

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 52135 / July 27, 2005

In the Matter of	:	<b>ORDER DENYING REQUESTS FOR CONFIDENTIAL TREATMENT</b>
	:	
Two Sigma Investments, LLC	:	
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I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and consistent with the public interest and protection of investors, pursuant to Sections 13(f)(3) and (4) of the Securities Exchange Act of 1934 (“Exchange Act”), to deny the request for confidential treatment of information for the calendar quarter ended September 30, 2004 (“Request”), filed by Two Sigma Investments, LLC (“Two Sigma”) pursuant to Section 13(f) of the Exchange Act.

II.

1. Two Sigma is an investment manager that engages in trading strategies based upon statistical models.
2. Under Section 13(f)(5)(A) of the Exchange Act, Two Sigma is an institutional investment manager that exercises investment discretion over \$100 million or more in reportable securities, as defined in Rule 13f-1(c) under the Exchange Act.
3. Two Sigma is subject to the reporting requirements of Rule 13f-1(a) under the Exchange Act, which requires Two Sigma to file Form 13F reports with the Commission on a quarterly basis.
4. On November 15, 2004, Two Sigma filed a request, pursuant to Rule 24b-2 under the Exchange Act, for confidential treatment of information required to be filed with the Commission pursuant to Section 13(f) of the Exchange Act (“Form 13F information”) for the calendar quarter ended September 30, 2004.
5. On January 25, 2005, the Division of Investment Management (“Division”), acting under delegated authority, denied Two Sigma’s Request (“Denial Letter”).

6. On January 31, 2005, Two Sigma filed a Notice of Intention to Petition for Review indicating that it would appeal to the Commission the Division's Denial Letter.

7. On February 7, 2005, Two Sigma filed a Petition for Review of the Division's Denial Letter ("Petition").

8. Rule 24b-2(b)(2)(ii) under the Exchange Act requires that a request for confidential treatment of Form 13F information contain, among other things, "a statement of the grounds of objection referring to, and containing an analysis of, the applicable exemption(s) from disclosure under the Commission's rules and regulations adopted under the Freedom of Information Act ["FOIA"]."

9. Rule 200.80(b)(4) under the Commission's FOIA rules provides that the Commission generally will not publish or make available to any person matters that "[d]isclose trade secrets and commercial or financial information obtained from a person and privileged or confidential."

10. The Form 13F confidential treatment instructions (the "Instructions") state that an institutional investment manager ("Manager") "requesting confidential treatment must provide enough factual support for its request to enable the Commission to make an informed judgment as to the merits of the request" and to "address all pertinent factors."

11. The Instructions require that a request that is based upon a claim that the subject information is confidential, commercial or financial information must provide supporting information in five specific areas: (1) a description of the investment strategy, including the extent of any program of acquisition or disposition; (2) an explanation of why disclosure of the securities would be likely to reveal the strategy; (3) a demonstration that the revelation of the investment strategy would be premature; (4) a demonstration that failure to grant the request for confidential treatment would be likely to cause substantial harm to the Manager's competitive position; and (5) a statement of the period of time for which confidential treatment is requested.

12. Rule 24b-2(b)(2)(ii) under the Exchange Act also requires that a request for confidential treatment of Form 13F information contain "a justification of the period of time for which confidential treatment is sought."

13. The Instructions also provide that a Manager may discuss each of the five areas listed above with respect to a class of holdings rather than with respect to each individual holding if "the Manager can identify a class or classes of holdings as to which the nature of the factual circumstances and the legal analysis are substantially the same."

14. The Instructions further provide that at the expiration of the period for which confidential treatment has been granted, a Manager may file a *de novo* request for confidential treatment that meets the requirements of the Instructions.

15. Rule 430(b)(2) of the Commission's Rules of Practice ("Rules of Practice") provides that a "person seeking review [of an action made pursuant to delegated authority] shall file a petition for review containing a clear and concise statement of the issues to be reviewed." Rule

430(b)(2) further provides that a petition for review shall “include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such record as may exist.”

### III.

We have carefully reviewed Two Sigma’s Request and Petition. For the reasons generally discussed below, we find that Two Sigma has failed to provide sufficient information, either in its Request or in its Petition, to substantiate that confidential treatment is merited.

Two Sigma asserts that it is engaged in a program of acquisition and disposition that employs a “statistical arbitrage” investment strategy. Two Sigma essentially argues that: (1) disclosure of any or all of its securities positions would leave its investment strategy vulnerable to reverse engineering; and (2) successful, or even partial, reverse engineering would adversely affect Two Sigma’s “ongoing investment strategy, thereby undermining public interest and placing Two Sigma at a competitive disadvantage in the securities market place.”

Such statements, however, do not provide us with sufficient information to conclude that confidential treatment is merited under Section 13(f)(3) of the Exchange Act. As noted by the Division in its Denial Letter, Two Sigma does not provide any information regarding the basic characteristics of its investment strategy or how its strategy is applied to each security for which Two Sigma seeks confidential treatment. We note that statistical arbitrage strategies may be based upon any number of different relative relationships among securities and that individual investment strategies will differ depending on the relationships on which they focus.

Because statistical arbitrage strategies differ, the conclusory statements in Two Sigma’s Request and the Petition do not enable us to determine, and Two Sigma does not explain, how public disclosure of Two Sigma’s securities positions would, in fact, be likely to reveal its investment strategy for each security. As the Division notes, Two Sigma fails to explain how public disclosure of a partial list of its securities positions (Form 13F does not require disclosure of all of a Manager’s holdings) would allow others to “reverse engineer” Two Sigma’s investment strategy. Two Sigma also fails to explain sufficiently how public disclosure of its securities positions would be likely to reveal its investment strategy for each of the securities in its Request in light of the specific requirements of Form 13F. We note that Form 13F requires a Manager to report only the number of shares and market value of each position as of the close of trading on the last trading day of the quarter. Because Form 13F is not required to be filed until forty-five days after the last trading day of each quarter, disclosure of a security holding as of the last day of a quarter would not necessarily reveal a Manager’s *current* investment strategy. We therefore find that Two Sigma has failed to provide us with a sufficient explanation of how public disclosure of its holdings would be likely to reveal its investment strategy for each of its holdings.

Furthermore, Two Sigma’s unsupported claims of premature revelation of its investment strategy in its Request and the Petition do not allow us to determine that disclosure of its securities positions would be likely to prematurely reveal its investment strategy. As discussed above, Two Sigma has failed to explain sufficiently how disclosure of each position as of the end

of a quarter would be likely to reveal its investment strategy for each position and therefore has not demonstrated that disclosing its positions on Form 13F would prematurely reveal its investment strategy. We note that revelation of a Manager's strategy could be premature if, among other things, the Manager was still engaged in the strategy at the time of the required disclosure. Two Sigma, however, does not demonstrate in its Request and the Petition that its investment strategy with respect to any particular security was ongoing at the time of filing. For instance, as the Division notes, Two Sigma does not provide any transaction data showing purchases or sales of any of the securities from the end of a quarter through the date of filing. Such failure to demonstrate that its investment strategy has not changed from quarter to quarter prevents us from concluding that Two Sigma's investment strategy is ongoing and static and that disclosure of Two Sigma's securities positions would be likely to prematurely reveal its investment strategy.

Likewise, Two Sigma's failure to support its general and conclusory assertions of substantial harm from public disclosure does not allow us to determine whether public disclosure of its securities positions on Form 13F would be likely to cause substantial harm to its competitive position. Two Sigma argues that public disclosure of its securities positions on Form 13F would allow its competitors to reverse engineer its investment strategy, yet, as noted above, Two Sigma fails to explain how reverse engineering by its competitors could be accomplished when Two Sigma is not required to disclose certain of its securities holdings on Form 13F. Two Sigma's failure to provide an explanation prevents us from being able to make an informed decision as to whether public disclosure of Two Sigma's securities positions would be likely to cause Two Sigma substantial harm. Further, Two Sigma does not attempt to quantify the extent to which it could be harmed by disclosure, and thus does not demonstrate that it would be likely to suffer "substantial" harm to its competitive position. Two Sigma also does not provide any facts or analysis pertaining to any particular security for which it seeks confidential treatment to demonstrate that disclosure of its position in that security would likely cause substantial harm to Two Sigma's competitive position. We agree with the Division that additional information is necessary in order for us to be able to conclude that disclosure would result in substantial harm. As the Division noted in its Denial Letter, such information could include, among other things, discussion and analysis of relevant market conditions and the likely effect of disclosure on Two Sigma's securities positions.

The assertions in the Request and the Petition are general and conclusory in nature, and do not demonstrate that disclosure of Two Sigma's securities positions on Form 13F forty-five days after the end of a quarter would impair Two Sigma's ability to implement its investment strategy or otherwise cause substantial harm to Two Sigma. We agree with the Division that Two Sigma does not provide any specific information to support Two Sigma's assertions in its Request and the Petition. Generalized and conclusory allegations in response to the Instructions and in support of confidential treatment are not enough.

Two Sigma's Request and the Petition also fail to justify the requested one-year period of confidential treatment (*See supra* Section II, ¶ 22). Simply put, Two Sigma's Request and the Petition do not explain why Two Sigma reasonably believes that its investment strategy with respect to the securities positions for which it seeks confidential treatment will continue for a one-year period.

Further, we agree with the Division's conclusion that Two Sigma has failed to provide sufficient information to identify a class of holdings for which the facts and legal analysis supporting confidential treatment are substantially the same for each securities position for which it seeks confidential treatment (*see supra* Section II, ¶ 23). In order to establish class treatment, a Manager must provide sufficient information to establish that the facts and legal analysis for each confidential treatment instruction (*see supra* Section II, ¶ 21) are substantially the same for each security that is identified as part of a class of holdings. Otherwise, a Manager must discuss each holding separately. Two Sigma fails in its Request to provide any specific analysis to support why its securities positions have substantially the same "factual circumstances and legal analysis." Accordingly, Two Sigma has failed to substantiate its request for confidential treatment with respect to each specific securities position and for its holdings as a class, as required by the Instructions.

Based on our review, we also find that Two Sigma's Petition fails to set forth any exceptions to any findings of fact or conclusions of law made by the Division in the Denial Letter, as required by Rule 430(b)(2) of the Rules of Practice (*See supra* Section II, ¶ 25).

Accordingly, the Commission denies Two Sigma's Request because it failed to: describe its investment strategy, including the extent of any program of acquisition or disposition; explain why public disclosure of its securities positions would be likely to reveal its strategy; demonstrate that revelation of its investment strategy would be premature; demonstrate that failure to grant the Request would be likely to cause substantial harm to Two Sigma's competitive position; and justify the requested one-year time period for confidential treatment.

#### IV.

IT IS ORDERED that, after considering Two Sigma's request for confidential treatment of Form 13F information, the Commission, pursuant to Sections 13(f)(3) and (4) of the Exchange Act, denies Two Sigma's Form 13F confidential treatment request for the calendar quarter ended September 30, 2004.

By the Commission.

Jonathan G. Katz  
Secretary