

Alberto Thomas  
Fideres Partners LLP  
380 Lexington Avenue,  
Suite 1743  
New York City  
NY 10168

By Electronic Mail

Office of the Secretary,  
U.S. Securities and Exchange Commission,  
100 F Street, NE  
Washington DC 20549

New York, August 10 2020

Dear Madam/Sir,

**Re: Use of Encrypted, Un-monitored Chatrooms by Traders**

A recent article of the Financial Times (“US Treasuries: the lessons from March’s market meltdown”, 30 July 2020)<sup>1</sup> has brought to the light the use of encrypted and unofficial chatrooms such as Whatsapp for the sharing of market rumors between market participants. Such informal channels pose a threat to market efficiency and integrity, if used for the sharing of pricing information, trade coordination and the sharing of insider information. Therefore, the use of encrypted and unmonitored chats can compromise the SEC’s ability to enforce Rule 10b-5 and 10b-5 (1). It may also make it very difficult, if not impossible, to uncover crucial evidence of infringement of Section 2 of the Sherman Act.

In the aftermath of the Great Financial Crisis, regulatory enforcement actions by financial regulatory bodies around the world has been crucial to identify illegal conduct in, among others, the coordinated manipulation of IBOR rates, WM/Reuters fix, ISDAfix, The Gold Fix and many others. Fideres’s work to investigate financial misconduct has also heavily relied on Bloomberg chatroom transcripts to prove anticompetitive and manipulative conduct against the defendants.

We have been aware for some time that, in order to avoid detection, traders move their chat to encrypted software such as Whatsapp, Telegram and Snapchat. Such practice has emerged despite compliance control functions emanating policies forbidding the use of unmonitored chatrooms.

We therefore propose that the SEC emanate a new rule that:

- (a) Forbids the use of private mobile phones and other devices with mobile data connectivity on trading floors. Only employer owned devices are allowed, as long as they prevent the use of unmonitored apps. The employer must put in place adequate measures to enforce

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<sup>1</sup> <https://www.ft.com/content/ea6f3104-eeec-466a-a082-76ae78d430fd>

such policy such as requesting that personal devices be handed in before entering trading floor

- (b) Imposes criminal penalties on market participants found to have used such devices to exchange market sensitive information
- (c) Creates a rebuttable presumption of breach of the relevant rules on the individuals and their employers in cases of insider trading, market manipulation or antitrust infringement in cases where such chatrooms content cannot be retrieved.

We look forward to your response,

Yours sincerely,



Alberto Thomas, Partner

Fideres Partners LLP