

October 3, 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 of Appendix A**

Dear Assistant Secretary:

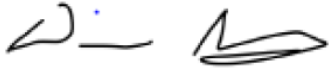
TW SEF LLC (“TW SEF”) hereby requests that the U.S. Commodity Futures Trading Commission (the “Commission”) accord confidential treatment under the Freedom of Information Act (the “FOIA”) to the attached appendix (“Appendix A”) and which was submitted to the Commission on this date. This request pertains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

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 Appendix A. TW SEF requests that the Commission advise the undersigned, its representative, in advance of any disclosure of Appendix A 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,

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line and a flourish.

Devi Shanmugham  
TW SEF CCO

**APPENDIX A**

**Fully Integrated API Services Fee Schedule (Emerging Market Currencies)**

**(Blackline and Clean Copies)**

**[REDACTED]**

## FOIA CONFIDENTIAL TREATMENT REQUESTED

October 3, 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: Detailed Written Justification Regarding the FOIA Confidential Treatment Request of Appendix A**

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 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).

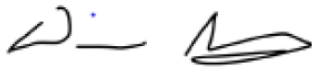
The information contained in Appendix A includes non-public information regarding pricing, business structure and financial incentives relating to certain technological means for accessing TW SEF. TW SEF believes that disclosure of this information would provide its competitors with valuable insights 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 Appendix A 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 Appendix A 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 black ink, appearing to read 'Devi Shanmugham', with a stylized flourish at the end.

Devi Shanmugham

TW SEF CCO

**APPENDIX A**

**Fully Integrated API Services Fee Schedule (Emerging Market Currencies)**

**(Blackline and Clean Copies)**

**[REDACTED]**