



Christopher Bowen
Managing Director and Chief Regulatory Counsel
Legal Department

March 11, 2016

VIA ELECTRONIC PORTAL

Mr. Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: FOIA Confidential Treatment Request: CME SEF Submission No. 16-091S

Dear Mr. Kirkpatrick:

By electronic portal today, March 11, 2016, Chicago Mercantile Exchange Inc. ("CME SEF" or "Exchange") provided a supplemental filing 16-091S ("Submission No. 16-091S") to the Commodity Futures Trading Commission ("CFTC" or "Commission"). Submission No. 16-091S contains confidential and proprietary commercial and technological information that could, if disclosed to the public, cause substantial harm to the competitive position of the Exchange.

Pursuant to Sections 8 and 8(a) of the Commodity Exchange Act ("CEA"), as amended, and Commission Regulation 145.9(d), CME SEF requests confidential treatment of the information contained in Submission No. 16-091S on the grounds that disclosure of the contents of Submission No. 16-091S would reveal confidential commercial information of the submitter.

Pursuant to Commission Regulation 145.9(d)(5), CME SEF requests that confidential treatment be maintained for the information contained in Submission No. 16-091S until further notice from CME SEF. We also request that the Commission notify the undersigned immediately after receiving any FOIA request for the information contained in Submission No. 16-091S or any other court order, subpoena or summons for same. Finally, we request that we be notified in the event the Commission intends to disclose information contained within Submission No. 16-091S to Congress or to any other governmental agency or unit pursuant to Section 8 of the CEA. CME SEF does not waive its notification rights under Section 8(f) of the CEA with respect to any subpoena or summons for the information contained in Submission No. 16-091S.

Please contact the undersigned at (212) 299-2200 should you have any questions concerning this letter.

Sincerely,

/s/ Christopher K. Bowen
Managing Director and Chief Regulatory Counsel

Enclosure: Exhibit 1

EXHIBIT 1

Detailed Written Justification



Christopher Bowen
Managing Director and Chief Regulatory Counsel
Legal Department

March 11, 2016

VIA ELECTRONIC PORTAL

Assistant Secretary of the Commission for FOIA,
Privacy and Sunshine Acts Compliance
Commodity Futures Trading Commission
Three Lafayette Centre, 8th Fl.
1155 – 21st Street, N.W.
Washington, DC 20581

Re: FOIA Confidential Treatment Request: CME SEF Submission No. 16-091S

Dear FOIA Compliance Staff:

I am writing on behalf of the Chicago Mercantile Exchange Inc. ("CME SEF" or "Exchange"). In accordance with the requirements set forth in Commodity Futures Trading Commission ("Commission" or "CFTC") Regulation 40.8, CME SEF hereby submits its detailed written justification in support of continued confidentiality of the information set out in Appendix A to Submission No. 16-091S (the "Confidential Information") and respectfully requests that the Commission not release the information contained therein.

As discussed more fully below, the Confidential Information contains confidential and proprietary commercial information of CME SEF and is thus exempt from disclosure pursuant to Section 8 of the Commodity Exchange Act ("CEA"), Commission Regulation 145.9(d) and Exemption 4 (the "Exemption") to the Freedom of Information Act ("FOIA").

Presumption of Confidentiality

There is a presumption of confidentiality for commercial information that is (1) provided voluntarily and (2) is of a kind the provider would not customarily make available to the public. See Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 878 (D.C. Cir. 1992) (en banc); see also Center for Auto Safety v. National Highway Traffic Safety Administration, 244 F.3d 144, 147 (D.C. Cir. 2001) (affirming continuing validity of Critical Mass and applying tests detailed in that case). CME SEF previously provided the Confidential Information together with a FOIA letter requesting confidential treatment. The Confidential Information is not generally available to the public.

Disclosure Would Likely Cause Competitive Harm to CME SEF

Notwithstanding this presumption of confidentiality, the confidential information in Appendices 2-A, 2-B, and 2-C still would be considered “confidential” because it is information that CME SEF would not and have disclosed to the public and its disclosure would cause substantial harm to the competitive position of CME SEF. FOIA was enacted to facilitate the disclosure of information to the public, but was clearly not intended to allow business competitors “cheap” access to valuable confidential information, especially when “competition in business turns on the relative costs and opportunities faced by members of the same industry.” Worthington Compressors v. Costle, 662 F.2d 45, 51 (D.C. Cir. 1981).

When a submitter of confidential information has a “commercial interest in the requested information the [E]xemption is properly invoked.” ISG Group, Inc. v. Dept. of Defense, 1989 WL 168858 (D.D.C. 1989). The test for determining confidentiality under Exemption 4 is set forth in National Parks & Conservation Association v. Morton, where the court held that information is confidential if its disclosure would “cause substantial harm to the competitive position of the person from whom the information was obtained.” In applying the “competitive harm” test for confidentiality, there is no requirement to demonstrate actual competitive harm. Gulf & Western Indus., Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1979). “Actual 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 at 530. Information is confidential if: 1) there is actual competition in the relevant market; and 2) disclosure is likely to cause substantial competitive injury. Id. Neither the Commission nor the courts must conduct a sophisticated economic analysis to determine the likely effects of disclosure; evidence demonstrating the *potential* for economic harm is sufficient. Utah v. Bahe et al. No. 00-4018, 2001 WL 777034, at 2 (10th Cir. July 10, 2001); Public Citizen Health Research Group v. Food & Drug Admin., 704 F.2d 1280, 1291 (D.C. Cir. 1983).

Disclosure Would Likely Harm CMESEF

CME SEF also satisfies the second requirement for the “competitive harm” test for confidentiality because the release of the information would likely cause substantial competitive injury to CME SEF. See Gulf & Western Indus. Inc. v. United States 615 F.2d 527,530 (D.C. Cir. 1979). As noted above, a sophisticated economic analysis is unnecessary; the potential for economic harm is sufficient. Utah v. Bahe et al., No. 00-4018, 2001 WL 777034, at 2 (Cir. July 10, 2001); Public Citizen Health Research Group v. Food & Drug Admin., 704 F.2d 1280, 1291 (D.C. Cir. 1983).

Under circumstances similar to those involved here, courts have recognized that disclosure of commercial information holds the potential for significant competitive harm. Bahe No. 00-4018, 2001 WL 777034, at 2-3 (terms and structure of contract for storage of nuclear fuel confidential); Heeney v. Food & Drug Admin., 2001 U.S. App. Lexis 7732, at 3-4 (9th Cir. April 12, 2001) (manufacturing agreement and other information confidential); Professional Review Org. v. U.S. Department of Health and Human Servs., 607 F. Supp. 423, 425-26 (D.D.C. 1985) (business plans confidential). When applying the “substantial competitive harm test,” courts “[c]onsider how valuable the information will be to the requesting competitors and how much this gain will damage the submitter.” Worthington Compressors, 662 F.2d at 51.

The Confidential Information contains valuable commercial information with respect to CME SEF’s listing of Transco Zone 6 Natural Gas (Platts IFERC) Fixed Price Swap for trading. This information was developed at significant cost and over a substantial period of time. It would destroy the value of that work if we were required to make that information available to competitors, who could free ride our efforts with no cost.

For the foregoing reasons, CME SEF respectfully requests that the Commission maintain the confidential privilege afforded to this type of information and refrain from releasing the Confidential Information as such action could prove harmful to CME SEF.

Please contact me if you have any questions regarding this matter.

Very truly yours,

/s/ Christopher K. Bowen
Managing Director and Chief Regulatory Counsel