Christopher Bowen
Managing Director and Chief Regulatory Counsel
Legal Department

November 19, 2015

VIA ELECTRONIC PORTAL

Mr. Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: FOIA Confidential Treatment Request

Dear Mr. Kirkpatrick:

By electronic portal today, November 19, 2015, Commodity Exchange, Inc. ("COMEX" or "Exchange") submitted a product certification filing to the CFTC (Submission No. 15-486S). This supplemental filing includes an appendix ("Appendix A"), which is attached.

The Exchange is also providing the Commission with a detailed written justification on behalf of COMEX and Platts, a division of McGraw Hill Financial Inc. ("Platts"), which sets forth grounds for this request for confidential treatment in Exhibit 1 herewith ("Exhibit 1").

Pursuant to Sections 8 and 8(a) of the Commodity Exchange Act ("CEA"), as amended, and Commission Regulation 145.9(d), COMEX requests confidential treatment of Appendix A on the grounds that disclosure of Appendix A would reveal confidential commercial information of the submitter (COMEX) and of Platts. Pursuant to Commission Regulation 145.9(d)(5), COMEX requests that confidential treatment be maintained for Appendix A until further notice from the Exchange. We also request that the Commission notify the undersigned immediately after receiving any FOIA request for said Appendix A or any other court order, subpoena or summons for same. Finally, we request that we be notified in the event the Commission intends to disclose such Appendix A to Congress or to any other governmental agency or unit pursuant to Section 8 of the CEA. COMEX does not waive its notification rights under Section 8(f) of the CEA with respect to any subpoena or summons for such Appendix A.

Please contact the undersigned at (212) 299-2200 should you have any questions concerning this letter.

Sincerely,

/s/Christopher Bowen
Managing Director and Chief Regulatory Counsel

Enclosure: Exhibit 1

Exhibit 1

DETAILED WRITTEN JUSTIFICATION

Christopher Bowen
Managing Director and Chief Regulatory Counsel
Legal Department

November 19, 2015

VIA Electronic Portal

Assistant Secretary of the Commission for FOIA,
Privacy and Sunshine Acts Compliance
Commodity Futures Trading Commission
Three Lafayette Centre, 8th Fl.
1155 – 21st Street, N.W.
Washington, DC 20581

Re: FOIA Confidential Treatment Request: Appendix A to COMEX Submission No. 15-486S

Dear Mr. Kirkpatrick:

I am writing on behalf of the Commodity Exchange, Inc. ("COMEX" or "Exchange") and Platts, a division of McGraw Hill Financial Inc. ("Platts"). In accordance with the requirements set forth in Section 40.8 of the Commodity Exchange Act ("CEA"), the Exchange and Platts hereby submit their detailed written justification in support of continued confidentiality of the information set out in Appendix A to COMEX submission 15-486S ("Appendix A") and respectfully request that the Commodity Futures Trading Commission (the "Commission") not release the information contained therein.

As discussed more fully below, Appendix A contains confidential and proprietary commercial information of Platts is thus exempt from disclosure pursuant to Section 8 of the Commodity Exchange Act ("CEA"), Commission Regulation 145.9(d) and Exemption 4 (the "Exemption") to the Freedom of Information Act ("FOIA").

Presumption of Confidentiality

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) (affirming continuing validity of Critical Mass and applying tests detailed in that case). Platts provided the confidential information in Appendix A to the Commission voluntarily in connection with the above referenced submission. Disclosure of the confidential information would reveal confidential commercial information of Platts, which Platts licensed to COMEX for a fee in connection with the development of the Aluminum Japan Premium (Platts) Futures contracts. The terms of the license between Platts and COMEX do not permit COMEX to make the Confidential Information available to the public. Platts which is in the business of gathering and providing information related to the energy markets, maintain the information as confidential and only disclose such information to persons who pay a license fee. The disclosure of the confidential information to the public would cause competitive harm to Platts by taking away its ability to collect license fees with respect to the confidential information and would cause competitive harm to the Exchange by limiting its ability to provide the cash market analysis needed for new product submissions.

Disclosure Would Likely Cause Competitive Harm to the Exchange and Platts

Notwithstanding this presumption of confidentiality, the confidential information in Appendix A still would be considered "confidential" because it is information that the Exchange and Platts would not and have not disclosed to the public and its disclosure would cause substantial and irreparable harm to the competitive position of the Exchange and Platts. FOIA was enacted to facilitate the disclosure of information to the public, but was clearly not intended to allow business competitors "cheap" access to valuable confidential information, especially when "competition in business turns on the relative costs and opportunities faced by members of the same industry." Worthington Compressors v. Costle, 662 F.2d 45, 51 (D.C. Cir. 1981).

When a submitter of confidential information has a "commercial interest in the requested information the [E]xemption is properly invoked." ISG Group, Inc. v. Dept. of Defense, 1989 WL 168858 (D.D.C. 1989). The test for determining confidentiality under the Exemption is set forth in National Parks & Conservation Association v. Morton, where the court held that information is confidential if its disclosure would "cause substantial harm to the competitive position of the person from whom the information was obtained." In applying the "competitive harm" test for confidentiality, there is no requirement to demonstrate actual competitive harm. Gulf & Western Indus., Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1979). "Actual 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 at 530. Information is confidential if: 1) there is actual competition in the relevant market; and 2) disclosure is likely to cause substantial competitive injury. Id. Neither the Commission nor the courts must conduct a sophisticated economic analysis to determine the likely effects of disclosure; 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 F2d 1280, 1291 (D.C. Cir. 1983).

Under circumstances similar to those involved here, courts have recognized that disclosure of commercial information holds the potential for significant competitive harm. Bahe No. 00-4018, 2001 WL 777034, at 2-3 (terms and structure of contract for storage of nuclear fuel confidential); Heeney v. Food & Drug Admin., 2001 U.S. App. Lexis 7732, at 3-4 (9th Cir. April 12, 2001) (manufacturing agreement and other information confidential); Professional Review Org. v. U.S. Department of Health and Human Servs., 607 F. Supp. 423, 425-26 (D.D.C. 1985) (business plans confidential). 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, 662 F.2d at 51. Since Platts sells this information to individuals for a fee pursuant to strict usage restrictions and it is not distributed publicly, making the confidential information public would clearly be valuable to Platts' competitors and cause substantial damage to it.

Appendix A contains valuable commercial information with respect to pricing that was developed at significant cost and over a substantial period of time by Platts. It would destroy the value of that work if we were required to make that information available to the general public and/or Platts' competitors, who could free ride with no cost. Additionally, there is no regulatory imperative to disclose such information.

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

Please contact me if you have any questions regarding this matter.

Very truly yours,

/s/Christopher Bowen
Managing Director and Chief Regulatory Counsel

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