

April 13, 2022

**Via email to FOIAsubmissions@cftc.gov**

Assistant Secretary of the Commission for FOI,  
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:

TW SEF LLC (“TW SEF”) hereby requests that the U.S. Commodity Futures Trading Commission (the “Commission”) accord confidential treatment under the Freedom of Information Act (the “FOIA”) to the attached appendices (“Appendices”), which were submitted to the Commission on this date. This request pertains to all material in Appendix A and Appendix B and an additional redacted version of the Appendices is included with this submission. TW SEF requests that confidential treatment be afforded as long as the Commission retains the Appendices. In accordance with the Commission’s FOIA regulations, the Appendices each bear the designation “Confidential Treatment Requested by TW SEF LLC.”

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

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 TW SEF will rely on and invoke any such confidentiality protection with respect to the Appendices. TW SEF requests that the Commission advise the undersigned, its representative, in advance of any disclosure of the Appendices pursuant to the FOIA so that this request for confidential treatment may be further substantiated. TW SEF 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 TW SEF’s behalf, or that we be permitted to make such a request directly.

If you have any questions, please do not hesitate to contact the undersigned at (646) 767-4923 or by email at [Devi.Shanmugham@tradeweb.com](mailto:Devi.Shanmugham@tradeweb.com).

Very truly yours,



Devi Shanmugham  
TWSEF CCO

**APPENDIX A**

**Explanation of Amended TW SEF Compliance Manual**

**[REDACTED]**

**APPENDIX B**

**TW SEF Compliance Manual**

**(Blackline and Clean Copies)**

**[REDACTED]**

**FOIA CONFIDENTIAL TREATMENT REQUESTED**

April 13, 2022

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

**Re: FOIA Detailed Written Justification**

Dear Assistant Secretary:

This detailed written justification for confidential treatment of the attached appendices (“Appendices”) 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 the Appendices contain information that would reveal the trade secrets or confidential commercial or financial information of TW SEF LLC (“TW SEF”) and its affiliates.

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 the Appendices include non-public information regarding pricing, business structure and financial incentives relating to certain technological means for accessing TW SEF. TW SEF believes that disclosure of this information would provide its competitors with valuable insights regarding TW SEF’s clients, access to its products, and how TW SEF operates and funds its business. Disclosure of such information would allow other swap execution facilities insight into the strengths and weaknesses of TW SEF which could be used to achieve a competitive advantage. Disclosure of the Appendices would thus result in precisely the type of competitive harm to TW SEF 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 TW SEF’s competitors with an informational windfall at TW SEF’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, TW SEF respectfully requests that the Commission maintain the confidential privilege afforded to this type of information and refrain from releasing the Appendices as such action could prove harmful to TW SEF.

If you have any questions, please do not hesitate to contact the undersigned at (646) 767-4923 or by email at [Devi.Shanmugham@tradeweb.com](mailto:Devi.Shanmugham@tradeweb.com).

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Devi Shanmugham', with a stylized flourish at the end.

Devi Shanmugham  
TWSEF CCO

## APPENDIX A

### Explanation of Amended TW SEF Compliance Manual

<b>Chapter/Clause</b>	<b>Description of Amendment</b>	<b>Reason</b>
Cover Page/Footer	Updated version number and date	Conforming change
Table of Contents	Updated page numbers and section titles	Conforming change
2.2	Removal of references to completing registration	SEF has completed registration
2.3	Removal of references to completing registration	SEF has completed registration
3.1.2	Add CCO responsibility to train employees, remove requirement to conduct a 3-month follow-up review	Streamline compliance audits
4.1.7	Remove unnecessary clause	Routine update/clarification
4.2	Clarify that ROC may raise an objection to prevent a rule or product filing	Routine update/clarification
6.1	Remove reference to the RSP and replace with Compliance Department	The SEF will not utilize the RSP for audit trail review purposes
6.2	Minor grammar change	Routine update/clarification
6.4	Remove reference to Participants and clarify that the summary of fitness reports is to be included in the Annual Compliance Report	Correct erroneous reference and clarify that fitness report summaries are not stand-alone reports
6.5.1	Updated to conform to CFTC Regulations	CFTC Regulation 37.1501(d)
6.5.2	Updated to conform to CFTC Regulations	CFTC Regulation 37.1501(d)
7.2	Updated to conform to CFTC terminology	CFTC Regulation 45.5
8.2	Removal of TW SEF's description of RSP service in favor of including the RSP's policies in Appendix A	RSP's policies are more accurate in describing how the RSP operates
8.2.3	Replace requirement for quarterly sampling with annual sampling, add requirement for a monthly review with RSP, and add requirement for a yearly review	Update trade surveillance procedures

8.3	Replace SEF-specific market surveillance provisions with those of the RSP in Appendix A	RSP's policies are more accurate in describing how the RSP operates
8.4	Clarify that the SEF, and not the RSP where required, will be responsible for any additional financial surveillance due diligence	The SEF will not utilize the RSP for any additional financial surveillance due diligence
8.5	Clarify that the Market Regulation Team, and not the RSP, will be responsible for Real-Time Market Monitoring	The SEF will not utilize the RSP for real-time market monitoring purposes
8.5.1	Clarify that the Market Regulation Team will be responsible for Real-Time Market Monitoring and remove unnecessary examples	Conforming change; Routine update/clarification
8.5.2	Remove the 15-minute time requirement and clarify that notification processes for the CCO should be automated	Update market monitoring policies
8.5.3	Clarify role of the ROC in Emergency Actions	Update market monitoring policies
8.5.4	Revise provisions regarding TW SEF's surveillance of electronic communications	Include TW SEF policies and procedures language regarding electronic communications
8.7	Removal of product monitoring provisions	The SEF will not utilize the RSP for product monitoring purposes
9.3.1.3	Clarify that certain preliminary inquiries may not automatically become investigations, depending on the facts and circumstances	Update market monitoring policies
11	Clarify that TW SEF does not offer swaps that are linked to broad-based equity indexes	Routine update/clarification
13	Remove general provisions and state that positions limits and position accountability levels currently do not apply	Routine update/clarification
14.1.3	Clarify that the SEF, and not the RSP where required, will be responsible for any additional financial surveillance due diligence	The SEF will not utilize the RSP for any additional

		financial surveillance due diligence
16.3.2	Remove notice requirement applicable to Participants since the SEF will now handle such notices	Update to block trade and error trade notice policies
16.4.2	Updated to conform to CFTC terminology	CFTC Regulation 45.5
16.4.3	Updated to conform to CFTC terminology	CFTC Regulation 45.5
16.4.4	Removal of outdated reference to the CFTC Interim Compliant Identifier	CFTC Regulation 45.6
16.4.5	Clarify that the SEF's SDR does not have a UPI regime	CFTC Regulation 45.7
16.4.7	Updated to conform to CFTC terminology	CFTC Regulation 45.5
17.5	Updated to conform to CFTC Regulations	CFTC Regulation 1.31(c)(2)
18.1	Updated to conform to CFTC Regulations	CFTC Regulation 37.1401
18.3	Add citations to relevant CFTC Regulations	Routine update/clarification
18.4	Remove unnecessary examples	Routine update/clarification
19.1	Add reference to the SEF's LLCA provision that allows for the removal of a Board Member	Routine update/clarification
Appendix A	Add policies from RSP for reference	Routine update/clarification



**APPENDIX B**

**TW SEF Compliance Manual**

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