



COMMODITY FUTURES TRADING COMMISSION

Amended and Restated Order Designating the Provider of Legal Entity Identifiers to be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (“Commission”) has issued an Amended and Restated Order to extend the Commission’s designation of the Depository Trust and Clearing Corporation (“DTCC”) and Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) joint venture (“DTCC-SWIFT”) as the provider of legal entity identifiers, or “LEIs,” pursuant to the Commodity Exchange Act and the Commission’s regulations. DTCC-SWIFT’s designation was made by Commission order issued on July 23, 2012. The designation was made for a term of two years. The Amended and Restated Order amends the Commission’s order of July 23, 2012, as previously amended on June 7, 2013, to extend DTCC-SWIFT’s designation for an additional one year, while the terms of transition to a fully operational global LEI system are finalized and implemented. Consistent with the terms of the Commission’s order of July 23, 2012, as amended on June 7, 2013, the Amended and Restated Order permits registered entities and swap counterparties subject to the Commission’s jurisdiction to comply with the specified legal entity identifier requirements of the Commission’s regulations by using identifiers issued by DTCC-SWIFT, or any other pre-Local Operating Unit (“pre-LOU”) that has been endorsed by the Regulatory Oversight

Committee of the global LEI system as being globally acceptable and as issuing globally acceptable legal entity identifiers.

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I. Background

A. Legal Entity Identifiers: CEA Section 21(b) and Section 45.6 of the Commission's Regulations

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹ amended the Commodity Exchange Act (“CEA”)² to establish a comprehensive new regulatory framework for swaps. Amendments to the CEA included the addition of provisions requiring the retention, and the reporting to Commission-registered swap data repositories (“SDRs”), of data regarding swap transactions, in order to enhance transparency, promote standardization and reduce systemic risk.³ Pursuant to these newly added provisions, the Commission added to its regulations part 45,⁴ which sets forth recordkeeping rules, and rules for the reporting of swap transaction data to a registered SDR, and part 46,⁵ which sets forth recordkeeping and swap data reporting rules for historical swaps.

Under the authority granted by new section 21(b) of the CEA, which, among other things, directs the Commission “to prescribe standards that specify the data elements for each swap that shall be collected and maintained” by a registered SDR,⁶ the Commission, in its part 45 regulations, prescribed the use of a legal entity identifier, or “LEI,” in required recordkeeping and swap data reporting. Section 45.6 provides that

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² 7 U.S.C. 1 et seq.

³ See, e.g., new Section 2(a)(13)(G) of the CEA, which requires all swaps, whether cleared or uncleared, to be reported to a registered SDR; new Section 21(b) of the CEA, which directs the Commission to prescribe standards for swap data reporting and attendant recordkeeping; and new Sections 4r and 2(h)(5) of the CEA, which, among other things, establish reporting requirements for swaps in effect as of the enactment of the Dodd-Frank Act (“pre-enactment swaps”), as well as swaps in effect after such enactment but prior to the effective date for compliance with the Commission’s final recordkeeping and swap data reporting rules (“transition swaps” and, collectively with pre-enactments swaps, “historical swaps”).

⁴ Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (January 13, 2012).

⁵ Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012).

⁶ CEA Section 21(b).

“[e]ach counterparty to any swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to [part 45] by means of a single legal entity identifier as specified in this section.”⁷ In adopting this requirement, the Commission highlighted the LEI as a crucial regulatory tool to facilitate data aggregation by regulators, in furtherance of the systemic risk mitigation and other important purposes of the Dodd-Frank Act.⁸

Section 45.6 sets forth requirements that the legal entity identifier to be used to comply with the Commission’s recordkeeping and swap data reporting rules must meet, including satisfaction of specified technical and governance principles. In adopting these requirements, the Commission took into consideration work that had commenced at the international level to establish a global LEI system.⁹ The Commission expressed its agreement that “optimum effectiveness of [the LEI] as a tool for achieving the systemic risk mitigation, transparency and market protection goals of the Dodd-Frank Act – goals shared by financial regulators world-wide – would come from creation of [an LEI] ... that is capable of becoming the single international standard for unique identification of legal entities across the world financial sector.”¹⁰ The Commission cited its involvement in an international initiative, coordinated by the Financial Stability Board (“FSB”),¹¹ to establish standards, and a governance framework, for a global LEI system – including the

⁷ 77 FR at 2204. In addition, in part 46 of the Commission’s regulations, Section 46.4 provides that each counterparty to a historical swap in existence on or after April 25, 2011, for which an initial data report is required pursuant to part 46, must obtain a legal entity identifier, which must be used for purposes of recordkeeping and swap data reporting under part 46 as prescribed in Section 46.4. 77 FR at 35228-9.

⁸ See 77 FR at 2138.

⁹ See 77 FR at 2163.

¹⁰ 77 FR at 2163.

¹¹ The FSB is an international body that develops and promotes the implementation of effective regulatory, supervisory and other policies in the interest of financial stability. Established in 2009 as a successor to the Financial Stability Forum, the FSB coordinates the work of national financial authorities, international standards setting bodies and international financial institutions. Its membership includes G-20 members, the International Monetary Fund and the World Bank. The FSB Secretariat is located in Basel, Switzerland. The FSB’s website can be accessed at <http://www.financialstabilityboard.org>.

Commission's participation in an ad hoc, expert group of regulatory authorities convened by the FSB to develop recommendations regarding the implementation of such a system.¹²

B. Designation of the DTCC-SWIFT Utility

Pursuant to Section 21(b) of the CEA and Section 45.6 of the Commission's regulations, on July 23, 2012, the Commission issued an order ("Order")¹³ designating the utility operated by DTCC-SWIFT as the provider of the legal entity identifier to be used in recordkeeping and swap data reporting pursuant to parts 45 and 46 of the Commission's regulations, and directing registered entities and swap counterparties subject to the Commission's jurisdiction to use identifiers provided by DTCC-SWIFT to comply with the Commission's recordkeeping and swap data reporting requirements. DTCC-SWIFT's designation was subject to specified conditions, including DTCC-SWIFT's continuing compliance with all of the legal entity identifier requirements set forth in part 45 of the Commission's regulations.¹⁴

In the preamble to the Order, the Commission highlighted its ongoing participation in the international process, coordinated by the FSB, to develop standards and a governance framework for a global LEI system, as well as its expectation that, after recommendations regarding the global system were endorsed by the FSB and implemented, the identifier to be used to comply with the Commission's recordkeeping

¹² See 77 FR at 2162.

¹³ Availability of a Legal Entity Identifier Meeting the Requirements of the Regulations of the Commodity Futures Trading Commission and Designation of Provider of Legal Entity Identifiers To Be Used in the Recordkeeping and Swap Data Reporting, 77 FR 53870 (September 4, 2012).

¹⁴ See 77 FR at 53873.

and swap data reporting rules would transition into the global LEI.¹⁵ The Commission noted that, in light of the work being undertaken at the international level to establish a global LEI system, and as requested by other regulatory authorities participating in that work, the Commission would, on a transitional basis, refer to the legal entity identifier to be used to comply with the Commission’s recordkeeping and swap data reporting rules as the CFTC Interim Compliant Identifier (“CICI”), rather than the “LEI.”¹⁶ The Order provided that such identifier would be known as the CICI “until the establishment of the global LEI system or further action by the Commission.”¹⁷

C. Amendment of Designation Order to Account for Developments in the Establishment of a Global LEI System

On June 7, 2013, the Commission issued an amendment to the Order (“Amendment”),¹⁸ to take into account the significant progress that had been made in establishing the global LEI system. In the preamble to the Amendment, the Commission summarized the developments that had taken place at the international level since the Order was issued. It noted that the process to establish the global LEI system was now being led by an international Regulatory Oversight Committee (“ROC”), of which the Commission was a member, and that the ROC had determined that the global LEI system would be federated in nature – comprised of a private sector Central Operating Unit (“COU”), and multiple Local Operating Units (“LOUs”) that would issue LEIs. The Commission noted that under the auspices of the ROC, a foundation (“Global LEI

¹⁵ See 77 FR at 53871, citing Commission Press Release, CFTC Announces Process to Designate the Provider of CFTC Interim Compliant Identifiers, March 9, 2012, available at <http://www.cftc.gov/PressRoom/PressReleases/pr6200-12>.

¹⁶ Id.

¹⁷ 77 FR at 53873.

¹⁸ Amended Order Designating the Provider of Legal Entity Identifiers to Be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission’s Regulations, 78 FR 38954 (June 28, 2013).

Foundation”) was being established in Switzerland to provide the COU, and that the COU would, within the global LEI system, coordinate the system’s multiple LOUs.¹⁹

The Commission further noted that, as a step in the establishment of the global LEI system, each of seven identifier-issuing utilities – including the Commission-designated utility operated by DTCC-SWIFT – had been sponsored to the ROC by the ROC member exercising oversight over such utility, and had been provided with a distinct prefix for use when issuing identifiers, in order to ensure the uniqueness of identifier codes across utilities. The Commission expressed its expectation that the number of ROC member-sponsored “pre-LOUs” would increase in the coming months. The Commission also expressed its expectation that the Commission-designated “pre-LOU” operated by DTCC-SWIFT would become a LOU, and that the identifiers issued by it would become LEIs, within the global LEI system.²⁰

In the preamble to the Amendment, the Commission emphasized the importance, during the transitional period before the global LEI system became fully operational, of preserving the uniqueness of the identifier issued to any particular legal entity. The Commission stated that, once requirements mandating the use of LEIs were in effect in more than one jurisdiction, the only way to ensure that a single legal entity was not issued more than one identifier, pursuant to the requirements of more than one jurisdiction, was through regulatory cooperation – namely, the acceptance, by ROC member authorities mandating the use of LEIs, of identifiers issued by any ROC-recognized pre-LOU.²¹

The Amendment modified the Order to provide for such mutual regulatory acceptance. The Commission noted in the preamble to the Order the ROC’s forthcoming

¹⁹ See 78 FR at 38955.

²⁰ Id.

²¹ Id.

finalization of “a framework for global acceptance of [identifiers] assigned by a pre-LOU that is sponsored by a ROC member who assures the ROC that the pre-LOU meets specified principles regarding compliance with the [global] LEI standard, technical capacity, and agreement to adhere to ROC high-level principles.”²² The Amendment modified the Order to provide that, after the ROC had adopted such a framework, and had also approved the DTCC-SWIFT utility and the identifiers issued by it as globally acceptable, registered entities and swap counterparties subject to the Commission’s jurisdiction could use identifiers issued by DTCC-SWIFT, or any other pre-LOU approved by the ROC as globally acceptable and as issuing globally acceptable identifiers, to comply with the Commission’s recordkeeping and swap data reporting rules.²³

The preamble to the Amendment stated that it was the Commission’s understanding that, once the ROC had adopted standards for the approval of pre-LOUs and the identifiers issued by them as globally acceptable, any identifiers approved by the ROC as meeting such standards would be referred to as “LEIs.” Accordingly, the Amendment further modified the Order to provide that, effective immediately upon ROC approval of the identifiers issued by DTCC-SWIFT as globally acceptable, “the [identifiers] issued by DTCC-SWIFT shall be known as LEIs and not as CICIs.”²⁴

²² 78 FR at 38955.

²³ See 78 FR at 38956. The Amendment also modified the Order to provide that the use of identifiers issued by approved pre-LOUs other than DTCC-SWIFT or WM Datenservice (a pre-LOU sponsored to the ROC by BaFin, Germany’s Federal Financial Supervisory Authority) could commence only after the Commission’s Chief Information Officer published a notice on the Commission’s Web site stating that such identifiers and such pre-LOUs had been approved by the ROC as globally acceptable. Id.

²⁴ 78 FR at 38956.

On October 30, 2013, the Commission’s Chief Information Officer published on the Commission’s Web site a notice²⁵ stating that the ROC had adopted standards for the approval of pre-LOUs and the identifiers issued by them as globally acceptable, and had approved DTCC-SWIFT and the identifiers issued by it as meeting such standards (such approval being known, at the international level, as ROC “endorsement”). Accordingly, the notice stated that from October 30, 2013, onward, registered entities and swap counterparties subject to the Commission’s jurisdiction could comply with the legal entity identifier requirements of the Commission’s recordkeeping and swap data reporting rules “by using any [identifier] endorsed by the ROC as globally acceptable.”²⁶

Since its endorsement by the ROC as a globally acceptable pre-LOU, the DTCC-SWIFT utility – which had initially been referred to, on the utility’s website and in educational and other materials, as the “CFTC Interim Compliant Identifier (CICI) utility”²⁷ – has commenced referring to itself as the “Global Markets Entity Identifier (GMEI) utility.” It is the Commission’s understanding that this transition in terminology is intended to clarify for market participants that the identifiers issued by the DTCC-SWIFT utility may be used not only to comply with the Commission’s recordkeeping and

²⁵ Notice Regarding LEIs That May Be Used to Comply With CFTC LEI Requirements, October 30, 2013, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/noticerocamendedorder.pdf>.

²⁶ *Id.*

²⁷ In the Order, the Commission provided that the legal entity identifier to be used to comply with the Commission’s recordkeeping and swap data reporting rules would be known as the CICI “until the establishment of the global LEI system or further action by the Commission.” 77 FR at 53873. The Commission’s designation of the DTCC-SWIFT utility as the provider of such identifier was conditioned on the utility’s website, “and other facilities and documents used to provide identifiers for use in complying with parts 45 and 46,” referring to the CICI and not to the “LEI, the preliminary LEI, or other similar terms including the term LEI.” *Id.*

See the discussion, *infra*, of the action taken by the Commission, through its issuance of the Amendment, to provide for the transition away from the use of the term “CICI” to refer to the legal entity identifier to be used to comply with parts 45 and 46, prior to the conclusion of the process of establishing the global LEI system.

swap data reporting rules, but also to comply with the requirements of other regulatory authorities that recognize legal entity identifiers issued by ROC-endorsed pre-LOUs.

The transition in the terminology used by DTCC-SWIFT to refer to its utility also reflects the transition – anticipated by the Commission in the Amendment – away from the use of the term “CICI” to refer to the legal entity identifier to be used to comply with the Commission’s recordkeeping and swap data reporting rules. As discussed above, at the time of issuing the Amendment, it was the Commission’s understanding that, after the ROC commenced endorsing pre-LOUs and the identifiers issued by them as globally acceptable, any such globally acceptable identifiers would be referred to as “LEIs”. Accordingly, the Amendment modified the Order to provide for the identifiers issued by DTCC-SWIFT to be known as LEIs rather than CICIs, once such identifiers were endorsed as globally acceptable by the ROC. While, subsequent to the issuance of the Amendment, the ROC did commence endorsing pre-LOUs and the identifiers issued by them as globally acceptable, the ROC also deferred from referring to endorsed identifiers as “LEIs” until the process of establishing the global LEI system had progressed further. Thus, for an interim period, identifiers endorsed by the ROC as globally acceptable and issued by a globally acceptable pre-LOU – including the identifiers issued by DTCC-SWIFT – have been referred to at the international level as “pre-LEIs.”

II. Extension of Designation of the DTCC-SWIFT Utility

In the Order, the Commission designated DTCC-SWIFT as the provider of legal entity identifiers to be used to comply with parts 45 and 46 of the Commission’s regulations for a term of two years, running from the date of issuance of the Order on

July 23, 2012.²⁸ The Order provided that if, at the conclusion of the term of DTCC-SWIFT’s designation, the global LEI system was not yet operational, “the Commission may consider the feasibility of having multiple CICI providers and the feasibility of coordination among them to avoid duplicative LEIs, and if it believes this is feasible, may consider submissions from DTCC-SWIFT as well as from other parties that seek to become CICI providers.”²⁹

The process to establish the global LEI system has continued to move forward since the issuance of the Amendment on June 7, 2013. As discussed above, in the second half of 2013, the ROC adopted endorsement standards for pre-LOUs and the identifiers issued by them, and has since endorsed sixteen member-sponsored pre-LOUs – including DTCC-SWIFT – as globally acceptable.³⁰ The Global LEI Foundation that will provide the COU, managing the central operations of the global LEI system, has also been formally established under Swiss law. The ROC and the Global LEI Foundation are currently in the process of developing a framework for the transition of full operational management of the global LEI system to the COU, with supervisory oversight by the ROC in the public interest. On June 30, 2014, the ROC issued a press release stating that, with the establishment of the Global LEI Foundation and the commencement of the transition to full operational management by the COU, legal entity identifiers issued by pre-LOUs that have been endorsed by the ROC as globally acceptable, would henceforth be referred to as “LEIs” rather than “pre-LEIs.”³¹ The Commission notes that previously

²⁸ See 77 FR at 53873. The Order also permitted the Commission’s earlier termination of such designation “in connection with the establishment of a global LEI system.” *Id.*

²⁹ *Id.*

³⁰ To date, the sixteen endorsed pre-LOUs have, collectively, issued nearly 300,000 legal entity identifiers. See ROC Press Release, Regulatory Oversight Committee Welcomes First Meeting of Global LEI Foundation, June 30, 2014, available at http://www.leiroc.org/publications/gls/gleif_20140629_1.pdf.

³¹ *Id.*

issued pre-LEIs (including CICIs issued by DTCC-SWIFT) do not now need to be reissued; they will, going forward, be referred to as “LEIs” rather than “pre-LEIs” (or “CICIs”), but will otherwise remain unchanged.

While progress continues to be made in the establishment of the global LEI system, the system will not be fully operational before the expiration of DTCC-SWIFT’s two-year term of designation under the Order. Taking into consideration the significant progress that has been made in establishing the global LEI system to date – including the ROC’s endorsement of the DTCC-SWIFT utility as a globally acceptable pre-LOU – and in anticipation that the DTCC-SWIFT utility will become a LOU within the global system, the Commission believes that it is appropriate, in order to further the smooth transition to a fully operational global LEI system, to extend its designation of the DTCC-SWIFT utility.

The Order contemplated that, if the global LEI system was not yet operational before the term of DTCC-SWIFT’s designation expired, the Commission could consider the feasibility of having multiple providers of legal entity identifiers, and the feasibility of coordination among them to avoid the issuance of duplicative identifiers. The Order was issued before the governance framework for the global LEI system had been determined – and, in particular, before it was determined that the system would be federated in nature, comprised both of a central COU, and of multiple LOUs issuing LEIs. Consistent with this federated framework, during the current, transitional period before the global LEI system becomes fully operational, the ROC has established standards for the global acceptance of pre-LOUs that satisfy specified principles and requirements, and has endorsed a number of pre-LOUs as meeting those standards. In addition, the ROC has

carried forward its practice, described in the Amendment, of providing each pre-LOU with a distinct prefix for use when issuing identifiers, in order to ensure the uniqueness of identifier codes across pre-LOUs. During the transitional period, the ROC has also played an important role in promoting the mutual acceptance, by ROC member authorities mandating the use of LEIs, of identifiers issued by any pre-LOU endorsed by the ROC as globally acceptable.³²

Thus, while the global LEI system is not yet fully operational, its implementation has progressed to the point where the system can accommodate multiple pre-LOUs, operating in accordance with standards that are designed to promote consistency, and to avoid duplication, in the issuance of legal entity identifiers. Accordingly, the Commission believes that the feasibility of having multiple providers of legal entity identifiers, and the feasibility of coordination among them to avoid the issuance of duplicative identifiers, has already been addressed in connection with the establishment of the global LEI system – into which the identifiers to be used to comply with the Commission’s recordkeeping and swap data reporting rules, and any provider thereof, are expected to transition.³³ The Commission’s modification of the Order, by way of the Amendment, to permit the use of identifiers issued by any pre-LOU endorsed by the ROC as globally acceptable, and as issuing globally acceptable identifiers, reflects the Commission’s support for the feasibility of such a multiple provider system.

³² See, e.g., 78 FR at 38955.

³³ This does not preclude the Commission from considering a submission from another existing or prospective provider of legal entity identifiers that wishes also to be designated by the Commission, along with DTCC-SWIFT, but the Commission notes that its consideration of any such submission would take into account not only the relevant requirements of Section 45.6 of the Commission’s regulations, but also, for the reasons set forth herein, the principles, standards and current state of implementation of the global LEI system.

For the reasons described above, the Commission is amending the Order, as modified by the Amendment, to extend its designation of the DTCC-SWIFT utility while the terms of transition to a fully operational global LEI system are finalized and implemented. The Commission is also updating the Order to align the legal entity identifier terminology used therein with the terminology that is currently used at the international level, and to remove from the Order certain provisions that, given the current state of implementation of the global LEI system, are no longer applicable.

III. Amended and Restated Order

It is ordered, pursuant to Section 21(b) of the CEA and Section 45.6 of the Commission's regulations, that the Order, as modified by the Amendment, is amended and restated in its entirety to read as follows:

It is hereby ordered that:

1. Subject to Section 2(a), below, the Depository Trust and Clearing Corporation ("DTCC") and Society for Worldwide Interbank Financial Telecommunications ("SWIFT") joint venture ("DTCC-SWIFT") is designated as the provider of legal entity identifiers ("LEIs"), to be used in recordkeeping and swap data reporting pursuant to parts 45 and 46 of the Commission's regulations.
 - a. This designation is conditioned on DTCC-SWIFT's continuing compliance, for as long as it is authorized to provide LEIs by this order or any future order of the Commission, with all of the legal entity identifier requirements of part 45 of the Commission's regulations, and any related requirements as set forth in this order or in the requirements document provided to DTCC-SWIFT during the determination and designation process; including, without limitation, the

requirement to be subject to supervision by a governance structure that includes the Commission and other financial regulators in any jurisdiction requiring use of legal entity identifiers pursuant to applicable law, for the purpose of ensuring that issuance and maintenance of LEIs and of associated reference data adheres on an ongoing basis to the Commission's requirements set forth in part 45.

- b. This designation is further conditioned on the requirement that, subject to applicable confidentiality laws and other applicable law, (1) DTCC-SWIFT shall make public all LEIs and associated reference data, utility operations, and identity validation processes, and (2) if DTCC-SWIFT fails to satisfy the conditions of this designation, or upon any termination of this designation pursuant to Section 2(c)(2) below, DTCC-SWIFT shall, as instructed by the Commission, pass to a successor LEI utility specified by the Commission, or to the global LEI system, free of charge, all LEIs issued by DTCC-SWIFT and associated reference data and all LEI intellectual property rights.
 - c. This designation is made for a limited term of one year from the date of this Amended and Restated Order, and may be terminated by the Commission on three months' notice in connection with (1) the establishment of the global LEI system, or (2) DTCC-SWIFT's exit from the global LEI system.
2. To comply with the legal entity identifier requirements of parts 45 and 46 of the Commission's regulations:
 - a. Registered entities and swap counterparties subject to the Commission's jurisdiction may use LEIs provided by DTCC-SWIFT, or any other pre-Local Operating Unit ("pre-LOU") approved by the Regulatory Oversight Committee of

the global LEI system (“ROC”) as globally acceptable and as issuing globally acceptable LEIs. The list of pre-LOUs that are currently approved by the ROC as globally acceptable and as issuing globally acceptable LEIs, including the website address via which registered entities and swap counterparties may contact each such pre-LOU, is available at

http://www.leiroc.org/publications/gls/lou_20131003_2.pdf.

- b. As provided in section 45.6(b)(1) of the Commission’s regulations, registered entities and swap counterparties subject to the Commission’s jurisdiction shall be identified in all swap recordkeeping and swap data reporting by a single LEI.

Issued in Washington, DC, on July 22, 2014, by the Commission.

Christopher J. Kirkpatrick,

Acting Secretary of the Commission.

Appendix to Amended and Restated Order Designating the Provider of Legal Entity Identifiers to be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission’s Regulations – Commission Voting Summary

On this matter, Chairman Massad and Commissioners Wetjen, Bowen, and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Commissioner O’Malia did not participate in this matter.

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