April 19, 2021

FOIA CONFIDENTIAL TREATMENT REQUESTED

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| Assistant Secretary of the Commission for FOIA 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 appendix (“Appendix A”) 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 Appendix A contains information that would reveal the trade secrets or confidential commercial or financial information of iSwap Euro B.V. (“iSwap Euro”).

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

If you have any questions, please do not hesitate to contact the undersigned Stephen M. Humenik, K&L Gates, LLP at +1-202-778-9477 or [stephen.humenik@klgates.com](mailto:stephen.humenik@klgates.com).

Very truly yours,



Stephen M. Humenik

**FOIA CONFIDENTIAL TREATMENT REQUESTED BY iSWAP EURO B.V.**

**PURSUANT TO 17 C.F.R. PART 145**

**APPENDIX A**