

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

ROBINHOOD DERIVATIVES, LLC

*Plaintiff,*

v.

MARY JO FLAHERTY, in her official  
capacity as Interim Director of the New  
Jersey Division of Gaming Enforcement,  
et al.,

*Defendants.*

Civil Action No. 1:25-cv-14723

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PLAINTIFF ROBINHOOD'S MOTION TO SEAL**

Plaintiff Robinhood Derivatives, LLC (“Robinhood”) has moved under Local Civil Rule 5.3 to seal (1) Robinhood’s FCM Membership Agreement with KalshiEX, LLC, (2) Robinhood’s FCM Clearing Member Agreement with Kalshi Klear LLC, and (3) Robinhood’s March 28, 2025 letter to the New Jersey Division of Gaming Enforcement, which are Exhibits A, B, and F to the Declaration of James B. Mackenzie in Support of Plaintiff Robinhood’s Motion for Temporary Restraining Order and Preliminary Injunction. (ECF Nos. 10-3, 10-4, and 10-8.)

### ARGUMENT

“Documents containing trade secrets or other confidential business information may be protected from disclosure.” *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 166 (3d Cir. 1993). Although “[t]here exists in civil cases a common law public right of access to judicial proceedings and records,” *Goldstein v. Forbes (In re Cendant Corp.)*, 260 F.3d 183, 192 (3d Cir. 2001), “[t]his Court has the power to seal where confidential information may be disclosed to the public,” and Federal Rule of Civil Procedure 26(c)(1)(G) “allows the court to protect materials containing ‘trade secret[s] or other confidential research, development, or commercial information,’” *Smarte Carte Inc. v. Innovative Vending Sols., LLC*, No. 1:19-cv-08681-ESK-AMD, 2024 WL 4025021, at \*2 (D.N.J. July 12, 2024) (Kiel, J.); *see also In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653, 664 (D.N.J. 2004) (“The presence of trade secrets or other confidential information weighs against public access and, accordingly, documents containing such information may be protected from disclosure.”).

“The party seeking to seal any part of a judicial record bears the burden of demonstrating that ‘the material is the kind of information that courts will protect.’” *Smarte Carte*, 2024 WL 4025021, at \*2 (citing *Miller v. Indiana Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994)). Under Local Civil Rule 5.3(c), the party seeking to file materials under seal must describe with

particularity “(a) the nature of the materials or proceedings at issue, (b) the legitimate private or public interests which warrant the relief sought, (c) the clearly defined and serious injury that would result if the relief sought is not granted, and (d) why a less restrictive alternative to the relief sought is not available.” *Goldenberg v. Indel, Inc.*, No. CIV. 09-5202 JBS/AMD, 2012 WL 15909, at \*2 (D.N.J. Jan. 3, 2012) (quoting L. Civ. R. 5.3(c)).

As set forth in Robinhood’s Motion for a Temporary Restraining Order and Preliminary Injunction (the “Motion”) (ECF No. 10), which has been administratively terminated following entry of the parties’ Consent Order Granting Preliminary Relief (ECF Nos. 21, 22), this suit involves whether Defendants’ threatened enforcement of New Jersey gambling laws is preempted by the Commodity Exchange Act and the Commodity Futures Trading Commission’s regulations pursuant to the Supremacy Clause of the U.S. Constitution.

Robinhood seeks to seal Exhibits A, B, and F to the Declaration of James B. Mackenzie in Support of the Motion (“Mackenzie Decl.”) (ECF Nos. 10-3, 10-4, and 10-8), which are Robinhood’s FCM Membership Agreement with KalshiEX, LLC, Robinhood’s FCM Clearing Member Agreement with Kalshi Klear, LLC, and Robinhood’s March 28, 2025 response letter to the New Jersey Division of Gaming Enforcement (the “Division”), respectively.

Robinhood’s agreements with non-parties KalshiEX, LLC and Kalshi Klear LLC (together, “Kalshi”) are commercially sensitive and confidential business agreements, and the parties to those agreements have a legitimate private interest in ensuring that these agreements are not publicly disclosed. *See Smarte Carte*, 2024 WL 4025021, at \*1, 3 (granting motion to seal documents that include “information relating to Defendants’ customer relationships and the terms of its customer contracts”); *China Falcon Flying Ltd. v. Dassault Falcon Jet Corp.*, No. CV 15-6210 (KM), 2017 WL 3718108, at \*3 (D.N.J. Aug. 29, 2017) (“Courts in this District

have consistently determined that ‘the confidentiality of business agreements, trade secrets or commercial information [is] a legitimate private interest and the disclosure of this information can be used for the improper purpose of causing harm to the litigant’s competitive standing in the marketplace.’”). Public disclosure of the FCM Membership Agreement and FCM Clearing Member Agreement would allow competitors a glimpse into Robinhood’s negotiating strategies, which would likely harm Robinhood’s competitive standing. *See Mars, Inc. v. JCM Am. Corp.*, No. 05-3165, 2007 WL 496816, at \*2 (D.N.J. Feb. 13, 2007) (“Courts generally protect materials . . . to prevent harm to a litigant’s standing in the marketplace.”). Moreover, disclosure of the agreements could also put Kalshi at a competitive disadvantage for the same reasons. Further, these agreements include Robinhood’s banking information, which, if revealed, could subject Robinhood to significant harm. *See Contour Data Sols., LLC v. Gridforce Energy Mgmt. LLC*, No. 20-3241, 2024 WL 3994375, at \*5 (E.D. Pa. Aug. 29, 2024) (“Courts regularly protect bank account information for a company’s financial security.”).

Robinhood’s letter to the Division concerns the measures Robinhood took in response to the Division’s March 27, 2025 cease-and-desist letter and contains commercially sensitive and confidential information about its business operations, disclosure of which would cause substantial injury to Robinhood’s competitive position. Robinhood therefore has a legitimate private interest in ensuring that this information is not publicly disclosed. *See Smarte Carte*, 2024 WL 4025021, at \*1, 3; *China Falcon Flying*, 2017 WL 3718108, at \*3; *Mars, Inc.*, 2007 WL 496816, at \*2.

Pursuant to Local Civil Rule 5.3(c), Robinhood submits that the Court should seal Exhibits A, B, and F to the Mackenzie Declaration given that:

- (a) The materials contain commercially sensitive and confidential business terms and information and banking information;
- (b) Robinhood has a legitimate private interest in keeping confidential the terms of non-public business agreements with Kalshi and commercially sensitive information about its business operations as well as its banking information, disclosure of which could harm Robinhood's competitive standing in the marketplace;
- (c) The clearly defined and serious injury that would result should Robinhood's Motion to Seal not be granted is that Robinhood and Kalshi's confidential business agreements, confidential information about Robinhood's business operations, and Robinhood's banking information would be revealed to their competitors and the public; and
- (d) There is no less restrictive alternative available to prevent the defined and serious injury to the parties. The agreements and letter as a whole contain commercially sensitive and confidential information, and therefore redaction would not be a viable alternative to sealing the agreements and letter.

### **CONCLUSION**

For the reasons set forth above, the Court should grant Robinhood's motion to seal.

DATED: September 2, 2025

Respectfully submitted,

By: /s/ A. Ross Pearlson

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