEX requests it be notified by the Commission after receiving any FOIA request for such documents or any other court order, subpoena, or summons for Appendix A. MGEX also requests that it be notified if the Commission intends to disclose Appendix A to Congress or any other governmental agency or unit pursuant to Section 8 of the Commodity Exchange Act ("CEA").

Detailed Written Justification

There is a presumption of confidentiality for commercial information that is (1) provided voluntarily and (2) is of a kind the provider would not customarily make available to the public. See Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 878 (D.C. Cir. 1992) (en banc); see also Center for Auto Safety v. National Highway Traffic Safety Administration, 244 F.3d 144, 147 (D.C. Cir. 2001) (applying the tests described in Critical Mass).

Notwithstanding this presumption of confidentiality, the information within Appendix A would still be considered "confidential" because MGEX would not ordinarily disclose it to the public and disclosure would cause substantial harm to the competitive position of the Exchange. In Gulf & Western Industries, Inc. v. United States, 615 F.2d 527 (D.C. Cir. 1979), the Court of Appeals held that information is confidential for purposes of FOIA if (1) it is not of the type normally released to the public by the submitter and (2) the information is of the type that would cause substantial competitive harm if released. Additionally, there is no requirement that "competitive harm" be established by a showing

of actual competitive harm. Rather, only "actual competition and the likelihood of substantial competitive injury is all that needs to be shown." Gulf & Western Industries, Inc. V. United States, 615 F.2d at 530. Accordingly, the D.C. Court of Appeals in National Parks and Conservation Association v. Kleppe, 547 F.2d 673 (D.C. Cir. 1976), concluded that the disclosure of certain financial information, including costs and price-related items, was likely to cause substantial harm to the competitive position of the person whose information was obtained. When applying the substantial competitive harm test, courts "[c]onsider how valuable the information will be to the requesting competitors and how much this gain will damage the submitter." Worthington Compressors v. Costle, 662 F.2d 51 (D.C. Cir. 1981). However, neither the Commission nor the courts is required to conduct a sophisticated economic analysis to determine the likely effects of disclosure, and evidence demonstrating the potential for economic harm is sufficient. Utah v. Bahe et al. No. 00-4018, 2001 WL 777034, at 2 (10th Cir. July 10, 2001); Public Citizen Health Research Group v. Food & Drug Admin., 704 F.2d 1280, 1291 (D.C. Cir. 1983). It is clear that the exemption was intended to prevent the fundamental unfairness that can result from one side having confidential information about the other in a business context. National Parks and Conservation Association v. Kleppe, 547 F.2d at 679.

MGEX provided the confidential information in Appendix A to the Commission voluntarily in order to demonstrate its compliance with the CEA and relevant Commission Regulations. The information set forth in Appendix A is commercially valuable due to the significant time and substantial cost required to develop. MGEX believes that disclosure of this information would provide its competitors with valuable insights of the Exchange's business and the construction of its products. Additionally, this information is not of a type customarily made available to the public by the Exchange and disclosure of such generates a potential for significant competitive harm to MGEX. Accordingly, the substantial competitive harm test is met and confidential treatment should be maintained for the information contained in Appendix A.

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

Should you have any questions regarding this letter, please feel free to contact me at (612) 321-7128 or psparby@mgex.com. Thank you for your attention in this matter.

Sincerely,

Peter D. Sparby
Corporate Counsel