



Luthra *and* Luthra
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CIRCULARS

1. Simplification and Streamlining of Offer Documents of Mutual Fund Schemes

Based on the suggestions received from Association of Mutual Funds in India ('AMFI') and the Mutual Fund Advisory Committee, SEBI has issued a [circular](#) on November 01, 2023 to simplify and streamline the format of the Scheme Information Document ('SID') of mutual fund schemes. The revised format is aimed at streamlining the dissemination of relevant information to the investors, rationalizing the preparation of SID and facilitating its periodic updation by mutual funds.

The updated format of the SID would be implemented from April 01, 2024. The draft SIDs to be filed with SEBI on or before March 31, 2024 or SIDs already filed with SEBI (final observations yet to be issued) or SIDs for which the final observations have already been received from SEBI (if launched on or before March 31, 2024), can use the old format of the SID, provided that the SIDs are updated as per the timeline mentioned in the circular. In line with the new SID format, SEBI has asked AMFI to carry out the necessary changes in the formats of the Key Information Memorandum and the Statement of Additional Information in consultation with it, within two months.

2. Procedural Framework for dealing with unclaimed amounts lying with the entities having listed non-convertible securities and manner of claiming such amounts by investors

SEBI has released a [circular](#) on November 08, 2023, providing a framework to define the manner of transfer of unclaimed amounts by a listed entity to an Escrow Account and claim of such amounts by an investor. Here, 'unclaimed amount' refers to the interest, dividend or the redemption amount that has not been claimed within thirty days from the due date of interest/dividend or redemption payment.

- (a) According to regulation 61A (2) of the SEBI LODR Regulations, the listed entity shall, within seven days from the date of expiry of thirty days, transfer the unclaimed amounts to an Escrow Account to be opened by it in any scheduled bank.
- (b) In case of any default in transferring the said amount, it shall pay an interest on the amount that has not been transferred to the Escrow Account for the period of default which would be calculated from the date of default till the date of transfer to the Escrow Account at the rate of 12% per annum.
- (c) The listed entity shall designate a person who may be a director, Chief Financial Officer, Company Secretary or Compliance Officer as a Nodal Officer who shall be the point of contact for investors entitled to claim their unclaimed amounts, SEBI, Stock Exchanges and Depositories.
- (d) The listed entity shall formulate a policy specifying the process to be followed by investors for claiming their unclaimed amount.
- (e) The listed entity shall preserve information pertaining to the unclaimed amounts of investors including relevant documentation. The listed entity shall furnish necessary information as and when called for by SEBI.

The circular also provides the framework for transferring the unclaimed amounts from the Escrow account to the Investors Protection and Education Fund ('IPEF') if the amount remains unclaimed for the period of seven or more years.

- (a) As per Regulation 61A (2) of the SEBI LODR Regulations, the listed entity shall, within thirty days from the date of expiry of seven years, transfer the unclaimed amounts to an IPEF.
- (b) In case of default in transferring the amount to IPEF within the stipulated time, the listed entity shall be liable to a penalty of one lakh rupees and in the case of continuing failure, a further penalty of five hundred rupees for each day that the failure continues, subject to a maximum of ten lakh rupees.
- (c) The listed entity shall within a period of thirty days of transferring the unclaimed amounts to the IPEF and upload the details on its website.

Listed entities having unclaimed amounts in the Escrow Account for less than 7 years, as on February 29, 2024, shall start computing interest as per the circular, from March 1, 2024. For listed entities which are not companies and have unclaimed amounts in the Escrow Account for more than 7 years, as on February 29, 2024, shall transfer the unclaimed amounts of the investors to IPEF, in compliance with the provisions of the circular, on or before March 31, 2024.

3. Procedural framework for dealing with unclaimed amount lying with Infrastructure Investment Trusts (InvITs) and manner of claiming such amounts by unitholders.

SEBI has released a [circular](#) providing a framework to be followed by an InvIT for transfer of unclaimed amounts initially to an Escrow Account and subsequently to the IPEF and claim of such amounts by a unitholder. The circular would come into effect on March 1, 2024.

- (a) Where a distribution has been made by the investment manager but the payment to any unitholders has remained unpaid or unclaimed, up to fifteen days from the date of declaration, the investment manager shall within seven working days from the date of expiry of such period of fifteen days, transfer such unclaimed amounts to an Escrow Account to be opened by it on behalf of the InvIT in any scheduled bank. Such bank shall be called 'Unpaid Distribution Account.'
- (b) In case a default is made in transferring the amount or portion of it to the Unpaid Distribution Account, the InvIT shall pay an interest on the amount that has not been transferred to the Account for the period of default which would be calculated from the date of default till the date of transfer to the Account at the rate of 12% per annum.
- (c) The Investment Manager shall designate a person who may be a director, Chief Financial Officer, Company Secretary or Compliance Officer of the InvIT as a Nodal Officer to be the point of contact for unitholders entitled to claim their unclaimed amounts, SEBI, Stock Exchanges and Depositories.
- (d) The Investment Manager shall formulate a policy specifying the process to be followed by unitholders for claiming their unclaimed amount.
- (e) The Investment Manager shall create an internal policy with respect to the process to be followed for verification of claims, facility to check status of claim by unitholders etc.
- (f) The Investment Manager shall preserve information pertaining to the unclaimed amounts of unitholders including relevant documentation. The Investment Manager shall furnish necessary information as and when called for by the Board.

Part-II of the circular concerns the transfer of unclaimed amounts from the Unpaid Distribution Account of the InvIT to IPEF by the Investment Manager.

The circular also provides a framework for transferring the unclaimed amount from the account to the Investors Protection and Education Fund, ('IPEF') if the amount remains unclaimed for the period of seven or more years.

- (a) Any amount transferred to Unpaid Distribution Account of an InvIT which remains unclaimed for the period of seven years from the date of transfer, shall be transferred by the Investment Manager to the IPEF within the period of 30 days after the expiration of the seven years' time.
- (b) In case of default in transferring the amount to IPEF within the stipulated time, the investment manager shall be liable to a penalty of one lakh rupees and in the case of continuing failure, a further penalty of five hundred rupees for each day that the failure continues, subject to a maximum of ten lakh rupees.
- (c) The listed entity shall within a period of thirty days of transferring the unclaimed amounts to the IPEF and upload the details on its website.

For InvITs having unclaimed amounts for less than 7 years, as on February 29, 2024, shall start computing interest, as per provisions of the circular, from March 1, 2024. For InvITs which shall be holding unclaimed amounts for more than 7 years, as on February 29, 2024, shall transfer the unclaimed amounts of the unitholders to IPEF, in compliance with the provisions of the circular, on or before March 31, 2024.

4. Procedural Framework for dealing with unclaimed amounts lying with the Real Estate Investment Trusts (REITs) and manner of claiming of such amounts by the unitholders.

SEBI has released a [circular](#) dated November 08, 2023 to provide a framework to be followed by a REIT for transfer of unclaimed amounts initially to an Escrow Account/Unpaid Dividend Account and subsequently to the IPEF and claim by a unitholder. The circular would come into effect on March 1, 2024.

- (a) Where a distribution has been made by the manager but the payment to any unitholders has remained unpaid or unclaimed, up to fifteen days from the date of declaration, the investment manager shall within seven working days from the date of expiry of such period of fifteen days, transfer such unclaimed amounts to an Escrow Account to be opened by it on behalf of the REIT in any scheduled bank. Such bank shall be called 'Unpaid Distribution Account.'
- (b) In case a default is made in transferring the amount or portion of it to the Unpaid Distribution Account, the InvIT shall pay an interest on the amount that has not been transferred to the Account for the period of default which would be calculated from the date of default till the date of transfer to the Account at the rate of 12% per annum.
- (c) The Manager shall designate a person who may be a director, Chief Financial Officer, Company Secretary or Compliance Officer of the InvIT as a Nodal Officer shall be the point of contact for unitholders entitled to claim their unclaimed amounts, SEBI, Stock Exchanges and Depositories.
- (d) The Manager shall formulate a policy specifying the process to be followed by unitholders for claiming their unclaimed amount.
- (e) The Manager shall create an internal policy with respect to the process to be followed for verification of claims including the documents to be taken into account, facility to check status of claim by unitholders etc.

- (f) The Manager shall preserve information pertaining to the unclaimed amounts of unitholders including relevant documentation. The Manager shall furnish necessary information as and when called for by the Board.

The circular also provides a framework for transferring the unclaimed amount from the account to the Investors Protection and Education Fund, ('IPEF') if the amount remains unclaimed for the period of seven or more years.

- (a) Any amount transferred to Unpaid Distribution Account of an REIT which remains unclaimed for the period of seven years from the date of transfer, shall be transferred by the Manager to the IPEF within the period of 30 days after the expiration of the seven years' time.
- (b) In case of default in transferring the amount to IPEF within the stipulated time, the manager shall be liable to a penalty of one lakh rupees and in the case of continuing failure, a further penalty of five hundred rupees for each day that the failure continues, subject to a maximum of ten lakh rupees.
- (c) The listed entity shall within a period of thirty days of transferring the unclaimed amounts to the IPEF and upload the details on its website.

5. Stock Brokers - Most Important Terms and Conditions

SEBI has come up with a [circular](#) dated November 13, 2023 with an aim to ease the understanding of the clients in the broker-client relationship. Generally, there are many voluminous documents that are executed in formalizing the broker-client relationship which may become difficult for the client to understand. In order to ease their understanding, SEBI has mandated that brokers inform a standard Most Important Terms and Conditions ('MITC') which would be acknowledged by the Client.

The form, nature of communication, documentation and detailed standards for implementation of MITX shall be published on or before January 01, 2024 by the Brokers Industry Standards Forum under the patronage of the Stock Exchanges, in consultation with SEBI. For onboarding of new clients, the date of the implementation and compliance by the market participants shall be April 01, 2024 and for existing clients, the MITC shall be informed to clients via email or any other suitable mode of communication (which can be preserved) by June 01, 2024.

INFORMAL GUIDANCE

1. Informal Guidance from Paramount Communications Limited in relation to the provisions of the SEBI ICDR Regulations 2018

An informal guidance (“**Informal Guidance**”) was issued by SEBI in the matter of Paramount Communications Limited (“**Company**”) on November 15, 2023 with respect to the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**SEBI ICDR Regulations**”). The [Informal Guidance](#) has provided clarity on whether a non-promoter entity can transfer their equity warrants after completion of one year of lock-in in terms of Regulation 167(2) of the SEBI ICDR Regulations, but prior to the conversion of said equity warrants to equity shares. Below mentioned are the key details of the same.

Background

The Company has its equity shares listed on BSE Limited and the National Stock Exchange of India Limited (together, “**Stock Exchanges**”). The Company had issued equity warrants convertible into equal number of equity shares of the Company to persons other than promoters on a preferential basis (“**Equity Warrants**”). The Equity Warrants are not listed on any Stock Exchange.

Regulatory Framework

The proviso to Regulation 167(2) of the SEBI ICDR Regulations, which pertains to lock-in restrictions in case of preferential allotment of specified securities to persons other than promoters, provides that “*in case of convertible securities or warrants which are not listed on stock exchanges, such securities shall be locked in for a period of one year from the date of allotment*”. Meanwhile, Regulation 168(2) of the SEBI ICDR Regulations states that “*The specified securities allotted on a preferential basis shall not be transferable by the allottees till the trading approval is granted for such securities by all the recognized stock exchanges where the equity shares of the issuer are listed*”.

Queries Raised

Whether the holder(s) of the Equity Warrants, being non-promoter entity can transfer their Equity Warrants held after completion of one-year lock-in in terms of the proviso to Regulation 167(2) of the SEBI ICDR Regulations or only after obtaining the trading approval?

Informal Guidance

The term “specified securities” in Regulation 168(2) of the SEBI ICDR Regulations includes within its ambit warrants, and thus the Equity Warrants may be transferred only after trading approvals from the Stock Exchanges are obtained by the Company.

2. Informal Guidance request received from Jain Irrigation Systems Limited on applicability of Regulation 167(2).

SEBI vide its [informal guidance dated November 17, 2023](#) (“**Informal Guidance**”), clarified its stance on the applicability of lock-in period under Regulation 167(2) of SEBI (Issue of Capital and Disclosure

Requirements) Regulations, 2018 (“**SEBI ICDR Regulations**”). The Informal Guidance was issued in response to a letter from Jain Irrigation Systems Limited (the “**Company**”). The Company is a public limited company having its ordinary equity shares listed on BSE Limited and National Stock Exchange of India Limited (“**Stock Exchanges**”) and is engaged in the business of manufacture of micro-irrigation, plastic pipes etc in India and globally. The particulars of the Informal Guidance are detailed below –

Brief facts:

The Company allotted equity share warrants to certain allottees after taking due approvals from the Board of Directors and shareholders, in terms of the SEBI ICDR Regulations. Pursuant to a Board meeting and general meeting held on September 7, 2021 and September 29, 2021 respectively, the allotment of share warrants and consequent allotment of equity shares was approved. Subsequently, the equity shares were allotted in tranches between May 2023 and July 2023.

Regulatory framework:

As per the amendment to Regulation 167(2) in the SEBI ICDR Regulations vide the SEBI ICDR (Amendment) Regulations, 2022 (“**Amendment**”), the lock-in restrictions in case of preferential allotment of specified securities to persons other than promoters shall be six months instead of the erstwhile one year.

Guidance sought:

- (i) Will the SEBI ICDR Regulations as amended by the Amendment made effective from January 14, 2022 be applicable to the equity shares as allotted by the Company?

Informal Guidance:

With respect to the queries, SEBI clarified that as per the SEBI Board’s decision dated December 28, 2021, the proposed amendments shall be made applicable to issuers making preferential issue under the SEBI ICDR Regulations where the board meeting of the issuer company considering the issue is held after the notification of the Amendment in the gazette. In the present case, since the board of the Company approved the preferential issue in the meeting held on September 7, 2021, i.e., before notification of the Amendment in the gazette, the equity shares would be subject to a lock-in period of one year from the date of trading approval received from the Stock Exchanges.

ORDERS**1. SEBI Order in the matter of unregistered investment advisory services/activities of YM Forecast managed by P Krishnakumar and Jagadeesan S.**

SEBI passed an [order](#) dated November 22, 2023 under Section 11 of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) read with Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, against P Krishnakumar and Jagadeesan S, (collectively called “**Noticees**”) for carrying out unregistered investment advisory activities.

It was found that the investment advice was provided by the Noticees to their clients through an online platform www.ymforecast.com since March 2021 and they had earned Rs. 30,92,789/- as fees till March 16, 2023. It was also found that the Noticees did not have the requisite SEBI registration to carry out such activities and were also not registered as stock brokers.

SEBI found that the Noticees’ activities falls under the definition of “investment advice” and they were termed as an “investment adviser” according to the Regulation 2(1)(m) of the SEBI (Investment Advisors) Regulations, 2013 (“**IA Regulations**”). SEBI went on to say that it is imperative that any person carrying out investment advisory activities must necessarily obtain registration from SEBI which in the present case the Noticees lacked. The Noticees also fell short of the minimum professional qualifications and mandatory net-worth that is required for providing investment advice as per the IA Regulations.

The Noticees were found in breach of the IA Regulations and the SEBI Act and were asked to refund the money collected/received from any investors/complainants as fees or consideration with respect to their unregistered investment advisory activities. The Noticees were also debarred from accessing the securities market, directly or indirectly and were prohibited from buying, selling, or otherwise dealing in the securities market, directly or indirectly for a period of one year from the date of the order.

2. SEBI Order in the matter of Jaykraya Sugar Ltd. (Issue of Non-Convertible Redeemable Preference Shares)

SEBI passed an [ad-interim order](#) dated November 17, 2023, against Jaykraya Sugar Limited (“**JSL**”) and its directors for issuing Non-Convertible Redeemable Preference Shares, (“**NCRPS**”) without registering the prospectus for the NCRPS with the Registrar of Companies and without listing the NCRPS on a recognized stock exchange, thereby violating Sections 60(1) and 73 of the Companies Act, 1956 respectively.

SEBI found that JSL issued NCRPS to at least 849, 476, 2786 and 601 persons during FY 2008-09, 2009-10, 2012-13 and 2013-14 respectively and raised approximately Rs. 20.94 crores. SEBI concluded that such an issue of NCRPS would qualify as a deemed public issue under the first proviso to Section 67(3) of the Companies Act, 1956. As it is a public issue, the prospectus of the issue had to be registered with the Registrar of Companies and had to be listed on a recognised stock exchange. With this, JSL has also violated clauses of the SEBI (Disclosure and Investor Protection) Guidelines, 2000, (“**DIP Guidelines**”).

It was also held that in terms of Section 73(2) of the Companies Act, the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of Section 73. Consequently, SEBI ordered JSL to stop mobilizing fresh funds from investors through the offer, allotment of any securities to the public and/or invite subscription, in any manner. JSL along with its directors shall not buy, sell or deal in the securities either directly or indirectly or associate themselves with securities market, any listed company or company intending to raise money from the public in any manner.

CONSULTATION PAPER

SEBI has released a [consultation paper](#) on “*Providing Flexibility in Provisions Relating to ‘Trading Plans’ Under the SEBI (Prohibition of Insider Trading) Regulations, 2015*” on November 24, 2023, where SEBI has proposed certain amendments to the trading plan framework (“TP”) as present under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”). The proposed amendments aim to provide flexibility for adoption of trading plans by persons who may be perpetually in possession of Unpublished Price Sensitive Information (“**UPSI**”).

Key recommendations are summarised as follows:

- i. **Reduction in cool-off period:** The minimum cool-off period between the public disclosure of the TP and implementation of TP may be reduced to 4 months from the present 6 months;
- ii. **Reduction in minimum coverage period:** The minimum coverage period requirement, which stipulates the minimum period for which a TP must entail trading for from the date of such TP coming into operation, may be reduced from the present 12 months to 2 months;
- iii. **Repeal of Black-out period:** Currently, the TP does not entail trading for the black-out period between the 20th trading day prior to the last date of a financial period for which results are to be announced and until the 2nd trading day after the disclosure of said results; SEBI proposes that this requirement for a black-out period may be repealed;
- iv. **Option to set price limits for insiders:** Presently, there is no provision which enables the insider to mention a price limit for trades under a TP, therefore SEBI proposes that the insider may be allowed to formulate upper price limits for buy trades and lower price limits for sell trades during the formulation of the TP, which have to be within +/-20% of the closing price as on the date of the submission of the TP:
 - a. If the price of the security is beyond the price limit set by the insider, the trade(s) shall not get executed;
 - b. If no price limit is opted for, the trade has to be undertaken irrespective of the prevailing price;
- v. **Contra-trade restrictions:** Presently, contra-trades by designated persons and insiders must have a minimum gap of 6 months to prevent misuse of UPSI in possession of designated persons and insiders, however, trades under TPs are currently exempted from such contra-trade restrictions, i.e., an insider is permitted to execute opposite trades with a gap of less than 6 months when made under a TP; In SEBI’s view, it is difficult to find any reasonable need for contra-trade restrictions to be exempted when made under a TP, especially when considering that personal exigencies cannot be planned in advance through TPs which need to undergo a cooling-off period post-disclosure; Therefore, SEBI proposes to remove the exemption made for contra-trade restrictions, which permit contra-trades to be made within 6 months of a trade made under TPs, while retaining the exemption which renders trading window norms inapplicable on trades made under a TP; and

- vi. **Timeline for disclosure of TP:** The disclosure of TPs to stock exchanges may be done within 2 days from the date of approval of the TP, whereas currently there is no deadline prescribed for TPs to be submitted to the stock exchanges for public disclosure.

Disclosure of personal details of insiders: SEBI is of the view that existing disclosures containing personal details including the name, designation, and PAN of the insider may continue for investors to make informed decisions. However, SEBI has proposed two potential alternatives to the extant system of disclosure of personal details which it may explore:

- i. Mask personal details (Name, Designation, PAN) of the insider in the TP; or
- ii. Make two separate disclosures of TP: (a) full (confidential) disclosure to stock exchange, and (b) disclosure without personal details to the public through the stock exchange.

SEBI has sought comments on the consultation paper on the above recommendations and on the above outlined potential alternatives to the present system of disclosure of personal details of insiders in TPs. Comments can be submitted by December 15, 2023.

SEBI BOARD MEETING

SEBI in its [Board meeting](#) held on November 25, 2023 has approved the regulatory framework affecting Social Stock Exchanges, Index Providers, Small and Medium REITs and Alternative Investment Funds. The key decisions of the Board meeting are highlighted below:

1. Flexibility in the Framework for Social Stock Exchange ('SSE')

SEBI in its board meeting has approved various relaxations in order to provide impetus to fund raising by Not for Profit Organizations ('NPOs') on the SSE. It has reduced the threshold for minimum issue size from Rs 1 Crore to Rs 50 lakh and minimum application size from Rs. 2 lakh to Rs. 10,000 in case of public issuance of Zero Coupon Zero Principal Instruments ('ZCZP') by NPOs on SSE. It has also approved the change in the name of 'Social Auditor' to 'Social Impact Assessor' to provide comfort to NPOs with an aim to convey a positive approach towards the social sector. Additionally, it has permitted NPOs to disclose past social impact reports in the fund raising document as per their existing practice. Further, SEBI has allowed more entities to be made eligible for registration and fund raising through issuance and listing of ZCZP on SSE by permitting entities registered under section 10(23C) and 10(46) of the Income Tax Act, 1961.

2. Introduction of Regulatory Framework for Index Providers

A regulatory framework for Index Providers with the objective of fostering transparency and accountability in governance and administration of financial benchmarks in the securities market has been introduced. The regulations, in accordance with International Organisation for Securities Commissions (IOSCO) principles shall only be applicable to Index Providers with license 'Significant Indices', which shall be notified by SEBI based on objective criteria.

3. Facilitation of Small & Medium REITs (“SM REITs”) - Amendments to SEBI (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”) for creation of new regulatory framework.

With an aim to create a regulatory framework for facilitation of SM REITs, with an asset value of at least Rs 50 crore vis-à-vis minimum asset value of Rs 500 crore for existing REITs, amendments have been approved in the REIT Regulations. The approved framework provides for the structure of SM REITs, and it shall include, among others, migration of existing structures meeting certain specified criteria, obligations of the investment manager including net-worth and investment conditions.

4. Amendment to SEBI (Alternative Investment Funds) Regulations, 2012, to facilitate ease of compliance and strengthen protection of interest of investors in Alternative Investment Funds

SEBI in its board meeting has approved that any fresh investment made by an Alternative Investment Fund(s) (“AIFs”), beyond September 2024 shall be held in dematerialised form, subject to certain exceptions. Further, the mandate for appointment of custodian shall be extended to all AIFs subject to similar conditions as prescribed under the SEBI (Mutual Funds) Regulations, 1996 for permitting related party of the sponsor of a Mutual Fund to act as its custodian.

BSE CIRCULAR

1. Revision in the Eligibility Criteria for Migration of SME Companies to BSE Main Board

BSE Limited (“BSE”) on November 23, 2023 has [notified](#) the eligibility criteria for migration of SME Companies to the BSE Main Board. The revised criteria shall be applicable for applications filed on or after January 1, 2024. The paid-up share capital shall be more than Rs. 10 crores and market capitalization should be minimum Rs 25 crores. The circular also prescribes certain financial parameters including operating profits, profit after tax and net worth. The promoter’s shareholding shall be at least 20% of the equity share capital of the company at the time of making application and shall have at least 250 public shareholders as per the latest shareholding pattern. As per the circular, the applicant company shall be listed on SME Exchange/platform having nationwide terminals of at least 3 years. Other parameters like no pending defaults, no ongoing proceedings, credit rating certificate for utilization of funds and no pending investor complaints also form part of the revised criteria. Companies making such an application are required to submit an Information Memorandum to BSE as prescribed under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or capital markets in general), please feel free to contact Geeta Dhania, at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2023. All rights reserved.

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