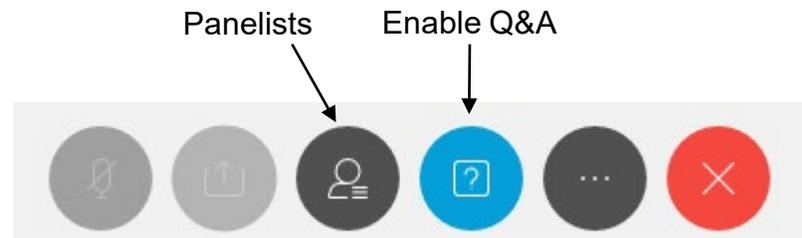


# Housekeeping

- On joining the session your microphone will be muted and your video will be turned off
- You will not be able to enable your video or un-mute your microphone during the session
- To activate the Q&A function click  the Q&A box will appear on the right hand panel
- To submit a question use the Q&A function, send your question to “**All Panellists**”
- If you experience any technical issues and cannot submit these via Q&A please call +44 203 088 7196 or +44 203 088 7450





## Fog in Channel: the TTP edition

Bob Penn and Kirsty Taylor

10 September 2020

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# What we are going to discuss today

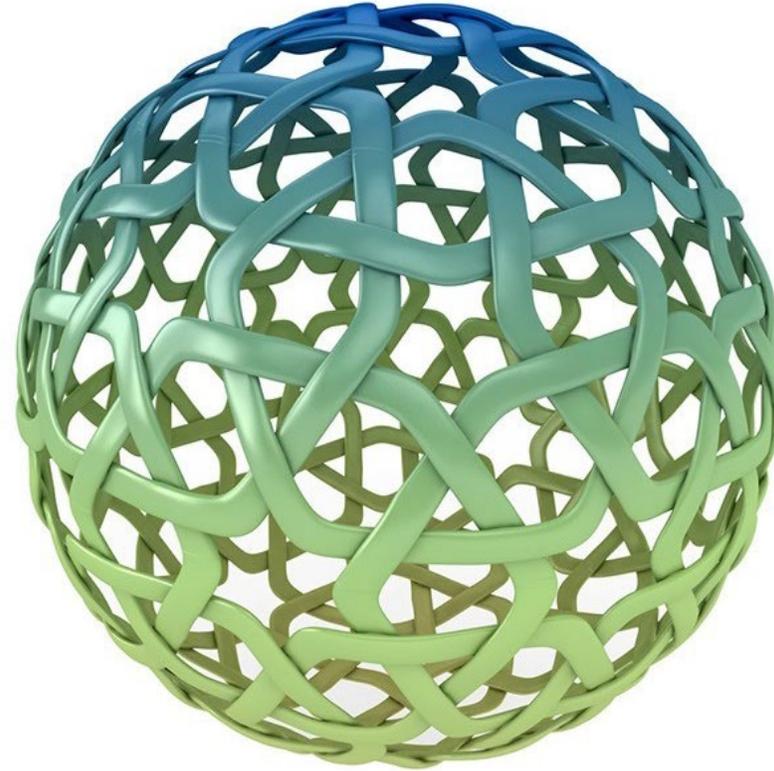
**1. General update**

**2. The Regulators' Temporary Transitional Powers: Recap and Update**

**3. Mind the gap: the regulators' expectations of firms post-IPCD, what the law says, and the TTP**

**4. Q&A**

# ALLEN & OVERY



General update

# Updates from the PRA



## **PRA Dear CEO letter and BoE webpage on operational readiness for the TPR (2 September)**

- new webpage summarises supervisory approach to the TPR and highlights key requirements for branches.
  - same rules as other third country branches. A more limited set of rules apply to cross-border service providers
  - Threshold Conditions
  - FSCS
  - SM&CR
  - status disclosure

## **PRA consultation on implementation of CRD V (31 July)**

- IPU

# Updates from the FCA

## **New TPR webpages (20 August):**

Financial services contracts regime

Considerations for firms leaving the TPR

TPR fees

The notification process for funds

Firms and investment funds that can use the TPR

Rules that will apply to firms and fund operators in the TPR

The notification process for firms

**FCA will re-open the notification window on 30 September 2020.**

# Updates from the FCA (cont.)



**FCA Quarterly Consultation No 29 (4 September)** includes proposals to reflect further onshoring changes over the transition period for EU withdrawal.



**FCA Market Watch 64 (27 August) - transaction reporting issues**



firms and ARMs should comply with the changes to their regulatory obligations by the end of the transition period



firms not able to comply fully immediately will need to back-report missing, incomplete or inaccurate transaction reports as soon as possible.



Industry testing for its Financial Instruments Transparency System (FITRS) will open on 5 October.

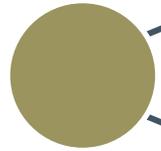
# Updates from HMT

**HMT policy statement – update on amendments to the PRIIPs Regulation (30 July)**

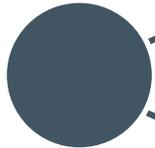
In the longer term, HMT intends to conduct a more wholesale review of the disclosure regime for UK retail investors.

Proposed amendments target only the most pressing concerns with the PRIIPs Regulation.

# Updates from the EU



**EBA call to finalise preparations for the end of the transitional period (29 July)**



necessary authorisations



effectively established

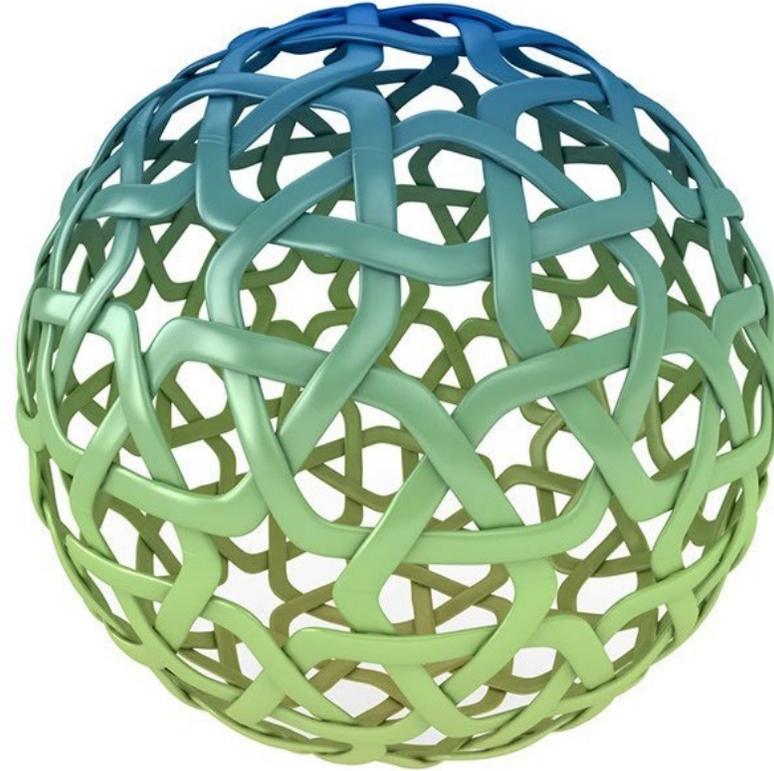


information to EU customers

# Trade deal?

**Get real Barnier!' UK threatens to starve EU of cash as Brexit fury reaches boiling point**





## The Regulators' Temporary Transitional Powers: Recap and Update

# Recap – how onshoring works



## – Regulations

- Are onshored by transposition into the UK statute book
- Are amended by SIs or Binding Technical Standards (BTS) to make them fit for purpose
- In some cases the SI/BTS provides for transitional relief (eg substituted compliance under UK MiFIR; exemptions under UK EMIR)

## – Directives

- Do not need onshoring
  - Generally in implementing rules or existing UK SIs
  - Are amended by rulechanges or SI to make them fit for purpose
- Provisions may be subject to equivalence decision powers
- Regulators may provide further temporary transitional relief - Part 7 of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019

# Recap – Temporary Transitional Relief Powers



- HMT proposal for a temporary transitional tool (8 October 2018)
- **Part 7 of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019**
- HMT statement that transitional powers will be available for up to two years from IP completion day (25 March 2020)

# TTP– where Transitional Directions do not apply

## PRA Transitional Direction does not apply to:

- Part 15A FSMA/FSCS
- information published by EIOPA which after exit is published by PRA
- obligations to which a specific transitional or savings provision applies
- stay in Resolution part of the Rulebook
- securitisation repository provisions
- STS securitisations provisions
- in relation to persons for whom HMT has the power to make an exemption direction
- obligations applying as a result of an equivalence determination/direction
- in relation to MiFIR when HMT has power to make an equivalence determination
- obligations in the CRA Regulation
- obligations in DR 2017/589/DR 2017/1945 or DR 2017/1946 persons to whom reg 47 of the EEA Passport Rights SI applies (Firms in CRO)
- definition of OTC derivatives (Art 2 EMIR)
- provisions related to TPR Firms (except certain remuneration obligations/certain reporting obligations)
- Contractual Recognition Rules (except phase two liabilities (existing EEA law governed agreements unless materially amended post Brexit))
- CRA Regulation (special transitional applies)
- reference to accounting standards

## FCA Transitional Direction does not apply to:

- amendments to the RAO/Financial Promotion Order/Exemption Order
- information to be provided to an EU institution/apply technical standards
- additional requirements imposed by the FCA in the context of Brexit
- FCA powers/functions/duties
- provisions relating to Gibraltar
- provisions applying as a result of an equivalence direction (i.e. transitional will end when equivalence decision in effect)
- rules relating to TPR firms

## FCA Prudential Transitional Direction does not apply to:

- obligations to when a specific transitional or savings provision exists
  - contractual recognition of bail in (except phase two liabilities/pre-existing EEA law governed agreements unless materially amended post Brexit)
  - persons for whom HMT has power to make an exemption direction (see Equivalence SI)
  - circumstances where the obligation is the subject of an exemption or equivalence decision
  - obligations applying to TPR firms
  - EU/MS institution functions
  - requirements imposed by FCA
  - Gibraltar
- \* Where transitional relief doesn't apply, the FCA has said that it expects firms to have undertaken "reasonable steps" to comply with the new/amended obligations by exit day

## BoE Transitional Direction does not apply to:

- Part 15A of FSMA/FSCS
- obligations for which specific transitional/savings provisions exist
- persons for whom HMT has power to make an exemption direction
- obligations applying as a result of equivalence direction/determination
- MiFIR/any related implementing measures
- definition of OTC derivative (Art 2 EMIR)
- Art 25 EMIR
- Art 25 CSDR
- FMI SI
- BoE powers
- Gibraltar



# BoE and PRA approach



- Policy statement: The Bank of England’s amendments to financial services legislation under the European Union (Withdrawal) Act 2018 (PS5/19) (February 2019) “near final” draft directions and guidance.
- CP18/19: UK withdrawal from the EU: Changes following extension of Article 50. **Joint PRA/BoE consultation updated the PRA’s and BoE’s ‘near final’ directions (July 2019).**
- Draft PRA Transitional Direction
- Draft BoE Transitional Direction
- General and Specific Guidance
- **BoE and PRA intend to apply the TTP from the end of the transition period until 31 March 2022. Draft transitional directions and guidance will be updated in light of the transition period.**

# FCA approach



- Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation (CP18/28)
- FCA statement on transitional powers (1 February 2019)
- PS 19/5: FCA Brexit Policy Statement and Transitional Directions
- On 26 September 2019, FCA updated and published draft directions.

[Draft main FCA Transitional Direction](#)

[Draft FCA Prudential Transitional Direction](#)

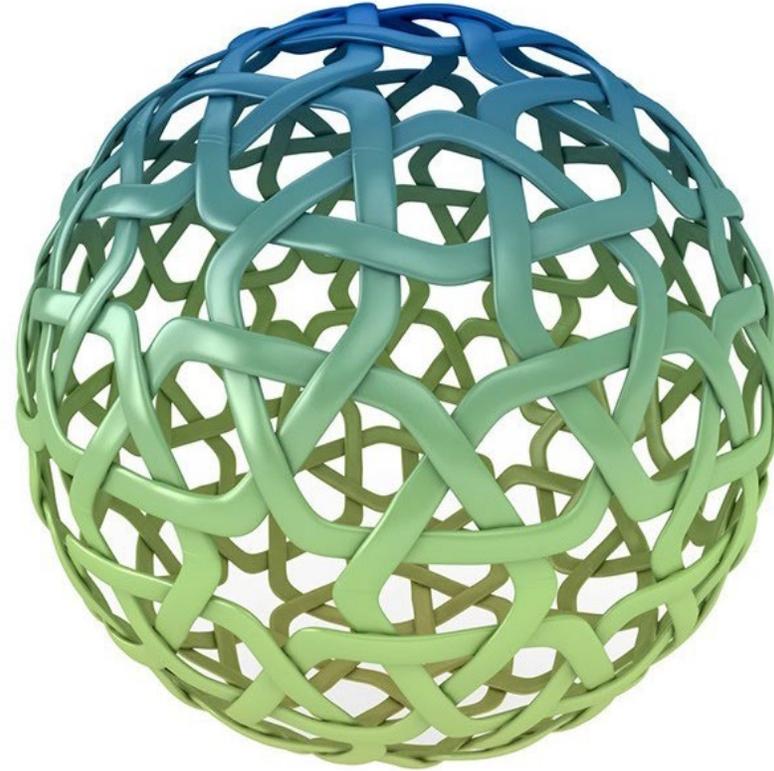
[Draft Annex A](#) – application of the ‘standstill’ in the Transitional Direction to amendments made in SIs and Exit Instruments amending technical standards

[Draft Annex B](#) – application of the ‘standstill’ in the Transitional Direction to amendments made in the FCA Handbook

[Explanatory note](#)

- **FCA intend to apply the TTP from the end of the transition period until 31 March 2022. Updated directions – possibly including some further general direction – anticipated.**

# ALLEN & OVERY



Mind the gap: the regulators' expectations of firms post-IPCD, what the law says, and the TTP

# FCA supervisory expectations on Brexit

1

**MiFID II transaction reporting** – FCA is building FCA FIRDS to replace ESMA FIRDS: it will broadly operate on the same basis as ESMA FIRDS.

2

**Issuer rules** – EEA entities that have securities admitted to trading or traded on UK markets will be required to submit information to the FCA and disclose certain information to the market from exit.

3

**Short selling notifications** – any firm wishing to use the exemption for market-making activities under the Short Selling Regulation will be required to join a UK trading venue and notify the FCA of their intention to use the market maker exemption 30 days ahead of their intended use. Any notifications already made to the FCA will remain valid post-exit.

4

**EMIR reporting obligations** – from exit day, UK firms and central counterparties (CCPs) will be required to report into a UK-registered trade repository (TR).

# FCA supervisory expectations on Brexit (cont'd)

5

**Contractual recognition of bail-in** – UK firms will need to include contractual recognition of bail-in in terms in all new or materially-amended liabilities governed by the law of an EEA State, with the exception of unsecured liabilities that are not debt instruments, from exit date. EEA firms with EEA-law governed contracts with UK firms will need to put in place bail-in language.

6

**Use of credit ratings for regulatory purposes** – after exit, all ratings will need to be issued or endorsed by a credit ratings agency (CRA) established in the UK and registered with the FCA for them to be eligible for regulatory use.

7

**Securitisation** – UK originators or sponsors will need to direct notifications to the FCA from exit day for UK securitisations they wish to be considered simple, transparent, and standardised (STS) under the Securitisation Regulation.

# Progress on the Temporary Transitional Powers regime

The FCA's website still refers to the February 2019 supervisory expectations indicating seven areas for firms to act on. So can firms forget about making changes for year end, other than those items?

- The TTP does not empower the regulators to override changes in law – eg to the change in certain residential mortgage contracts to become consumer credit, or to changes in the regulatory perimeter
- The TTP applies only to 'relevant obligations': FCA takes the view that that does not cover definitional changes – meaning onshored EMIR changes still apply
- The TTP does not override equivalence decisions
- The FCA approach to implementation has been not to provide a blanket exclusion, but rather a series of Annexes 'switching off' relevant obligations – leaving others switched on

Following feedback that the TTP directions were inadequate, FCA indicated informally in early summer that it was considering providing updated directions – possibly including some further general direction – in September. It circulated draft revised directions to UK Finance in July.

So have the revised draft TTP Directions helped?  
Not really:

- The Directions have been moved out to commence from IPCD and finish at the end of March 2021
- The FCA has added a number of new TTP Directions "for the avoidance of doubt" – where they think no change is needed by firms.
- The FCA has also made minor changes to the draft Directions to bring them up to date with new SIs (eg REFIT 2.1)

# Legislative ruleset - would the revised draft Direction affect my MiFID II obligations?

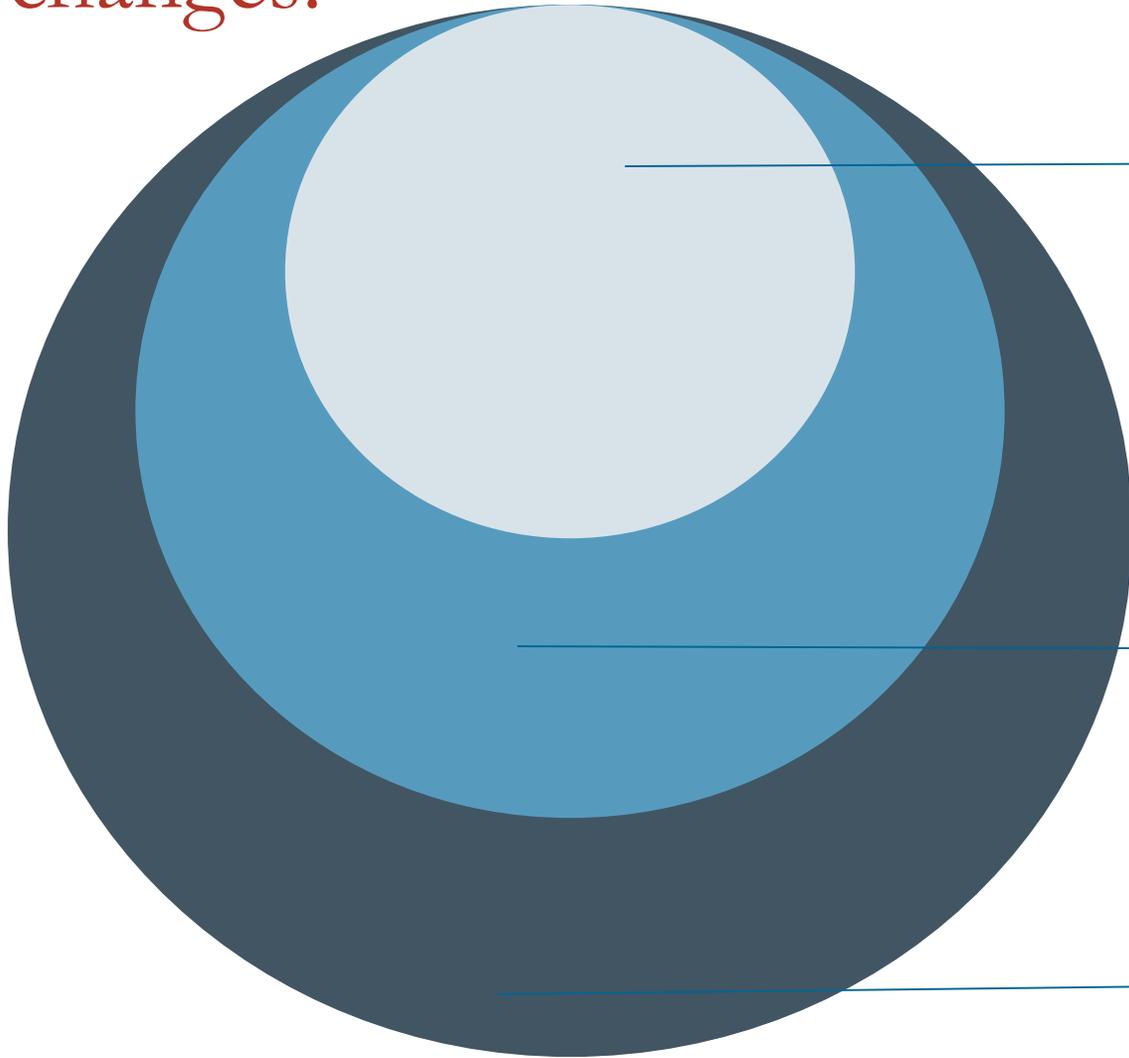
Change in FCA/PRA expectations	Change not in FCA/PRA expectations	Is it stood still under existing TTP?	Is it stood still under proposed revision to TTP?
	<i>Pre-trade transparency</i>		
	<i>Post-trade transparency</i>	Limited – post-trade transparency waterfall	No change
	<i>Share trading obligation</i>		
	<i>Derivatives trading obligation</i>		
Transaction reporting			
	<i>Supply of reference data</i>		
	<i>Best execution reporting</i>		RTS 28

# Would the revised draft Direction affect my EMIR obligations?

Change in FCA/PRA expectations	Change not in FCA/PRA expectations	Is it stood still under existing TTP?	Is it stood still under proposed additions to TTP?
Reporting			
	<i>Clearing*</i>	Covered bond exemption	No change
	<i>Risk mitigation</i>		
	<i>Margin*</i>		
	<i>Intragroup exemptions*</i>		
	<i>CCPs*</i>		
	<i>Trade repositories*</i>		

\* SI includes transitional relief.

# Would the revised Direction affect other legislative or ruleset changes?



The substantive additional relief offered in the revised draft provides additional relief in respect of

- Consumer credit and payments – limited additional transitional relief for certain disclosures under CONC and reliance on the EU
- AIFMD – to enable UK AIFMs of EEA AIFs to continue to market them post-IPCD

Other areas of onshored legislation where there are requirements outside the expectations include:

- All firms
  - Scope – CCA/regulated mortgage contracts
  - PRIIPs
  - Short selling
- EEA firms
  - CSDR reporting
  - SFTR reporting
  - MAR - reporting by PDMRs

These are subject to no, or limited, TTP relief.

# So what's the prognosis?

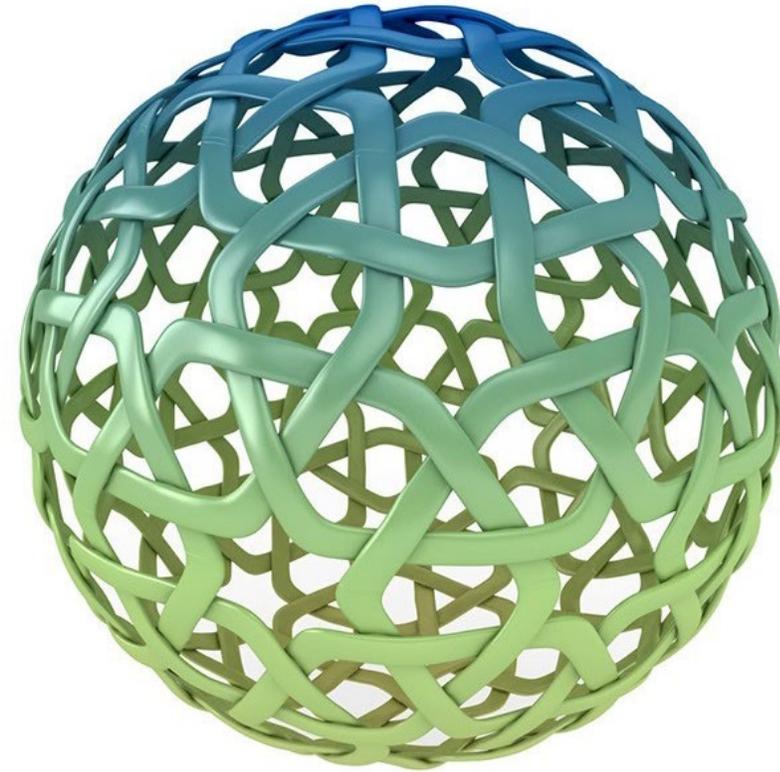
When will we get final form Directions (and indeed all other materials)?

Will the proposed FCA revisions make it into the final form?

Will we get an all-encompassing Direction from either regulator?

Will we get forbearance?

What should firms be doing for the run-in?



## Resources and contacts

# Resources



Allen & Overy Brexit toolkit

[Allen & Overy Brexit Law – Financial Services](#)

Brexit SI tracker

Regulators' publications  
– TPR  
– BTS/Rule set changes

Equivalence table

A&O Brexit Briefings

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# Contacts at A&O



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