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Roma, 13 dicembre 2013

Dear Sirs,

Comments on the consultation document "*Information reporting as contemplated in Article 129 of the TUB relating to the offer of financial instruments in Italy*" (October 2013)

Our firm is grateful for the opportunity of taking part in the public consultation process concerning the information reporting scheme contemplated in Article 129 of Legislative Decree 385 of 1 September 1993 (the ***Testo Unico Bancario* – Consolidated Law on Banking, TUB)** as amended by Article 1, paragraph 7, of Legislative Decree 303 of 29 December 2006, proposed by the Bank of Italy for the purposes of bringing the activity of collecting information on financial instruments issued or offered in Italy in line with developments in the legal framework, the markets and with the practice in the sector.

The Joint Associations Committee on Retail Structured Products (JAC)[1] supports this position paper, along with The International Capital Market Association (ICMA)[2], The International Swaps and Derivatives Association (ISDA)[3], as well as with the *Associazione Italiana Intermediari Mobiliari* (ASSOSIM)[4].

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[1] The members of the JAC comprise a large proportion of the major firms involved in the creation, manufacturing and distribution within the European Union of retail structured products and furthermore is sponsored by multiple associations with an interest in retail products.

[2] ICMA is responding in relation to its primary market constituency that lead-manages syndicated debt securities issues throughout Europe. This constituency deliberates principally through ICMA's Primary Market Practices Committee and ICMA's Legal and Documentation Committee.
Setting standards internationally, ICMA is a unique organisation and an influential voice for the global capital market. It represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges, central banks, law firms and other professional advisers. ICMA's market conventions and standards have been the pillars of the international debt market for over 40 years. Information about ICMA and its activities is available on the Association's web site: www.icmagroup.org.

[3] Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 60 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers.
Information about ISDA and its activities is available on the Association's web site: www.isda.org.

[4] ASSOSIM is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the Investment Services Industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the total trading volume.

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The aim of such comments is to contribute to highlighting certain requirements that have emerged from constant contact with issuers and capital market operators, and also take into account the examination of laws and practical expertise of other European Union countries that our firm and the aforesaid participants in the consultation process have gained as a result of their international activities.

We are glad to have had the opportunity to share our thoughts on a matter of such importance and remain at your disposal for any further explanation or analysis that you may consider necessary or appropriate. For this purpose, do not hesitate to contact the following for further information or clarification:

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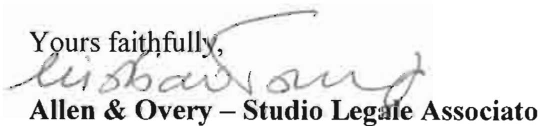

Yours faithfully,

Allen & Overy – Studio Legale Associato

COMMENTS ON CONSULTATION DOCUMENT *"SEGNALAZIONE A CARATTERE CONSUNTIVO DI CUI ALL'ART. 129 DEL TUB RELATIVA ALL'OFFERTA IN ITALIA DI STRUMENTI FINANZIARI"* (*"Information reporting as contemplated in Article 129 of the TUB relating to the offer of financial instruments in Italy"*) (October 2013)

With reference to the draft scheme contained in the consultation document "*Information reporting as contemplated in Article 129 of the TUB relating to the offer of financial instruments in Italy*" published on 14 October 2013 (the "**Measure**"), we wish to state, first of all, that we understand the essence of the reasoning that has led to the proposal formulated by your Institution, as described in the *Relazione sull'analisi d'impatto* ("*Report on the study of the impact of the proposal*") annexed to the Measure (the "**Report**").

Nevertheless, we wish to set out herein some problematic issues that emerge from the current version of the Measure, also when considered in the light of current international capital market practice, which we trust will be of assistance in the commendable attempt to bring the rules in question into line with the needs of sector operators, which is the aim underlying the Measure as detailed in the Report.

This document is divided into the following sections:

- SECTION I — It summarises the uncertainties raised by the Measure and the relevant practical implications; and
- SECTION II — It is more detailed and includes our proposal for changes to the present wording of the Measure in light of the comments received by the domestic and international capital market operators.

However, for your convenience, the comments in these Sections are deliberately set out in outline; we are at your disposal for any further details and/or explanations that might be deemed necessary or desirable.

SECTION I - GENERAL COMMENTS

Aims of the rules

As explained in the Report, the aim of the Measure is to regulate the methods for the collection of information on the part of those entities subject to the provisions of Article 129 of the TUB (as defined above) on a systematic basis in order to acquire information and data relating to the development of products and financial markets in Italy. The ultimate purpose would be to set up a structured and easily manageable financial instruments database for gathering detailed information that could be used both by the Bank of Italy and other authorities, such as Consob, as well as for fulfilling any other requests on the part of international bodies such as the EBA.

Article 129 of the TUB only gives the Bank of Italy the right - with regard to the issue and/or offer of financial instruments in Italy - to ask for the post-trade information it considers desirable. Under this framework, the system of monthly hard copy reporting which was effective until August 2011 and is no longer applicable should be "*replaced*" by the reporting scheme outlined in the Measure, which seems to impose extremely rigorous obligations involving the requests for particularly detailed information to be provided for each deal within extremely tight deadlines and the duty, in certain circumstances, of constantly updating the data provided.

This regulatory approach may well give rise to perplexity if it is analysed in relation and comparison to the systems for the collection of information concerning the issue and offer of financial instruments in force in other Eurozone countries, in which similar reporting obligations with the aim of meeting data storage objectives are not to be found (e.g., among others, in the UK); even where the banking regulator requests to be provided with post-trade information by local issuers, the obligations in question appear less cumbersome in terms of quantity and type of information to be supplied (e.g., see, among others, the experience of France and Luxembourg), also when the reporting requirements are clearly imposed by the national regulator to comply with the ECB's securities issues statistics (e.g., see the German example).

In this context, the provision of extremely burdensome reporting obligations under the Measure not only would undoubtedly give rise to difficulties in the implementation of such new rules from an administrative point of view, but could also ultimately lead - as stressed to our firm by the associations supporting this position paper as mentioned above - to discouraging non-resident entities from issuing and offering financial instruments in Italy, when we consider that Italy would be an "*anomalous*" case in respect of other Eurozone countries.

Field of application of reporting obligations

The present version of the Measure might raise some doubts regarding the interpretation of the provisions applicable to entities affected by the new rules.

We suggest that, in determining the entities responsible for reporting and the contents of the reports (see also below), the practical aspects of the procedures for the offering and placement of financial instruments should be taken into consideration, in particular with regard to offerings restricted to institutional investors, private placements and syndicated structures (e.g. pot deals).

In addition, you might want to consider the possibility to exclude from the scope of the Measure certain type of transactions, such as senior unsecured vanilla issues for non-Italian issuers, or at least, to consider the introduction of a materiality threshold so as to avoid the reporting requirements for transactions where the

amount placed into Italy is not very significant, should you confirm the need to collect the relevant information.

Reporting timescales and contents

The Measure is intended to reduce the duties of those entities subject to the information reporting regime in respect of those contemplated in the reform scheme submitted to public consultation in 2008, also in light of the fact that some of the information to be reported would be included in reports submitted at the time of allocating the securities database code to newly issued financial instruments.

However, the obligations imposed on entities subject to the rules appear to be particularly rigorous and burdensome often resulting in some of the information being impossible to obtain especially where considering the whole product provider and the distributor relationship relevant to the transactions in question. In general terms and also with regard to offers and placements of financial instruments by non-resident entities, as well as considering how some investment banks active on the Italian market operate, the amount and degree of detail of the data to be supplied in the information reports would force market operators to set up a special internal compliance system suitable for the specific reporting purposes, with a consequent significant increase in costs and procedures that, as we have said, are not required in other European Union jurisdictions.

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ICMA International Capital Market Association

ISDA Safe, Efficient Markets

SECTION II - COMMENTS ON THE INDIVIDUAL PROVISIONS OF THE MEASURE

We set out below some suggestions regarding desirable clarifications and/or modifications of certain provisions of the Measure.

PARAGRAPH	COMMENT
1.2 Definitions	
2) ***"Structured financial instruments"***	Even though the provisions under 1.2 of the Measure are drafted in line with the typical technique used by Italian regulators when making cross-references to other texts of laws, some doubts arises in relation to the present formulation of the definition at 1.2 (2), which refers to Article 1 of Legislative Decree 58 of 24 February 1958 (the *Testo Unico Finanziario* - "*Consolidated Law on Finance*"). Such cross-reference and the broad scope of the provision in question could give rise to uncertainties in particular when applied by operators on foreign markets and with reference to specific types of financial instruments, whose description, for the purposes of these rules, may not be clear. In order to ward off this possibility, you might want to **rephrase the current wording of the definition** of "*structured financial instruments*" (i) **excluding** those instruments, such as the asset-backed securities - ABS, in relation to which the information requested seem not applicable; and if possible, (ii) **including a list** of financial instruments which it is deemed may fall under such category.
4) ***"Reverse enquiry"***	The definition of "*reverse enquiry*" seems narrow and too restrictive as it only applies to securities sold to investors who will not resell them. For issuers and intermediaries it might be difficult to control/police subsequent on selling activities carried out by their investors, and therefore, we suggest that **such definition should be replaced with the following**: "*Transactions for the issuance of financial instruments carried out at the request of one or more underwriters/investors which exclude subsequent on selling or, in case of subsequent on selling, include an undertaking to comply with the applicable laws and regulations including reporting to the Bank of Italy pursuant to Article 129 of the Banking Act*".

2. Reporting obligations **2.1. Area of application** [*sub-section (c)*]	In subjecting to the rules entities that place financial instruments issued by non-resident entities (other than resident group parent entities subject to supervision, as defined), the present formulation of the Measure requires, in the case of **private placements**, that the reporting obligations be fulfilled by the issuers themselves in absence of said placement entities. It would be advisable to reconsider this provision with reference to the level and quantity of information that foreign issuers possess when financial instruments are distributed by private placement. As known, a large number of private placement transactions involve the presence of intermediaries whose role is to help the issuer to distribute the financial instruments among investors and who would be in a better position to provide the required data in the information reports. Furthermore, as regards **widely practised market techniques**, it would be desirable to specify which entities are deemed to be responsible for the information reporting as contemplated in Article 129 of the TUB. Among others, reference is made to a techniques that is frequently implemented in placements of financial instruments on a large scale and that is appreciated by particular syndicate structure, known as the "*pot system*", whereby all or some of the orders collected by the members of the placement syndicate flow into a central book managed by a lead manager bank: in this way the allocation of the securities to the various investors can be controlled so that market distribution is as smooth and well-balanced as possible. On this point what would be required is confirmation of the assumption that it is enough for reporting obligations to be laid upon the lead manager delivering the securities to Italian investors in order to avoid the unnecessary duplication and excessive fragmentation of information that would result from imposing similar obligations on each member of the placement syndicate.
3. Content of the reports and reporting procedures	In the hope that the whole paragraph will be reframed in order to make it easier to understand its clauses, different for each type of financial instrument and for each entity subject to the information reporting obligation, we would suggest taking this opportunity to make changes to the provisions, as set out in the current version of the Measure, pertaining to the **timing and content** of these reports in order to adapt them to the needs of sector operators. ▪ As regards **timing**, first we would like to draw your attention to the particular concern by market operators with regard to financial institutions that operate at global level handling substantial volumes of business, which would find it complex to set up a system able to satisfy reporting obligations on almost a daily basis.

3. *Content of the reports and reporting procedures*	In more details: (i) the Measure contains a reporting obligation to be complied with over two different periods of time, which are also quite close to each other. Since the rationale for this provision is not totally clear, it would be preferable to set a single reporting requirement and a single time limit for providing the data required with respect to a transaction; (ii) as mentioned, the reporting deadlines to be observed seem particularly tight and would force the entities concerned to set up internal procedures and incur greater costs, which could become exorbitant with respect to the purposes of the Measure. In order to reconcile the needs of the sector operators with those of storing and updating the data concerned, we suggest reconsidering the possibility of monthly deadlines for the transmission of information as per Article 129 of the TUB, which, when in force, created problems arising from the collection of data and coordination in market practice, but it would certainly be more consistent with operators' requirements, especially those of the international financial institutions referred to above, and would achieve the result of providing the same information with less administrative burden; and (iii) in addition to the reporting obligations referred to above, save as provided for in relation to financial instruments offered or placed in Italy and issued by non-resident entities, there is provision for an ongoing obligation to promptly provide an update concerning the characteristics of the financial instrument which may be subject to change or of the variations of the static conditions of said financial instrument. As a general comment, please note that the ongoing reporting obligations outlined in the Measure appear to be difficult to satisfy in practice, especially with regard, for example, to financial instruments with long maturity dates – as is often the case – and/or that may also be traded outside the country after their initial placement and/or by market operators at conditions which are not in the possession of the issuer/initial underwriters (e.g. trading prices). Please also see below specific comments on the ongoing reporting obligation concerning rating. With regard to the **set of information** to be prepared, we suggest the advisability of clarifying and reducing the number and type of data currently requested, as well as limiting the scope of the reporting obligation to information that are available to underwriters and can be extracted immediately from the offer (or listing) documentation of the financial instruments to which the obligations refer.

	In this respect, you might also want to consider the proposals for changes to the provisions of Appendix A – Section 2, as detailed below.
APPENDIX A **Section 1** ***"Registration information"***	The **quantity and type of information** required unquestionably give rise to issues of practical application, especially for reports from entities other than the issuer, which would find it quite burdensome to obtain the registration information required, especially in cases of financial instruments issued by non-resident entities where some of the information required may not exist. In order to avoid imposing the burden of satisfying requests for types of data that a reporting entity other than the issuer would not normally possess, we would hope that the following provisions can be revised or deleted: ▪ REGISTRATION INFORMATION — In particular, in light of our observations above, please consider substantially revising or deleting all the provisions concerning the obligation to provide information such as the tax and registered codes. ▪ ECONOMIC ACTIVITIES SUB-GROUP ▪ ISSUER'S GROUP PARENT COMPANY ▪ GUARANTOR'S CODE ▪ GUARANTOR'S GROUP PARENT COMPANY

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<td>Section 2

"Information on the issue"</td>
<td>We suggest that it would be advisable to review the type/quantity of information and the timing that is being contemplated at present, also in view of the fact that the securities to which the report refers may actually be in the process of being traded (inside and/or outside the country) or, in any event, that they may be undergoing an indeterminate number of changes and variations which would be too burdensome and in some cases non possible for initial underwriters to monitor and update.

In addition, the present version imposes the duty of reporting data that are not easily acquired at the reporting time, or data that are not known or data that it is hard to understand.

In particular, you might want to consider deleting or substantially revising the following provisions:

▪ CURRENCY → For the sake of clarity, please specify the requirements under the ISO 4217 standard.

▪ NUMBER OF CERTIFICATES IN CIRCULATION → Delete the current provision in relation to the various deadlines to be observed and the type of information to be filed considering (i) that this is not available to market operators, namely underwriters, post-closing; and (ii) the practical implications of imposing strict reporting requirements as outlined above.</td>
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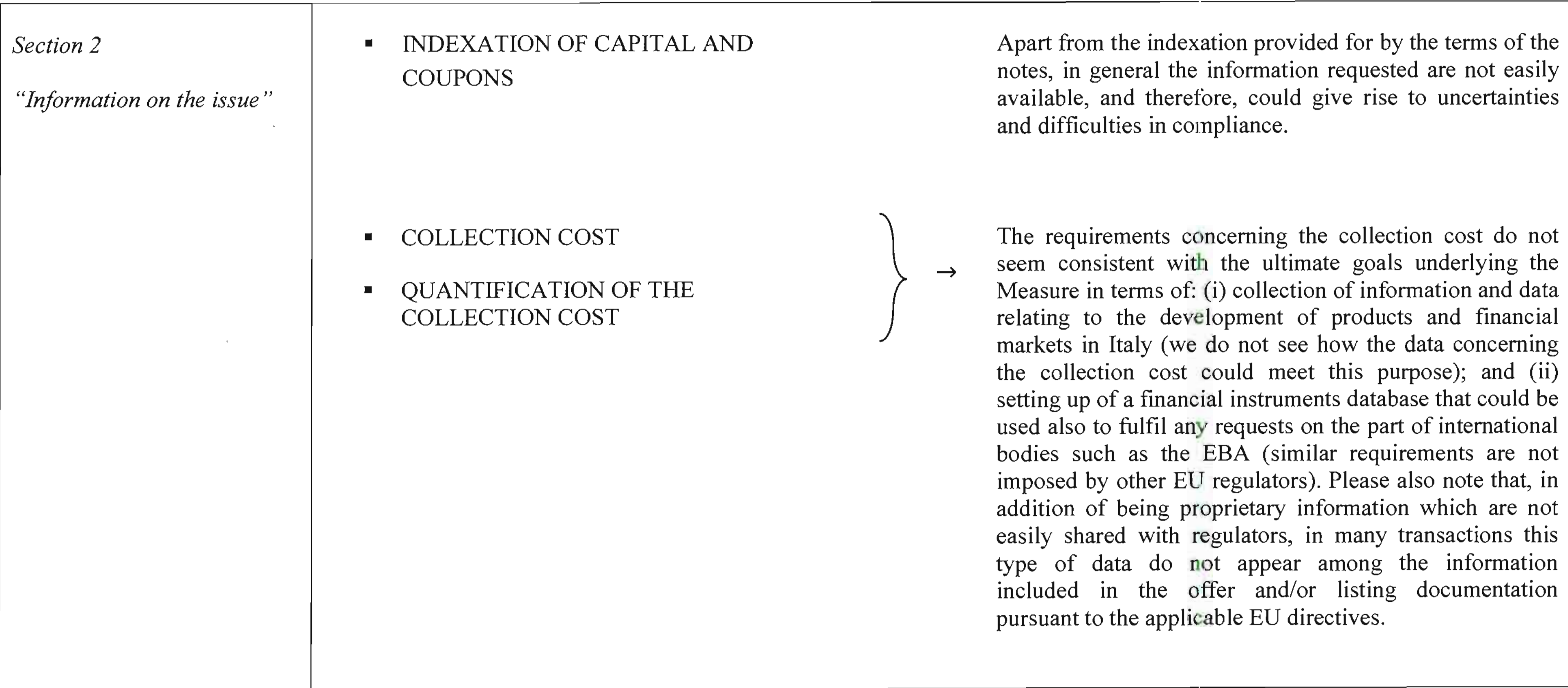
Section 2 *"Information on the issue"*	▪ RATING OF THE SECURITY ▪ RATING OF THE ISSUER ▪ RATING OF THE GUARANTOR	→ Please consider (i) our comments above concerning the costs and the burden on the entities subject to reporting which ongoing post-closing obligation regarding ratings may imply; and (ii) the circumstance that initial ratings may not be part of the official securities documentation and may not be easily accessible to initial underwriters and that post-closing changes in ratings would not generally be monitored by underwriters.
	▪ TRADING PRICE	→ Please consider deleting this requirement. However, please consider the scope, need and rationale for the current provision, which easily applies only with respect to listed financial instruments. Please also note that, even in case of listing, trading prices are generally determined by over-the-counter trading activities which are not public, and however, may not be visible to entities which are not parties to the trade.
	▪ ISIN CODE FOR THE REFERENCE PARAMETER ▪ ANNUAL RETURN ON THE ISSUE	→ Please consider revising or deleting these provisions considering that the current wording may give rise to uncertainties. In particular, the requirement concerning the ISIN code allocated to the reference parameter could be unclear or not existing unless the reference parameter is a security in a clearing system, and the reference to elements such as the "compound capitalisation scheme" seems not clear, and therefore, could be difficult to understand and implement by operators in the actual practice.



Section 2 *"Information on the issue"*	▪ INDEXATION OF CAPITAL AND COUPONS	Apart from the indexation provided for by the terms of the notes, in general the information requested are not easily available, and therefore, could give rise to uncertainties and difficulties in compliance.
	▪ COLLECTION COST ▪ QUANTIFICATION OF THE COLLECTION COST } →	The requirements concerning the collection cost do not seem consistent with the ultimate goals underlying the Measure in terms of: (i) collection of information and data relating to the development of products and financial markets in Italy (we do not see how the data concerning the collection cost could meet this purpose); and (ii) setting up of a financial instruments database that could be used also to fulfil any requests on the part of international bodies such as the EBA (similar requirements are not imposed by other EU regulators). Please also note that, in addition of being proprietary information which are not easily shared with regulators, in many transactions this type of data do not appear among the information included in the offer and/or listing documentation pursuant to the applicable EU directives.

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<td>Section 3

"Structured financial instruments"</td>
<td>We suggest that it would be advisable <u>to review this section as a whole</u> in the light of: (i) the extent of the knowledge that the entities subject to the reporting obligation may have in actual practice and the burden of gathering the information requested; and (ii) the circumstance that the set of information currently requested under the Measure does not feature in the official securities documentation. Please refer to general comments set out above in relation to the scope of the concept of "structured financial instruments".

In particular, we suggest that the contents of the following provisions should be substantially revised or deleted, as they may give rise to uncertainties in their construction and implementation:

▪ TYPE OF FINANCIAL INSTRUMENT

▪ BASIC OPTIONALITY

▪ TYPE OF CALL ON THE DERIVATIVE

▪ LEVERAGE OF THE SECURITY ON ISSUE

▪ ISSUE PRICE UNBUNDLING — Please revise this provision considering that the breakdown of the issue price is intended to apply to a broad universe of securities for some of which the information may not applicable or may not be clearly identifiable.

** NOTE ON THE STANDARDISED METHOD OF VALUATION</td>
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