

[REDACTED]

From: [REDACTED]
Sent: 11 April 2013 10:04
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: MiFID- Access and Price Reference Waiver

[REDACTED]

Further to [REDACTED] email last week, please find some additional comments from us on Article 30, the new RPW non-paper and CTP, which you may find helpful ahead of today's CWG.

Please let me or [REDACTED] know if you have any questions.

Kind regards
[REDACTED]

1 – MiFIR Access article 30

- In general we support the proposals for article 30
- In paragraph 1 we note the reduction of the proprietary rights period for benchmarks from four years to three years, but suggest this should be reduced to two years to maximise the competition and cost-lowering benefits of article 30
- Also, for existing benchmarks that have already been trading during the proprietary rights period, the provisions should apply immediately from entry into force of the regulation- a further extension would be unreasonable and counter to the aims of the Regulation

1.a – MiFIR Access articles 28, 29

- We recognise the attempt to address concerns of smaller Member States' infrastructure providers, although, as a principle, we support open access and do not see need for size thresholds
- We support the amendment which clarifies that the notional amount shall include all transactions concluded under the rules of a trading venue in all relevant financial instruments

2 – MiFIR article 4a(new)

- On the Presidency non-paper options to progress negotiations on the reference price waiver (RPW)
- We support option 1, as it is the more flexible approach that enables market participants to continue to use the RPW in specific circumstances while restricting its usage overall
- Option 1 is also consistent with the CESR/ESMA approach set out in 2010 and much easier to establish, calibrate and monitor for all stakeholders
- Option 2 is particularly problematic from an implementation perspective and may have repercussions on operation of orderly markets when trading venues have to halt trading
- The capping mechanism fails to consider the aggregate market share executed in the dark when multiple venues operate the waiver, while adding complexity for competent authorities, market participants and trading venues

3 – Consolidated Tape Provider

- In general we support the proposals for a CTP and we welcome to re-introduction of Cypriot text allowing for multiple CTPs within the regime
- However, in order to deliver ANY consolidated, harmonised, high-quality tape of post-trade data, the pre-requisite is for a requirement for adoption of harmonised data standards to be imposed across the market on all venues, investment firms and vendors

more than EUR 500,000m
notional value traded

On article 30, I am sure you know that we are opposed to the 4-year limit being applied to benchmarks which are currently in existence in the EU. Just wanted to point out that Deutsche Borse has granted licences to trade Euro Stoxx 50 to SGX, but refuses to do so to EU platforms.

We're also working to provide you some more #s for cash equities that would help assessing the impact of the volume cap and the threshold in MiFIR 29 (particularly for smaller member states), with some comments on the new text. Will get that to you shortly.

Hope this helps. Do let me know if you want to discuss further. Looking forward to seeing you in Brussels next week.

[REDACTED]

[REDACTED]

- Therefore, within no more than 3-6 months after MiFID enters into force ESMA must be required to propose harmonised data standards, based on the work already carried out by CESR/ESMA and the Market Model Typology (MMT) project and then impose these standards on all market participants (trading venues, vendors, buy and sell side)

From: [REDACTED]
Sent: 03 April 2013 18:50
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: MiFID- Access and Price Reference Waiver

[REDACTED]

Hope you are well and had a good break at Easter.

I just wanted to share with you what we are circulating to attaches on the access provisions, to inform the debate on the 10th April. In the Excel spread sheet and section 1 below we are trying to ensure that smaller countries that are currently part of the German anti access bloc will understand what the Presidency proposal means for them, so may not feel that they need to support Germany so strongly.

The points on price reference waiver and CTP we have made to one or two attaches, but not all.

Please let me know if I can help further.

Regards

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

www.londonstockexchange.com

Email to attaché:

It was good to see you last week- I hope you had a good break for Easter.

1 MiFIR- Access

When we met, we agreed to send you the analysis of EU trading volumes for equities and listed derivatives, showing those trading venues that would be in/out of scope of access requirements under the proposed thresholds for Articles 28/29 MiFIR. This is attached and shows:

Equities- €100 billion cap (Data sources: FESE, BATS, LSEG)

- Large RMs and MTFs (BME, BATS-CHIX, DBAG, LSEG, Nasdaq OMX, NYSE Euronext, SIX, Turquoise and Oslo) would be in scope;
- Smaller Member State exchanges (GR, SK, RO, BG, HU, SI, CZ, AT, IE, LU, MT, PL) would be out of scope.

Listed derivatives - €500 billion threshold (Data sources: FESE, LSEG)

- The larger exchanges (EUREX, Euronext.LIFFE, Nasdaq OMX, LSEG, ICE Futures Europe) would be in scope, based on total trading across asset classes. All others (included in the FESE analysis) would be out of scope, including GR, ES, RO,CZ, AT, PL.

2 Price Reference Waiver

- **Volume cap** We could not find any rules in place in Canada or Australia on this- the only reference we found was to a piece of research in Australia suggesting that dark reference price waiver trading up to 10% was not considered harmful to price formation/liquidity.
- **Price improvement** I attach a copy of our paper discussing the possible price improvement obligation that could be applied across all firms and trading, to support lit price formation and benefit investors

3 Consolidated Tape

I thought it would be useful to restate what we discussed on CTP and the steps that are needed.

- As I mentioned, in general we support the proposals for a CTP- however, as a first step, in order to deliver a consolidated, harmonised, high-quality tape of post-trade data, a requirement must be imposed across the market on all venues, investment firms and vendors, specifying the harmonised data standards that must be adopted.
- To ensure that this is effective, within a defined time period after entry into force (e.g. no more than 3-6 months), ESMA should propose harmonised data standards, based on the work already carried out by CESR/ESMA and the Market Model Typology (MMT) project. ESMA should then require adoption of these standards by all market participants (trading venues, vendors, buy and sell side).
- Such an approach would effectively “quality-mark” the quality and consistency of post trade data and would make it capable of consolidation and delivery through a multiple or single CTP model.
- This approach would be necessary even if a single CTP model was implemented.
- As the activities of a consolidated tape provider in collecting and distributing data across the EU comprise a number of different functional activities that may be provided most efficiently and effectively by more than one entity, each co-operating together, they should be treated collectively as a CTP for the purposes of the Directive.

I hope this is useful ahead of the discussions at the next Council Working Group on 10 April. In the meantime, if you have any questions, please do not hesitate to contact me.

Regards

A large, dark, irregular redacted area covering the signature and any accompanying text.

[REDACTED]

From: [REDACTED]
Sent: 06 February 2013 18:19
To: [REDACTED]
Cc: [REDACTED]
Subject: MiFID II: Tradeweb Follow up

Dear [REDACTED]

As a follow up to previous meetings/correspondence we have had on the MiFIR/MiFID II file, please find below Tradeweb principal concerns on the most recent Council draft compromise texts which we are also sharing with your colleagues at the FSA and the Treasury.

Derivatives Trading Mandate

- Block Trading Exemption. It is difficult to provide much concrete feedback on these provisions as we find them quite confusing. However, we would note two points in particular:
 - We do not understand how the reference to the €100,000 threshold is supposed to operate. If this refers to a €100,000 threshold based on notional amount, please note that almost all IRS and CDS trades exceed this threshold. This means that very few transactions would fall within the trading mandate.
 - We would urge coordination with US regulators on block trading calculations to avoid the possibility of regulatory arbitrage.
- Continuous Interest Requirement. We have significant concerns with the proposed requirement that for a derivative instrument to be subject to the trading mandate, such instrument must have "sufficient continuous third party buying and selling interest". Unlike equities instruments, derivatives (such as interest rate swaps and credit default swaps) are primarily traded outside of exchanges and do not trade "continuously" (or even frequently), yet they are liquid and can be and are readily traded electronically. While it is unclear exactly what is meant or intended by "sufficient continuous third party buying and selling interest", we are concerned that interpreted literally, this "continuous trading requirement" could exclude virtually all off-exchange derivatives being subject to the trading mandate.

Unequal Playing Field for Pre-Trade Transparency Obligations

- General. Further consideration is required regarding how pre-trade transparency obligations may be met and monitored in a voice trading or discretionary trading environment to ensure a level playing field with trading venues where real-time dissemination of pre-trade data may be more feasible from a technological perspective.
- Systematic Internalisers. Under the revised MiFIR draft, more stringent pre-trade transparency obligations are imposed on trading venues (regulated markets, MTFs, OTFs) than on systematic internalisers, thereby creating an unequal playing field and potentially triggering competitive disadvantages for these multilateral venues. For example, systematic internalisers are required to publish quotes only where there is a "liquid market" for the relevant instrument, which is a limitation not applicable to trading venues. We urge the Council to ensure an equal playing field for transparency obligations.

We have also included below an outline of the key features of the institutional fixed income/derivatives markets that differ significantly from the equities markets along several key parameters. In addition, we have noted

below some issues being addressed in MiFID II/MiFIR where we believe such differences between these markets would require differing regulatory approaches.

We hope that you would find the information useful and that our concerns could be taken into consideration in the upcoming discussions.

Please do not hesitate to let us know if you would like to discuss any of these issues in more detail.

Kind regards,

<u>Issue</u>	<u>Institutional Fixed Income/Derivatives</u>	<u>Equities</u>
Number of Instruments	Many	Few
Number of Participants	Few	Many
Frequency of Trades	Low	High
Average Trade Size	High	Low
Trading Relationships	Disclosed (Parties reveal identities before transaction)	Anonymous
Trading Methods	Request for Quote (RFQ) Click to Trade (Streaming Prices)	Central Limit Order Book

Selected Relevant Issues in MiFID II/MiFIR

Pre/Post-Trade Transparency. As noted by many market participants, pre/post-trade transparency obligations need to be tailored to the features of the institutional fixed income/derivatives markets to avoid adverse consequences for liquidity.

Required Indicative Pricing. Trading venues in the fixed income/derivatives markets such as Tradeweb publish indicative prices for a wide range of instruments based on pricing furnished by market makers. However, given the enormous number of bonds and derivatives (as compared to equities), it is not realistic to expect liquidity providers to continuously furnish pricing for **all** such instruments. As a result, it is not possible for venues, in turn, to provide indicative pricing for **all** such instruments, as currently contemplated in the Council version of MiFIR. (See MiFIR Article 7(3)).

Required Incentives for Market Makers to Provide Competitive Firm Prices. Whereas there may be circumstances under which trading venues hosting anonymous trading should be required to incentivise market makers to provide competitive firm prices, this is not the case for venues with disclosed trading modes (where the counterparties are aware of each other's identities on a pre-trade basis). These types of "disclosed" trading models already have a built-in incentive for market makers to provide competitive firm prices: if market makers do not provide such prices, then their buy-side clients will stop asking them for quotes and will instead seek liquidity from other entities. (See MiFID II Article 51(a)).

System Monitoring/Compliance. Various provisions in MiFID II requiring systems monitoring/compliance may make sense for equities markets but are not appropriate for the institutional fixed income/derivatives markets. These include systems to (1) reject orders that exceed pre-determined price thresholds, (2) halt trading following significant price movements, including on other markets, (3) limit the ratio of unexecuted order to transactions entered into the system and (4) limit minimum tick sizes. (See MiFID II, Article 51).

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: 04 February 2013 14:02
To: [REDACTED]
Cc: [REDACTED]
Subject: STP - A25 MiFIR
Importance: High

Dear [REDACTED]

In the spirit of taking advantage of the 'open door' – we have rather serious concerns about the STP text which has crept into the MiFIR text at article 25.

We do not have any reservations about STP as an abstract technical matter: we use it ourselves. However there is a big difference between agreeing that it's "a good thing", and being in agreement with a single EU approach harmonized to the nth degree at level 2, which is what the Commission drafting envisages: "ESMA shall develop draft regulatory technical standards to specify the minimum requirements for systems, procedures and arrangements (including the acceptance timeframes) under this paragraph, and shall have ongoing authority to update these requirements as industry standards evolve".

What this will mean in practice – inevitably – is that ESMA will put together a technical group which will produce technical specifications now and in the future which will differ from what we do, forcing us to change. The costs in making these changes, and in abandoning existing systems which work perfectly well, will be substantial – for no benefit other than harmonisation for harmonisation's sake. I can get you ballpark costings if you are interested.

We see this provision as all cost and no benefit, and as such are not supportive and do not really see the reasoning. Hope this helps to give some perspective on the new A25 text.

Best regards

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] United Kingdom

[REDACTED]

[REDACTED]

[REDACTED] Services and Markets Act 2000

[REDACTED]

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[REDACTED]

From: [REDACTED]
Sent: 24 January 2013 10:19
To: [REDACTED]
Cc: [REDACTED]
Subject: Reference price Waivers

Dear [REDACTED]

It was good to meet again last week. You asked about the reference price waiver and I put the question to [REDACTED], here is his answer.

The reference price waiver is used by MTFs and broker pools when the parent order does not itself qualify for the large-in-scale waiver. This might be for a number of reasons, such as the investor spreading out a large order on his OMS via many small child placements, to minimise potential info leakage even to the broker. In reality the fact that the order is not pre-trade transparent is almost irrelevant for the following reasons:

1. If the stock is liquid, the HFT market makers will almost certainly be at the front of any order book on both the bid and offer, so the dark order is not setting the price anyway, until it becomes the wrong price at least.
2. In liquid stocks every small trade is printed in real time, so the small child placement using this waiver, which in itself is unlikely to be large enough to influence the price, is reported immediately, providing the price discovery that people are concerned about. Our concern is that if this waiver is removed then the pattern of entering small child orders to the lit book with limits would be very easy for the HFT algos to detect.

If the stock is illiquid then any investor should be using limit orders and is free to place an order within the displayed spread, in which case it would interact with a hidden order. The impact of displaying any meaningful size in less liquid stocks is the whole reason for wanting to be able to hide the size of potential demand or supply using the waiver.

[REDACTED] is very prepared to engage in these conversations and has been over to Brussels a couple of times. He was also on the expert group of the Foresight project. If you wanted to follow up with him direct I can organise that.

Regards

[REDACTED]
[REDACTED]

[REDACTED] ted)

From: [REDACTED]

Sent: 12 December 2012 14:05

To: [REDACTED]
[REDACTED] (mailto:[REDACTED])

Subject: EFAMA RPW Paper

Attachments: 12_4060_EFAMA_Letter on Reference Price Waivers.pdf.pdf

Importance: High

Final paper distributed today to PermReps, ECON MEPs, and [REDACTED] at the EC.

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[REDACTED]

From: [REDACTED]
Sent: 10 December 2012 12:40
To: [REDACTED]
Subject: Follow-up from today's meeting
Attachments: MiFID Waivers - use and impact on end-investors.docx.docx.docx; ViewPoint - European Fixed Income.pdf.pdf

[REDACTED]

Thanks for meeting earlier today. By way of follow-up I attach the note I mentioned arguing in favour of the continued possibility to use the full range of waivers in MiFID II and the benefits this brings for end-investors. I also attach the ViewPoint we have written on how we think about fixed income markets (most likely you have seen this already).

On the corporates angle I'm going to talk to Fleishman about bringing a group together on this.

Have a great holiday and let's get back in touch in the New Year.

Best regards

[REDACTED]

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[REDACTED]

From: [REDACTED]
Sent: 20 November 2012 15:55
To: [REDACTED]
Cc: [REDACTED]
Subject: OTC Definition - a review of the arguments
Attachments: MiFID Report by Gomber Pierron (Oct 2010).pdf.pdf; Oct 2010 CESR Advice on Post Trade Transparency.pdf.pdf; MiFID - OTC Definition Trade Flagging.doc.doc

Dear [REDACTED]

Following the discussions I had with [REDACTED] a couple of weeks ago in Brussels, I wanted to share with you both some of the revised positions we are taking on the OTC definition issue in MiFID/R.

The paper seeks to propose some modifications to the current OTC definition which take account of concerns raised as to the rationale and practicability of the provisions. We thought this would be useful to share with you and of course would be happy to have a phone conversation to clarify any of the points.

Best regards,

[REDACTED]

>>> Overview

In the discussions on the proposed OTC definition concerns have been raised as to the rationale, justification and practicality of the definition. This paper seeks to take a step back and clarify the reasons why a definition is required alongside some suggestions which can accommodate the criticisms that have been advanced.

- Argument against a definition: Define trading venues and leave OTC undefined and 'residual':
 - Issue: this is the approach from MiFID 1, which delivered a high proportion of OTC equities trading in Europe which in turn justifies a workable definition.
- Argument against a definition: Non fit of definition with EMIR and issues of non financial counterparties:
 - Solution: reduce scope of OTC definition to equities only removes EMIR point and also non-financials issue appeared to have been dealt with in the latest compromise text.
- Argument against a definition: providing space in the OTC world for legitimate transactions:
 - Solution: using the framework of trade flags and categories proposed by CESR to accommodate non large in scale technical transactions.

1. Defining the OTC problem and identifying the right policy objectives

- It is critical **not to lose sight of the fundamental problem** we are seeking to address: the growth of OTC equities trading in small transaction sizes of liquid shares.
- The attached independent Gomber study demonstrates this perfectly: 50% of OTC equities trade studied were under standard market size and a full 2/3 were judged to be at a size which would have no market impact if traded on a lit venue (attached, see pg 13).

- In contrast, one of the arguments against the introduction of a binding definition of OTC equities trading is that all this trading is currently large and illiquid. **Is there evidence to demonstrate that, in OTC equities trading, the majority of volumes are large and illiquid?**
- The original spirit of the OTC definition for equities is to **allow the trading of large in scale transactions without pre-trade transparency in order to mitigate market impact.**
 - *We agree with the use of OTC for this purpose.*
- As such, we are proposing a definition of **OTC trading for large in scale equities only** to avoid any overlap with EMIR and to allow customized hedging transactions (OTC derivatives, bespoke operations etc) to continue as is the case today. We note that the latest Presidency compromise text appears to have exempted transactions between non-financial counterparties from the definition.
- An approach limiting the OTC definition to cash equities only is justified by the fact that 2/3 of OTC equities trading is currently in shares which would have no market impact if traded on lit venues. It's a solution to a clearly identified market problem today. Furthermore, the suggestion that applying post-trade transparency rules to OTC would solve the situation should be disregarded: post-trade transparency already applies to the OTC space and one only has to review the current market situation to evaluate the effect of these provisions. Two important principles are at stake here:
 - **Investor protection:** trading on an OTC basis means that investor protection is harmed because there are absolutely no execution rules for trades executed OTC, nor any pre-trade transparency. This means that (i) banks can execute client trades with total discretion in respect to the execution price and (ii) that investors are not provided with the necessary information to take an informed investment decision. While the bank is under an obligation to execute on best terms for the client, defining what exactly "best execution" means is particularly difficult, which leaves banks with a considerable scope for interpreting the best execution obligations they bear towards their clients. In addition, the absence of pre-trade transparency and sufficiently detailed and harmonised of trade reporting standards and flags in the OTC space renders it impossible for the client to verify that best execution has actually been achieved. In contrast, execution rules on multilateral venues are public and predictable and serve the best interests of the investor.
 - **Undermining the price formation process:** OTC equities trading also undermines the overall price formation process on lit venues since an ever increasing amount of addressable liquidity which should be part of the multilateral price formation process does not contribute to this process since, by essence, there is no pre-trade transparency in the OTC space: at some point this will undermine the core function of financial markets, which is to enable the efficient formation of prices.
- Arguments have also been advanced on the need for **internalization to allow for the trading of illiquid instruments**, which we consider flawed for the following reasons:
 - First, where the orders are large in scale (therefore creating liquidity issues of market impact), **there is an existing waiver** designed for that. Alternatively, the broker can split the order into smaller ones;
 - Second, where there is an overall liquidity issue linked to the instrument itself (not the size of the order), say it is a small cap stock, then there are market makers on lit markets offering prices and market model mechanisms designed to deal with liquidity issues.
- The fundamental issue is that if everyone keeps liquidity away from the market because there is a perception that there is no liquidity, then this creates a **self fulfilling prophecy**: everyone keeps their trading intentions to themselves and the intermediary can profit from the trade by internalizing it.

2. Accommodating 'technical trades' within a legally binding definition of OTC cash equities trading

- An important element we do recognize is that there are **some non LIS equity transactions which should be allowed to be traded on an OTC basis**. These are generally transactions deemed to be 'non addressable' in respect of liquidity and which can therefore be justifiably traded on an OTC basis. This reflects one of the functions of the OTC category within MiFID to act as a '**residual**' framework: however this category should be the exception rather than the rule and should be properly framed within a legally binding framework.
- To be workable therefore, a definition of OTC cash equities trading should cover **large transactions** (LIS) as well **smaller trades** which, due to their nature, do not correspond to addressable liquidity and cannot be concluded on organised trading venues. Within this category of smaller trades there can exist a '**residual**' **category of technical trades**, which will ensure that the proposed framework provides a home for all trades. This addresses the argument that an important element of the OTC category is its 'residual' nature, which its proponents say provides flexibility to accommodate a variety of transactions that should be traded on an OTC basis. The cited examples could be easily accommodated in such a framework.
- Fortunately, such a framework already exists. In 2010 CESR elaborated a set of trade standards and corresponding flags to be used to identify all possible OTC equities trades (attached **CESR Technical Advice to the Commission on Equity Markets Post-Trade Transparency Standards - attached**). Based on substantial industry work, CESR proposed the adoption of trade flags covering organised trading venues and OTC.
- CESR proposed **four specific categories** (benchmark trades, agency crossing trades, give-up / give-in trades and ex/cum dividend trades) and a separate generic '**technical trade**' **category** to cover a broader range of non addressable liquidity.
- The use of these categories would allow for the **accommodation of non addressable liquidity trades** within an OTC space which is legally defined, but with the sufficient flexibility to either be categorised by type (as above) or included within a defined 'residual' category, i.e. 'technical trades'. Over time ESMA could analyse the nature of transactions falling into this residual category and determine whether the creation of additional categories to accommodate them would be necessary.

3. Conclusion

- The overall outcome of our proposal would be an OTC market for cash equities which is legally framed, allowing transactions which would have market impact on lit venues due to their size while at the same time providing flexibility to accommodate non-addressable liquidity in a framework which is much better defined than is the case today.
- This is in perfect alignment with the overall objectives set by the G20 to increase transparency and ensure that all markets, participants and products are appropriately regulated and supervised.



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[REDACTED]

From: [REDACTED]

Sent: 19 November 2012 15:21

To: [REDACTED]

Cc: [REDACTED]

Subject: MIFID/R important clarification - post-trade risk reduction

Attachments: Doc_00174.pdf; Briefing doc.pdf

Dear [REDACTED]

Attached are copies of a letter and related briefing paper which we sent to [REDACTED] today in the Commission.

It concerns an important remaining technical issue in the current drafting of MIFID/R which may, if not addressed, stop derivatives post-trade risk reduction services, such as trade compression, from functioning in the future.

We realize MIFID/R is at an important stage of negotiations and are grateful for the excellent work which has been put in from the UK side on this file.

On the specifics of these clarifications we would be grateful if they could be integrated into your thinking (albeit hoping that the OTC trading requirement clarification will become a redundant concern). We have also shared the briefing paper with Stockholm.

Please do let me know if you have any questions.

Best regards

[REDACTED]



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[REDACTED]

From: [REDACTED]
Sent: 07 November 2012 17:49
To: [REDACTED]
Cc: [REDACTED]
Subject: NYSE Euronext: Open access note
Attachments: MiFID-R Open Access - Preferred CCP Model.pdf

Dear [REDACTED]

Hope all is well with you.

Ahead of this Friday's Council working group on MiFID-R, please find attached an **updated position paper** presenting our views on the MiFIR open access provisions.

In addition to outlining our existing positions, this short document also include an analysis of an approach, the "**preferred CCP model**", proposed by some stakeholders to address the issue of liquidity fragmentation arising from article 29. Although this model has operated in some cash equity markets as a means of providing clearing choice without fragmenting liquidity at trading level, we are concerned that is **not fit for purpose in relation to exchange-traded derivatives markets**.

I trust this document is useful to you and remain at your disposal should you require any clarification from our side.

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]