

All interested parties and stakeholders

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Date: 27 February 2015

Dear colleague,

**Consultation decision on Ofgem's proposed application process for NEMO designation and application of designation criteria, and**

**Formal invitation for applications to be designated a NEMO in GB for single day ahead and /or intraday coupling**

On 18 December 2014 we consulted on our proposed process for designation of Nominated Electricity Market Operators (NEMOs) in GB<sup>1</sup>. We proposed stages and timings for an initial process and for an ongoing process to designate NEMOs in GB. We also set out our understanding of the criteria, which candidates must meet to be designated a NEMO, provided by the Regulation on Capacity Allocation and Congestion Management (CACM).

This letter summarises the responses we received and sets out our consultation decision. In addition, it formally invites interested parties to submit applications to be designated a NEMO in GB for single day ahead and / or intraday coupling through an initial designation process. It also invites applications on an ongoing basis following the completion of this initial process. This letter includes information on what, when, and how applications should be submitted by all interested parties for the initial and ongoing processes.

**Consultation responses**

We received three responses to our consultation, one of which was marked confidential<sup>2</sup>. The key issues relevant to NEMO designation are summarised here and our responses set out in our decision below.

With respect to our proposed approach, one respondent questioned the value and need for a 28 day consultation on our draft designation decision, and suggested an additional step should be included whereby applicants may discuss their applications with Ofgem before submission and that the deadline for such discussions should be 30 March 2015. The respondent also asked whether legislative change will be required for NEMO designation and for clarity on the applicable appeals process.

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<sup>1</sup> The consultation letter can be found here: <https://www.ofgem.gov.uk/ofgem-publications/92240/openletteronimplementationandconsultationonnemodesignation.pdf>

<sup>2</sup> Responses to our consultation can be found here: <https://www.ofgem.gov.uk/publications-and-updates/implementing-eu-electricity-network-codes-and-consulting-ofgem%E2%80%99s-proposed-application-process-nemo-designation>

We also received an additional confidential response to our consultation which was submitted outside of the consultation deadline. We considered this confidential response as the information it raised was relevant to the decision detailed in our letter. However our final decision did not change as a result of this additional submission.

With respect to our understanding of the designation criteria, one respondent explained it understood our approach to mean, on some criteria, an assessment of capability and commitment to perform or demonstrate arrangements by the time single day ahead and intraday coupling is implemented. It explained that its application will therefore be to demonstrate capability to perform NEMO functions required by the Regulation on CACM, and that while existing coupling arrangements may form the basis of the NEMO functions they are not currently one and the same.

## **Consultation decision**

### *Approach to process*

Legislative change is not required for us to designate NEMOs in GB. The CACM Regulation requires regulatory authorities to be the designating authority, unless otherwise provided for by Member States. As set out in our letter 18 December Ofgem will designate NEMOs in GB. Parties may appeal against our designation decisions through Judicial Review.

Ofgem considers it important to provide a transparent and clear process for how we make decisions. We will consult on our draft decisions for all applications to allow opportunity for all stakeholders to provide comments they consider may be relevant in our assessment of whether a candidate meets the designation criteria.

We confirm we will accept formal submissions by candidates for the initial designation process by 30 March 2015. We will not accept any additional applications after 30 March 2015 until the initial process has been completed. The initial designation process will be completed when we publish a final decision on applications. Once the initial process has been completed we will accept additional formal submissions on an ongoing basis.

We consider it important to receive formal submissions for both the initial application round and any subsequent applications. We believe that requiring formal applications provides a clear, non discriminatory process for assessment and decision-making. In addition, we consider it important to have a clear process and a set deadline for applications for the initial process to allow sufficient time to meet the requirement to have designated a NEMO within four months after entry into force of the Regulation on CACM.

Ofgem would be happy to discuss any submissions and draft applications with potential candidates before receiving any formal submission. In addition, for the initial designation process we ask candidates to be available during the week commencing 13 April to discuss their formal submissions. We will arrange meetings with candidates following receipt of a formal submission. For the ongoing process we will arrange meetings with candidates to discuss their applications following receipt of a formal submission. For both processes we may require further information from and meetings with candidates during the assessment process.

### *Designation criteria:*

We will assess whether candidates meet the criteria set out in the Regulation on CACM. We will only designate or reject an application based on whether we consider the candidate meets the criteria. We have set out our understanding of the criteria in the Annex to this letter, and consider the assessment of these criteria to be an assessment of a candidate's capability to perform the NEMO tasks set out in the Regulation on CACM for single day ahead and / or intraday coupling.

The initial designation process cannot assess whether a candidate meets the detailed methodologies, terms and conditions that the Regulation on CACM will subsequently require designated NEMOs to submit to NRAs for approval. These methodologies, terms and conditions will set the detailed operational and contractual arrangements for single day ahead and intraday coupling. However, once approved, all NEMOs will be required to

comply with the Regulation and the approved methodologies, terms and conditions in delivering the NEMO tasks. The designation process is therefore an assessment of capability to perform the NEMO tasks. This capability test will also apply to ongoing applications for designation.

In order to make sure the criteria are applied in such a way that competition between NEMOs is organised in a fair and non-discriminatory manner we will accept and assess all submissions on their own merit, avoiding discrimination between candidates, and assess all candidate's capability to enter into arrangements that allow other NEMOs to operate single day ahead and / or intraday coupling. However, in our consultation we said that our understanding of the criteria included that:

*given more than one entity already operates day ahead coupling in GB, applications for designation as a NEMO for single day ahead coupling must provide evidence that it has or will enter into the operational and contractual arrangements required to allow more than one entity to operate day ahead coupling in GB including evidence that these arrangements allow for new TSOs and NEMOs to enter into these arrangements, as required by Article 43b(1)).*

To clarify, candidates applying for day ahead and / or intraday coupling must demonstrate they have or will enter into operational and contractual arrangements that allow more than one NEMO to operate day ahead and / or intraday coupling, as required by Articles 45 and 57 of the CACM Regulation. We will assess applications against this understanding of the criteria.

### **Statement of reason for not carrying out an impact assessment**

We have decided that we will not undertake an Impact Assessment as part of our designation decision. This is for a number of reasons, including, but not limited to:

- Designation of NEMOs by designating authorities is a requirement of EU law. The Regulation on CACM requires designating authorities to assess whether NEMO candidates meet the criteria set out in Article 6, avoid any discrimination between applicants, and only refuse candidates which do not meet the criteria. We therefore have no discretion in making a decision other than whether we consider a candidate meets the criteria.
- Accordingly, if a candidate does meet the criteria Ofgem is bound to designate the candidate as a NEMO in GB. This is because Ofgem must act compatibly with EU law when exercising its functions. An impact assessment could not change the designation decision that has to be taken by the Authority and would therefore not serve any useful purpose.
- This is consistent with our approach to impact assessments on other decisions made in respect of the European Network Codes.

### **How we may use the information submitted as part of the formal submission and how this information may be disclosed**

Candidates should clearly identify in any application any information which the applicant considers to be confidential. For each piece of information identified, the applicant should provide an explanation as to why that information is confidential<sup>3</sup>.

We may use information provided to us as part of a formal submission for designation as a NEMO in assessing applications, designating candidates, and monitoring their compliance with the criteria. Any information which candidates provide will be subject to certain

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<sup>3</sup> For these purposes, information will be confidential if it is personal information for the purpose of section 40 Freedom of Information Act 2000; or information the publication or disclosure of which would, or would be likely to, prejudice the commercial interest of any person.

statutory restrictions and obligations on the Authority relating to disclosure and use of information. These are contained in section 105 Utilities Act 2000, the Authority's obligations under the Data Protection Act 1998 and the Freedom of Information Act 2000.

### **Formal invitation for applications to be designated a NEMO in GB for single day ahead and /or intraday coupling**

All interested parties are invited to submit applications to Ofgem to be designated as a NEMO in GB for single day ahead and / or intraday coupling either through the initial designation process or the subsequent ongoing process.

The initial designation process will be as follows:

- Applications may be made to the Authority, stating clearly whether it is for day ahead and / or intraday coupling, until **30 March 2015**. We welcome potential candidates to arrange a meeting with us in advance to discuss a draft application.
- We will invite candidates to discuss their formal submission during the **week commencing 13 April 2015** following receipt of their formal submission. We may require further information from and meetings with candidates during the assessment process.
- We will consult on our draft decision on whether candidates meet the designation criteria for 28 days in **June 2015** subject to the need for initial time to assess additional information and meet with candidates.
- We will make a final decision on applications, and give formal designation to successful candidates, on / or before the NEMO designation deadline taking into account the date of entry into force of the CACM Regulation and consultation responses.

Interested parties should contact [matthew.ramsden@ofgem.gov.uk](mailto:matthew.ramsden@ofgem.gov.uk) to discuss draft applications, and **should send formal submissions addressed to the Authority to Matthew Ramsden no later than 30 March 2015**.

**Candidates must complete the application template set out in the Annex to this letter and include this in their formal submission.** The template requests specific information for candidates to provide to help process and assess submissions. It also provides examples of evidence candidates may include, but are not limited to, in their applications to demonstrate they meet our understanding of the criteria. **The examples do not alter our understanding of the criteria and we will only take into account whether NEMOs meet the criteria in making a decision.**

We also invite interested parties to submit applications to the Authority to be designated a NEMO on an ongoing basis once we have completed this initial process. The initial designation process will be completed when we publish a final decision on applications.

As with the initial process interested parties may contact Ofgem to discuss draft applications and must submit a formal application to the Authority including a completed application template set out in the Annex to this letter. We will invite candidates to discuss their formal submissions following receipt of their formal submission, and may require further information from and meetings with the candidate during the assessment process. We will consult on our draft decision on applications for 28 days, and we will make a final decision, and give formal designation to successful candidates, taking into account consultation responses.

Yours sincerely,

Mark Copley  
Associate Partner Wholesale Markets

## Annex 1

### Application template to be completed and submitted with formal application by candidates

#### 1. Background questions

- Please provide a statement of the natural or legal entity applying to be designated a NEMO in GB for single day ahead and / or intraday coupling, and confirmation of whether this entity is a national legal monopoly in any other Member State: **[please complete]**
- Please provide a statement of whether the candidate is applying for designation in GB for single day ahead and / or intraday coupling: **[please complete]**
- Please provide a statement of whether all or part of the submission is confidential, the reasons why, and that the confidential information is clearly market confidential: **[please complete]**
- Please provide contact information to be used for all correspondence during the designation process: **[please complete]**

#### 2. Submission of evidence to demonstrate candidate meets the criteria for designation set out in the Regulation on CACM

<b>CACM Designation Criteria Article 6.1.a:</b>	<b>Our understanding of criteria:</b>	<b>Confirmation that information has been submitted: Y/N</b>
it has contracted or contracts adequate resources for common, coordinated and compliant operation of single day-ahead coupling and/or single intraday coupling, including the resources necessary to fulfil the NEMO functions, financial	<p><i>Applications must include evidence of</i></p> <ul style="list-style-type: none"><li>- <i>adequate capitalisation and financial security to cover its activities and risk exposure in order to operate efficient, reliable, and stable single day ahead and/or intraday coupling.</i></li><li>- <i>necessary user platforms and interfaces, including necessary information technology, technical equipment, and or contractual service level agreements, together with contingency plans, to operate efficient, reliable, and stable single day ahead and/or intraday coupling.</i></li><li>- <i>operational arrangements, including contractual arrangements with members, NEMOs, and TSOs, together with contingency plans, demonstrating how it will deliver the NEMO tasks. In particular, candidates applying for day ahead and /</i></li></ul>	<p>Confirmation of where the relevant information is provided in main or supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>

<p>resources, the necessary information technology, technical infrastructure and operational procedures or it shall provide proof that it is able to make these resources available within a reasonable preparatory period before taking up its tasks in accordance with Article 7;</p>	<p><i>or intraday coupling must demonstrate they have or will enter into operational and contractual arrangements that allow more than one NEMO to operate day ahead and / or intraday coupling, as required by Articles 45 and 57 of the CACM Regulation.</i></p> <p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <ul style="list-style-type: none"> <li>a. Clear reporting on: <ul style="list-style-type: none"> <li>- Operating costs, capital and debt</li> <li>- Contingency reserves, borrowing facilities, and any parent company guarantees</li> <li>- Insurance and liabilities</li> <li>- Other activities impacting on costs and liabilities</li> </ul> </li> <li>b. Clear description and evidence of risk assessment and sensitivity analysis undertaken to demonstrate current and ongoing financial adequacy.</li> <li>c. Clear explanation and description of technical systems, how they work, ownership and / or contractual and service level agreements for operation and servicing of single day ahead and / or intraday coupling.</li> <li>d. Clear explanation of risk planning, testing, monitoring, reporting, and contingency plans to ensure technical system performance.</li> <li>e. Clear description and explanation of how it will operate single day ahead and / or intraday coupling, including organisational chart, whether any functions will be delivered internally or outsourced, and explanation of contingency plans and risk planning.</li> <li>f. Clear demonstration and confirmation these technical systems, processes, and contractual arrangements allow or will allow other NEMOs and TSOs to operate day ahead and / or intraday coupling.</li> </ul>	
<p><b>CACM Designation Criteria Article: 6.1.(b):</b></p> <p>it shall be able to ensure that market participants have open access to information regarding the NEMO tasks in</p>	<p><b>Our understanding of criteria:</b></p> <p><i>Applications must include evidence that it is able to ensure market participants have open access to the arrangements, methodologies, rules, processes, and data required to be made public by the CACM Regulation.</i></p> <p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <ul style="list-style-type: none"> <li>a. Clear description of where and how market participants will be able to access</li> </ul>	<p><b>Confirmation that information has been submitted: Y/N</b></p> <p>Confirmation of where the relevant information is provided in main or supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential</p>

accordance with Article 7;	<p>information required to be made public by the Regulation on CACM.</p> <p>b. Clear description of contingency planning to make sure this information is available.</p>	<p>together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>
<p><b>CACM Designation Criteria Article 6.1.(c):</b></p> <p>it shall be cost-efficient with respect to single day-ahead and / or intraday coupling and shall in their internal accounting keep separate accounts for MCO functions and other activities in order to prevent cross-subsidisation;</p>	<p><b>Our understanding of criteria:</b></p> <p><i>Applications must include evidence that they have separate accounts for the MCO functions and other NEMO activities, and can report a clear breakdown of all their NEMO costs.</i></p> <p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <ol style="list-style-type: none"> <li>a. Clear description and explanation of processes to be able to identify and separate MCO and NEMO costs,</li> <li>b. Clear description and explanation of separate accounts that will be used for MCO and NEMO costs,</li> <li>c. Clear description of processes to report a clear breakdown of all its NEMO costs, including MCO costs.</li> </ol>	<p><b>Confirmation that information has been submitted: Y/N</b></p> <p>Confirmation of where the relevant information is provided in main or supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>
<p><b>CACM Designation Criteria Article 6.1.(d):</b></p> <p>it shall have an adequate level of business separation from other market participants;</p>	<p><b>Our understanding of criteria:</b></p> <p><i>Applications must include evidence of adequate business separation that includes a clear description of their corporate structure.</i></p> <p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <ol style="list-style-type: none"> <li>a. Clear description and explanation of the natural or legal entity applying for designation, its legal status, and place of registration.</li> <li>b. Clear description and explanation of its corporate structure, including a description of its board or governing body and details of its Directors, and any arrangements to ensure adequate business separation.</li> </ol>	<p><b>Confirmation that information has been submitted: Y/N</b></p> <p>Confirmation of where the relevant information is provided in main or supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>
<p><b>CACM Designation Criteria Article 6.1.(e):</b></p> <p>if designated as a national legal monopoly</p>	<p><b>Our understanding of criteria:</b></p> <p><i>Applications must include evidence that they have separate accounts for services provided as a national legal monopoly to prevent cross-subsidisation.</i></p>	<p><b>Confirmation that information has been submitted: Y/N</b></p> <p>Confirmation of where the relevant information is provided in main or</p>

<p>for day-ahead and intraday trading services in a Member State, it shall not use the fees in Article 5(1) to finance its day-ahead or intraday activities in a Member State other than the one where these fees are collected;</p>	<p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <ul style="list-style-type: none"> <li>a. Clear description and explanation of separate accounts and accounting processes for any national legal monopoly activities in any Member State.</li> </ul>	<p>supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>
<p><b>CACM Designation Criteria Article 6.1.(f):</b></p> <p>it shall be able to treat all market participants in a non-discriminatory way;</p>	<p><b>Our understanding of criteria:</b></p> <p><i>Applications must include evidence that they are able to treat all market participants in a non-discriminatory way.</i></p> <p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <ul style="list-style-type: none"> <li>a. Clear description and explanation of processes for market participants to join and use its services ensuring non-discrimination.</li> <li>b. Clear description of internal processes for making sure operational arrangements, contractual arrangements, and services to market participants are not discriminatory.</li> </ul>	<p><b>Confirmation that information has been submitted: Y/N</b></p> <p>Confirmation of where the relevant information is provided in main or supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>
<p><b>CACM Designation Criteria Article 6.1.(g):</b></p> <p>it shall have appropriate market surveillance arrangements in place;</p>	<p><b>Our understanding of criteria:</b></p> <p><i>Applications must include evidence of training and monitoring procedures to identify and report any potential issues consistent with the requirements of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT).</i></p> <p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <ul style="list-style-type: none"> <li>a. Clear description and explanation of staff training for REMIT.</li> <li>b. Clear description and explanation of its processes to: retain data, monitor trading activities, identify possible REMIT cases, assess and investigate possible REMIT cases, and escalate potential case internally and in line with its</li> </ul>	<p><b>Confirmation that information has been submitted: Y/N</b></p> <p>Confirmation of where the relevant information is provided in main or supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>



	REMIT obligations.	
<p><b>CACM Designation Criteria Article 6.1.(h):</b></p> <p>it shall have in place appropriate transparency and confidentiality agreements with market participants and the TSOs;</p>	<p><b>Our understanding of criteria:</b></p> <p><i>Applications must include evidence of appropriate transparency and confidentiality agreements with market participants and TSOs.</i></p> <p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <ol style="list-style-type: none"> <li>a. Clear description and explanation of its processes to assess what transparency and confidentiality agreements are required and how these will be agreed with Market Participants and TSOs.</li> <li>b. Demonstration of any existing relevant agreements or commitment to enter into the necessary agreements.</li> </ol>	<p><b>Confirmation that information has been submitted: Y/N</b></p> <p>Confirmation of where the relevant information is provided in main or supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>
<p><b>CACM Designation Criteria Article 6.1.(i):</b></p> <p>it shall be able to provide the necessary clearing and settlement services;</p>	<p><b>Our understanding of criteria:</b></p> <p><i>Applications must include evidence that they have, or have contracted an entity which is able to provide:</i></p> <ol style="list-style-type: none"> <li>a. <i>adequate capitalisation and financial security, together with procedures in place to ensure satisfactory guarantees for settlements, necessary to clear and settle exchange of energy resulting from single day ahead and/or intraday coupling.</i></li> <li>b. <i>the technical, operational and contractual arrangements to clear and settle exchange of energy resulting from single day ahead and/or intraday coupling. In particular, candidates applying for day ahead and / or intraday coupling must demonstrate they have or will enter into operational and contractual arrangements that allow more than one NEMO to operate day ahead and / or intraday coupling, as required by Articles 45 and 57 of the CACM Regulation, as with our understanding of criteria 6.1.(a).</i></li> </ol> <p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <ol style="list-style-type: none"> <li>c. Clear reporting on operating costs and collateral requirements and holdings.</li> <li>d. Clear description and explanation of processes to establish what guarantees are needed for settlement.</li> <li>e. Risk assessment and sensitivity analysis undertaken to demonstrate ongoing</li> </ol>	<p><b>Confirmation that information has been submitted: Y/N</b></p> <p>Confirmation of where the relevant information is provided in main or supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>

	<p>adequacy.</p> <p>f. Clear description and explanation of how it will clear and settle, including: the market rules, member requirements, and processes for clearing and settlement, including with other NEMOs and TSOs where relevant.</p> <p>g. Clear description and explanation of the contractual arrangements necessary to deliver the clearing and settlement processes, including with other NEMOs and TSOs, and confirmation the operation and contractual arrangements allow or will allow other NEMOs and TSOs to operate day ahead and / or intraday coupling.</p>	
<p><b>CACM Designation Criteria Article 6.1.(j):</b></p> <p>it shall be able to put in place the necessary communication systems and routines for coordinating with the TSOs of the Member State;</p>	<p><b>Our understanding of criteria:</b></p> <p><i>Applications must include evidence of information and technical equipment and/or contractual service level agreements together with contingency plans for communicating with relevant TSOs.</i></p> <p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <p>a. Clear description and explanation of how it will communicate with TSOs, including ownership and contractual arrangements for operating and servicing the necessary equipment.</p> <p>b. Clear description and explanation of contingency arrangements and risk planning.</p>	<p><b>Confirmation that information has been submitted: Y/N</b></p> <p>Confirmation of where the relevant information is provided in main or supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>
<p><b>CACM Designation Criteria Article 2:</b></p> <p>The designation criteria set out in paragraph 1 shall be applied in such a way that competition between NEMOs is organised in a fair and non-discriminatory manner.</p>	<p><b>Our understanding of criteria:</b></p> <p><i>We will consider each application for designation based on whether that applicant meets the designation criteria. Applications must demonstrate that any contractual arrangements with other NEMOs and TSOs allow additional NEMOs and TSOs to operate single day ahead and intraday coupling in GB.</i></p> <p><b>Evidence that may be included, but is not limited to, within application in order to demonstrate the application meets this criteria:</b></p> <p>a. Clear description and explanation confirming that operational and contractual arrangements allow or will allow additional NEMOs and TSOs to operate day ahead and / or intraday coupling.</p>	<p><b>Confirmation that information has been submitted: Y/N</b></p> <p>Confirmation of where the relevant information is provided in main or supporting annex documents.</p> <p>Confirmation of whether all or part of the information is confidential together with an explanation of why this information is confidential.</p> <p><b>[please complete]</b></p>