

FINANCIAL SERVICES

REGULATORY ROUNDUP | NOV 2025

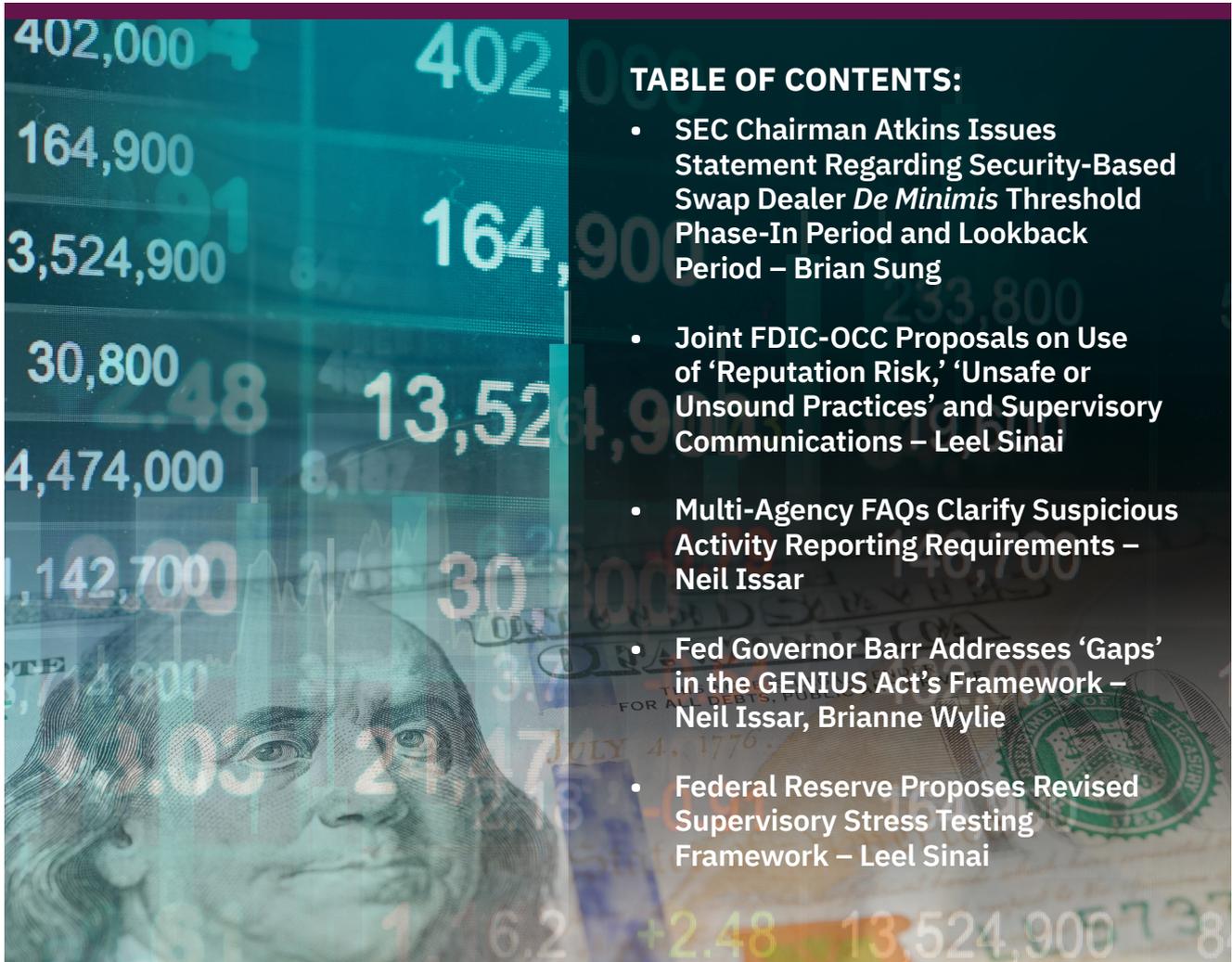


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SEC Chairman Atkins Issues Statement Regarding Security-Based Swap Dealer *De Minimis* Threshold Phase-in Period and Lookback Period – Brian Sung

On Oct. 29, 2025, in light of the ongoing U.S. government shutdown, Securities and Exchange Commission (SEC) Chairman Paul Atkins issued a Statement Regarding Phase-In Termination Date for the *De Minimis* Exception to the Security-Based Swap Dealer Definition (the Statement).

As participants in the security-based swap (SBS) market are likely aware, institutions falling within the definition of a security-based swap dealer (SBSD) are subject to SBSBD registration and other regulatory requirements, provided that SBSBDs whose SBS dealing activity does not exceed a specified *de minimis* level over the immediately preceding 12 months can rely upon a *de minimis* exemption from such requirements (the *De Minimis* Exemption).

The *De Minimis* Exemption threshold is currently subject to a phase-in period, set to expire on Nov. 8, 2026 (the Phase-in Period), during which it is temporarily set at an aggregate gross notional amount of (i) \$8 billion (set to be reduced to \$3 billion after the Phase-in Period) for SBS that are credit default swaps and (ii) \$400 million (set to be reduced to \$150 million after the Phase-in Period) for SBS that are not credit default swaps.

Given the scheduled end of the Phase-in Period, the 12-month lookback period for SBSDs' inclusion of dealing activity towards the *De Minimis* Exemption threshold was scheduled to commence on Nov. 8, 2025, unless modified or postponed.

Because the SEC has discretion to potentially modify the Phase-in Period expiration date and/or the *De Minimis* Exemption thresholds, the Statement notes that the SEC staff has started to prepare a report analyzing SBS transaction data. Due to the ongoing U.S. government shutdown, however, the SEC staff has been unable to continue this work. Chairman Atkins said that, once the shutdown and lapse in appropriations are lifted, he will direct staff to evaluate whether relief from the phase-in termination date is necessary or appropriate such that the lookback period would not apply before the SEC has had time to consider the staff report and related public input.

Participants in the SBS market should monitor developments (and the status of the shutdown) closely to stay abreast of any further announcements or potential relief from the SEC regarding the Phase-in Period and *De Minimis* Exemption thresholds.

Read the Statement [here](#).

Joint FDIC - OCC Proposals on Use of 'Reputation Risk,' 'Unsafe or Unsound Practices' and Supervisory Communications – Leel Sinai

NPRM on "Reputation Risk"

On Oct. 7, 2025, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) jointly issued a Notice of Proposed Rulemaking (NPRM) to codify the removal of "reputation risk" from their supervisory frameworks and to prohibit the agencies from using reputation risk as a basis for criticism or adverse action against supervised institutions.

Key Elements of the Proposal

The NPRM defines "reputation risk" as the risk that an action, activity or omission of an institution could negatively affect public perception of the institution for reasons unrelated to its present or future financial condition.

Under the proposal, the agencies would be prohibited from criticizing, formally or informally, or taking adverse action (including via exam feedback, ratings contributions, enforcement, denial of applications or imposing capital above minimums) against an institution or any employee on the basis of reputation risk.





The NPRM would also bar the agencies from requiring, instructing or encouraging an institution (or its employees) to:

- terminate or refrain from contracting or doing business with a third party on the basis of reputation risk; or
- enter into (or fail to enter into) a contract or business relationship, modify a business relationship or terminate one, on the basis of a person’s or entity’s political, social, cultural or religious views or beliefs, constitutionally protected speech or involvement in lawful but politically disfavored business activities perceived as reputation risk.

The proposal clarifies that the rule does not affect the agencies’ authority to enforce obligations tied to lawful regulatory regimes (e.g., the Office of Foreign Assets Control sanctions regime, Bank Secrecy Act/AML obligations). Supervisory actions anchored in those regimes are not considered “reputation risk” for purposes of the rule.

The NPRM proposes conforming amendments to eliminate references to reputation risk in existing FDIC and OCC regulations.

The agencies seek comment on all aspects of the proposal, including definitions (e.g., “adverse action” and “doing business with”), potential unintended consequences and whether other supervisory concepts warrant similar treatment.

NPRM on “Unsafe or Unsound Practices” and Matters Requiring Attention

On the same day, the FDIC and OCC also issued an NPRM to (i) define the term “unsafe or unsound practice” for purposes of § 8 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. § 1818), and (ii) revise the supervisory-communications framework (notably, the issuance of “matters requiring attention” MRAs).

Key Elements of the Proposal

The proposed definition would treat an “unsafe or unsound practice” as a practice, act or failure to act, alone or in combination with other acts that (i) is contrary to generally accepted standards of prudent operation and (ii) either (1) if continued, is likely to materially harm the financial condition of the institution or present a material risk of loss to the Deposit Insurance Fund (DIF), or (2) has materially harmed the financial condition of the institution.

The proposed rule explicitly focuses the standard on material financial risk (capital, asset quality, liquidity, earnings, market sensitivity) and excludes risks tied solely to reputation unconnected to financial condition.

MRAs would become subject to a uniform standard: The agencies may issue an MRA only for a practice, act or omission that (i) is an actual violation of banking or banking-related law/regulation, or (ii) is contrary to prudent operation and either has already caused material harm or could reasonably be expected under current or foreseeable conditions to cause material harm or risk to the DIF.

The proposal includes a tailoring requirement: Supervisory and enforcement actions (and MRA issuance) must take into account an institution's capital structure, complexity, size and risk profile, with a much higher bar for community banks than for large institutions.

The comment period is 60 days after the rule's Federal Register publication.

Read the NPRMs [here](#) and [here](#).

Multi-Agency FAQs Clarify Suspicious Activity Reporting Requirements – Neil Issar

On Oct. 8, 2025, five of the key federal agencies that oversee and regulate the country's financial system—the Office of the Comptroller of the Currency (OCC), the Financial Crimes Enforcement Network (FinCEN), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA)—jointly issued a Frequently Asked Questions (FAQs) document related to Suspicious Activity Reports (SARs). The multi-agency document addresses SAR filings for potential structuring-related activity, continuing activity reviews and documentation of decisions not to file a SAR.

As background, the Bank Secrecy Act (BSA), 31 U.S.C. §§ 5311 *et seq.*, established program, recordkeeping and reporting requirements for financial institutions, which include national banks, federal savings associations, federal branches and agencies of foreign banks. The regulations implementing BSA requirements provide, among other things, that financial institutions must file a currency transaction report (CTR) for each currency transaction (that is, a deposit, withdrawal, exchange of currency or other payment or transfer) of more than \$10,000.¹ They must also file a SAR if they suspect a transaction of more than \$5,000 is related to fraud, money laundering or other illegal activities.²

The FAQs clarify a financial institution is not required to file a SAR for a transaction or a series of transactions merely because the value is at or near the CTR threshold (over \$10,000). Instead, the SAR filing requirement is only triggered if the institution knows, suspects or has reason to suspect the transaction or series of transactions is designed to evade CTR reporting requirements. An example of this would be a person breaking down a single deposit of over \$10,000 into multiple smaller deposits to avoid triggering the CTR reporting requirement. This is sometimes referred to as “structuring” and may be indicative of underlying illegal activity and is therefore unlawful under the BSA.³

The FAQs also clarify that even if a financial institution has filed a SAR, it is not required to conduct a review of the customer or account at issue to determine whether suspicious activity is continuing. Though FinCEN previously stated that “[a]s a general rule of thumb, organizations should report continuing suspicious activity with a report being filed at least every 90 days,”⁴ financial institutions are permitted to rely on risk-based internal policies, procedures and controls in lieu of individual reviews to monitor and report suspicious activity as appropriate, provided those internal policies, procedures and controls are reasonably designed to identify and report such activity.

Moreover, per the FAQs, there is no timeline specifically for reporting ongoing suspicious activity. Instead, financial institutions may file SARs as appropriate in line with applicable timelines. This means that financial institutions must generally file a SAR no later than 30 calendar days after the date of the institution's initial detection of facts that may constitute a basis for filing a SAR—whether it is a first incident of suspicious activity or instance of ongoing suspicious activity.⁵ An institution may take an additional 30 calendar days to identify a suspect, but reporting must not be delayed more than 60 days after the date of detection of a reportable transaction.⁶

“Governor Barr focused on three primary concerns: the risk of uninsured and unreliable reserve assets, regulatory arbitrage driven by inconsistent regulations and insufficient consumer protections.”



Finally, the FAQs explain that a financial institution is not required to document its decision not to file a SAR. While FinCEN has previously encouraged such documentation,⁷ it is not mandatory. And if a financial institution decides to document it anyway, a short, concise statement is sufficient, although in more complex investigation scenarios, the financial institution may opt to include additional materials to explain the factors that were considered.

Though the FAQs do not alter existing BSA legal or regulatory requirements or establish new supervisory expectations, they are nonetheless intended to provide guidance that assists financial institutions with their compliance and reporting obligations under the BSA.

Read the FAQs [here](#).

Fed Governor Barr Addresses ‘Gaps’ in the GENIUS Act’s Framework – Neil Issar, Brianne Wylie

Signed into law on July 18, 2025 after several rounds of deliberation and revision, the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act creates a federal framework for payment stablecoins—digital assets pegged to a fiat currency and intended for use as a means of payment or settlement. In an effort to provide clarity to spur stablecoin innovation, the Act establishes requirements for the issuance of stablecoins—including oversight, reserve, redemption and audit requirements—as well as protections for consumers that hold stablecoins.

The GENIUS Act leaves several critical areas unaddressed, however, with Congress directing the U.S. Department of the Treasury (the Treasury) to issue regulations to fill in certain gaps. For example, the Treasury is tasked with issuing regulations that (i) provide for exceptions to the limitation on who can issue stablecoins under the Act; (ii) establish broad-based principles for determining whether a state-level regulatory regime is substantially similar to the federal regulatory framework; and (iii) implement the requirement that permitted stablecoin issuers are “subject to all Federal laws applicable to a U.S. financial institution located in the United States relating to economic sanctions, prevention of money laundering, customer identification and due diligence.” Correspondingly, the Treasury issued a [Request for Comment](#) and an [Advance Notice of Proposed Rulemaking](#) to solicit public input to inform the development of forthcoming regulations.

¹ See 31 C.F.R. §§ 1010.311, .330.

² See 12 C.F.R. §§ 12.11, 208.62; 31 C.F.R. § 1020.320(a).

³ See 31 U.S.C. § 5324.

⁴ FinCEN, *The SAR Activity Review: Trends, Tips & Issues, Issue 1* at 27 (Oct. 2000), https://www.fincen.gov/system/files/shared/sar_tti_01.pdf. FinCEN publishes *The SAR Activity Review: Trends, Tips & Issues* periodically as a product of close collaboration between FinCEN’s regulatory, law enforcement, and industry partners. It is intended to provide meaningful information about the preparation, use and value of SARs filed by financial institutions.

⁵ See 12 C.F.R. §§ 12.11(d), 208.62(d); 31 C.F.R. § 1020.320(b)(3).

⁶ See 12 C.F.R. §§ 12.11(d), 208.62(d); 31 C.F.R. § 1020.320(b)(3).

⁷ See FinCEN, *The SAR Activity Review: Trends, Tips & Issues, Issue 10* at 35 (May 2006), https://www.fincen.gov/system/files/shared/sar_tti_10.pdf (“Financial institutions are encouraged to document SAR decisions, including final decisions not to file a SAR.”).

In addition, the Act tasks the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Office of the Comptroller of the Currency with jointly issuing regulations that (i) implement capital and liquidity requirements applicable to issuers; (ii) establish a process and framework for the licensing, regulation, examination and supervision of issuers; and (iii) govern depository institutions that hold stablecoin reserves or otherwise participate in payment stablecoin activities.

On Oct. 16, 2025, Federal Reserve Governor Michael S. Barr, speaking at D.C. Fintech Week, discussed concerns stemming from some of the gaps in the GENIUS Act. Governor Barr focused on three primary concerns: the risk of uninsured and unreliable reserve assets, regulatory arbitrage driven by inconsistent regulations and insufficient consumer protections. According to Governor Barr, there is “a lot of work to do on the part of the government to fill in the specifics during the rule-writing process.” Certain other commentators and officials have echoed and expanded upon these concerns, including U.S. Senator Elizabeth Warren in a [statement](#) issued on Oct. 21, 2025.

Reserve Assets Risks

The GENIUS Act requires stablecoin issuers to maintain one-to-one reserves to back their outstanding stablecoins. Permissible reserve assets include, among other things, any “medium of exchange currently authorized or adopted by a domestic or foreign government.” Governor Barr cautioned that this means stablecoins could be backed by reserves that are “potentially volatile assets” and “not immune to stress.” For example, both the Central African Republic and El Salvador had recent periods in which Bitcoin was officially recognized as legal tender. A stablecoin issuer could argue those recognitions mean Bitcoin qualifies as an eligible reserve asset for payment stablecoins. However, the volatility of Bitcoin value could compromise the one-to-one backing of that issuer’s stablecoin liabilities. Governor Barr urged the Treasury to put regulations in place “to eliminate or minimize such risks.”

Governor Barr also highlighted the GENIUS Act’s failure to require that all reserve assets be insured. Uninsured deposits were a “key risk factor” during the March 2023 banking stress, which led to the collapse of Silicon Valley Bank. Governor Barr expounded upon the danger of increased bank runs from the use of uninsured and unreliable reserve assets, highlighting such historical examples as the Panic of 1907 and the Lehman Brothers bankruptcy in 2008. Senator Warren echoed this concern, arguing that a financial system reliant upon uninsured deposits “makes runs and firesales more likely.”



Regulatory Arbitrage Risks

Governor Barr cautioned that the gaps in the GENIUS Act may lead to regulatory arbitrage given the inconsistent treatment of issuers and financial institutions. The Act permits four federal agencies, as well as agencies in each state and territory, to serve as the primary regulators and supervisors of stablecoin issuers. According to Governor Barr, the “array of charter choice options” resulting from this “heterogeneity” of regulators may “provide incentives for regulatory arbitrage” unless regulations are crafted in a way that ensures careful coordination between federal and state regulators.

Consumer Protection Concerns

The GENIUS Act does not cover all stablecoins. Instead, it only covers “payment stablecoins,” which it defines as digital assets that are, or are designed to be, used as a means of payment or settlement, and that the issuers of which are obligated to convert, redeem or repurchase for a fixed amount of monetary value and represent or create the reasonable expectation that they will maintain a stable value relative to a fixed amount of monetary value. Governor Barr warned that consumers may not be aware of this limitation in scope and could therefore be misled into “relying on payment instruments that they believe are regulated, but for which there are no prudential protections of any kind [in the GENIUS Act].”

Moreover, he took issue with the statute’s lack of “fraud protections applicable to traditional payment instruments—including protection for unauthorized transfers.” Senator Warren likewise expressed concern that the GENIUS Act “failed to include commonsense amendments to ensure that basic consumer protections . . . would extend to stablecoin transactions,” leading to a higher likelihood that consumers will get “ripped off and scammed.”

Despite the optimism associated with the GENIUS Act’s enactment, Governor Barr believes stablecoins’ benefits will only be fully realized if federal and state regulators work to promulgate regulations that provide “strong guardrails and consumer protections” and that help maintain stablecoin stability even during episodes of “stress in the market that . . . put pressure on the value of even otherwise liquid government debt” and of “strain on the individual issuer or its related entities.”

With thoughtful implementing regulations, the GENIUS Act could provide a clear regulatory framework for financial institutions, issuers and stablecoin users alike, while simultaneously serving as a foundation for future innovation. As Governor Barr notes, stablecoins can reduce remittance costs, improve the efficiency of global trade and finance, support treasury management and expand access to financial independence for lower-income individuals underserved by traditional banking. In other words, regulatory clarity in the GENIUS Act could build public trust in and spur broad adoption of digital assets like payment stablecoins.

Read Governor Barr’s remarks [here](#).

Federal Reserve Proposes Revised Supervisory Stress Testing Framework – Leel Sinai

On Oct. 24, 2025, the Federal Reserve Board voted 6–1 (Governor Barr dissenting) to issue a Notice of Proposed Rulemaking that would amend its Policy Statement on the Scenario Design Framework for Stress Testing, Stress Testing Policy Statement, the stress capital buffer rule and related reporting forms. The proposal, Enhanced Transparency and Public Accountability of the Supervisory Stress Test Models and Scenarios, is intended to “enhance the transparency and public accountability” of the Board’s stress-testing framework while preserving the rigor and independence of the supervisory process.





Key Proposal: Enhanced Disclosure Process

The proposal would codify a new “enhanced disclosure process,” under which the Board would:

- i. Annually publish for comment the supervisory stress-test scenarios and accompanying comprehensive documentation describing the models used; and
- ii. Solicit public comment on any “material model changes,” as defined in the rule, before implementing such changes in a stress-testing cycle.

The required model documentation would describe “the equations, variables, coefficients, assumptions and limitations of each model,” the rationale for modeling decisions and “discussions of alternative models or modeling choices.” The Board would release this documentation by May 15 of each stress-testing year and use it to generate the results disclosed by June 30.

Model and Scenario Transparency

The proposal requests comment on the models that would be used for the 2026 supervisory stress test, which incorporates modifications from the 2025 models. These changes are intended to “address the sensitivity of pre-provision net revenue projections to recent firm performance.” To accommodate the new annual comment process, the proposal would shift the stress-test “jump-off” date (i.e., the date on which firms’ balance-sheet data are captured) from Dec. 31 to Sept. 30 of the preceding year. The Board would publish proposed stress-test scenarios for public comment by Oct. 15 each year, with at least a 30-day comment period.

Amendments to the Scenario Design Framework

The Federal Reserve also proposes several amendments to its Scenario Design Policy Statement:

- Introduce “guides” for seven additional domestic scenario variables to enhance predictability and transparency.
- Provide a more “detailed description” of the methodology for generating scenario variable paths.
- Expand the “as-of date” window for the global market shock (GMS) from the current Oct. 1–March 1 range to the period between Oct. 1 two years before and Oct. 1 of the year preceding the stress test.
- “Streamline” the GMS methodology by reducing modeled risk factors from 20,000 to approximately 2,300.
- Shorten liquidity horizons to one month for liquid asset classes and three months for illiquid classes.

These changes are designed to simplify the GMS framework and align it more closely with the “instantaneous” nature of market-shock events.

Revisions to Reporting Forms

The proposal would also amend the FR Y-14A/Q/M reporting forms to remove data fields and supporting documentation that are “no longer needed to conduct the supervisory stress test.” Eliminating the supporting-documentation requirement alone is expected to reduce the average submission by over 10,000 pages per firm. The Board estimates that these reporting revisions, along with the model and scenario updates, are “not expected to materially change capital requirements” for covered institutions.

Proposed 2026 Stress-Test Scenarios

Alongside the rulemaking, the Fed released for comment the proposed baseline and severely adverse scenarios for the 2026 stress test. These scenarios retain the 28 macroeconomic variables used in 2025. Under the severely adverse scenario, the U.S. unemployment rate peaks at 10 percent (up 5.5 percentage points from Q4 2025) and real GDP declines 4.8 percent through Q2 2027 amid a “severe global recession” triggered by an “abrupt decline in risk appetite that causes substantial declines in risky-asset prices and declines in risk-free interest rates.”

Firms with “substantial trading or custodial operations” must include a “counterparty default component,” while firms with “significant trading activity” must incorporate a global market shock component—a set of hypothetical shocks reflecting “general market distress and heightened uncertainty.” The 2026 GMS assumes higher inflation, elevated Treasury yields, and increased commodity prices relative to 2025.

Comments on the proposed rule are due Jan. 22, 2026. Comments on the 2026 proposed stress-test scenarios are due Dec. 1, 2025.

Read the Proposed Rule [here](#).



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