



August 29, 2024

Submitted via CFTC Portal

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

**Re: FOIA Confidential Treatment Request Justification – SpectrAxe Credit Program**

Dear Assistant Secretary,

SpectrAxe LLC (SpectrAxe) hereby requests that the U.S. Commodity Futures Trading Commission (Commission) accord confidential treatment under the Freedom of Information Act (FOIA) to the attached Reverse Give Up Credit Program (Credit Program), which was submitted to the Commission on this date pursuant to Commission Regulation 37.1501(e)(2). This request pertains to all materials set forth in the Credit Program. SpectrAxe requests that confidential treatment be afforded as long as the Commission retains the Credit Program. In accordance with the Commission's FOIA regulations, the Credit Program bears the designation "CONFIDENTIAL TREATMENT REQUESTED BY SPECTRAXE LLC PURSUANT TO 17 CFR PART 145."

This request for confidential treatment under the FOIA is made pursuant to Commission Regulation 145.9(d), as the Credit Program contains information that would reveal the trade secrets or confidential commercial or financial information of SpectrAxe and/or 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, 700 (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 Commission 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 Credit Program include non-public information regarding the fees charged by Axe FX Trading Platform, the swap execution facility platform operated by SpectrAxe. SpectrAxe believes that disclosure of this information would provide its competitors with valuable insights regarding how SpectrAxe operates and funds its business. Disclosure of such information would allow other swap execution facilities insight into the strengths and weaknesses of SpectrAxe, which could be used to achieve a competitive advantage. Disclosure of the Credit Program would thus result in precisely the type of competitive harm to SpectrAxe 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 Credit Program would provide SpectrAxe’s competitors with an informational windfall at SpectrAxe’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 Credit Program thus falls squarely within the type of information that the provision of the FOIA and Commission Regulation 145.9(d)(ii) are designed to protect from disclosure.

For the above reasons, SpectrAxe respectfully requests that the Commission maintain the confidential privilege afforded to this type of information and refrain from releasing the Credit Program as such action could prove harmful to SpectrAxe.

If you have any questions, please do not hesitate to contact the undersigned at +1-929-581-0340 or [mlee@spectraxe.com](mailto:mlee@spectraxe.com).

Respectfully,

A handwritten signature in black ink, appearing to read "mlee", with a horizontal line extending to the right.

Michael Lee  
Chief Compliance Officer, Chief Regulatory Officer  
SpectrAxe, LLC