North American Derivatives Exchange, Inc.

September 16, 2026

Via CFTC Portal Submissions

Assistant Secretary of the Commission for FOIA Matter
Privacy and Sunshine Acts Compliance
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW Washington, D.C. 20581
FOIAsubmissions@cftc.gov

RE: FOIA Confidential Treatment Request

Dear Assistant Secretary:

Pursuant to CFTC Regulation 40.6(a), North American Derivatives Exchange, Inc. ("NADEX" or "Exchange") has on this date submitted a self-certification of its Macro Predictions Market Maker Program for macro predictions markets, including crypto, FX, equity indices and commodities, as described more fully herein (the "Program" or "Submission"). The Exchange respectfully requests that the Commission accord confidential treatment to the confidential transmittal provided to the Commission today, segregated from the Submission as Exhibit B and marked confidential, and to all information contained therein (the "Confidential Information"). The Confidential Information is proprietary to the Exchange and contains highly sensitive and confidential commercial and financial information exempt from disclosure pursuant to Section 8 of the Commodity Exchange Act, Commission Regulations, and Section 552(b)(4) ("Exemption 4") of the Freedom of Information Act ("FOIA"), as explained below.

DETAILED WRITTEN JUSTIFICATION

In accordance with CFTC Regulations 40.8, 145.5, and 145.9, the Exchange requests confidential treatment of the Confidential Information, on the grounds that disclosure of such information would reveal trade secrets and confidential commercial and financial information of the Exchange. Confidential treatment additionally is requested on the grounds that Exhibit B is exempt from disclosure under Exemption 4 and CFTC Regulations 145.5(d) and 145.9(d)(1)(ii) because it contains confidential commercial and financial information that would grant competitors a material unfair competitive advantage and/or compromise the competitive advantages possessed by the Exchange.

Exemption 4 exempts from the disclosure requirements of FOIA "trade secrets and commercial or financial information obtained from a person and privileged or confidential." FOIA contains no definition of "privileged" or "confidential." Some courts have found there to be 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 Regul. Comm'n* 975 F.2d 871, 878 (D.C. Cir. 1992) (en banc); *see also Ctr. for Auto. Safety v. Nat'l Highway Traffic Safety Admin.*, 244 F.3d 144, 147 (D.C. Cir. 2001) (applying tests from *Critical Mass*). Even if there were no presumption of confidentiality, the information in Exhibit B still would be considered "confidential" because the Exchange would not ordinarily disclose it to the public and disclosure would cause substantial harm to the competitive position of the Exchange. In *Gulf & W. Indus., Inc. v. U.S.*, 615 F.2d 527 (D.C. Cir. 1979), the Court of Appeals concluded that information is confidential for purposes of the FOIA if (i) it is not of the type normally released to the public by the submitter and (ii) the information is of the type that would cause substantial competitive harm if released. There is no requirement that “competitive harm" be established by a showing of actual competitive harm; rather, "actual competition and the likelihood of substantial competitive injury is all that needs to be shown." *Gulf & Western Indus., Inc. v. U.S.*, 615 F.2d at 530. Thus, in *Nat’l Parks and Conservation Ass’n v. Kleppe*, 547 F.2d 673 (D.C. Cir. 1976), the Court of Appeals concluded that the disclosure of certain financial information, including costs and price-related items, was likely to cause substantial harm to the disclosing party’s competitive position. Such disclosure, if required, would provide competitors with valuable information relating to the operational strengths and weaknesses of the disclosing company. Such competitive harm may result from the use of such information either by direct competitors or by persons with whom one is negotiating. *See Am. Airlines, Inc. v. Nat’l Mediation Bd.*, 588 F.2d 863, 868 n.13 (2d Cir.1978). It is also 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. *Cf. Nat’l Parks*, supra, at 678 n.18.

The information set forth in Exhibit B was voluntarily provided to the Commission and is not of a type customarily made to the public by the Exchange. In particular, the Confidential Information in Exhibit B contains valuable commercial information with respect to, among other information, the specific incentive payment amounts and program parameters that the Exchange found necessary to increase market participation, repeat engagement, and liquidity. This information took significant time and expense to develop, and constitutes an essential part of the Exchange’s strategy for its event contract markets. Disclosure of the terms of the Program would cause significant competitive harm to the Exchange. Additionally, it should be noted that there is no regulatory requirement that such information be disclosed.

Accordingly, we ask that you take appropriate steps to keep the Confidential Information confidential and that you restrict the redistribution of the Confidential Information. Pursuant to CFTC Regulation 145.9(d)(5), the Exchange hereby requests that the Confidential Information be afforded confidential treatment in perpetuity. The Exchange requests that the Commission notify the undersigned immediately after receiving any Freedom of Information Act request, or any court order, subpoena, or summons seeking to access the Confidential Information in whole or in part. The Exchange further requests notification (through the undersigned) in the event the Commission intends to disclose the Confidential Information in whole or part. The Exchange does not waive its notification rights under Section 8 of the CEA with respect to any subpoena or summons with respect to the Confidential Information in whole or in part.

Should you have any questions regarding the above, please do not hesitate to contact me by e-mail at scott.kallback@nadex.com.

Sincerely,

/s/

Scott Kallback
The North American Derivatives Exchange, Inc.