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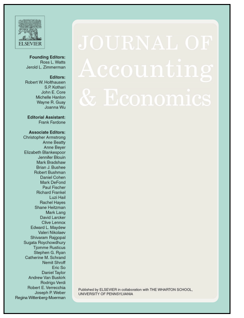

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Interpreting the Effects of Rule 10b5-1 Reform

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1. Introduction

The paper by Kim, Kim, and Rajgopal (2026) examines the effects of the Securities and Exchange Commission's (SEC) 2022 amendments to Rule 10b5-1 on opportunistic insider trading. Adopted in 2000, Rule 10b5-1 created an affirmative defense that allows corporate insiders to trade pursuant to a pre-established trading plan, even if they later come into possession of material nonpublic information, provided the plan was adopted in good faith before the insider became aware of that information (SEC, 1999). By providing greater legal certainty regarding the circumstances under which insiders may rely on Rule 10b5-1 plans, the rule seeks to facilitate legitimate liquidity and diversification while preserving the prohibition on trading based on material nonpublic information.

Over time, however, regulators, academics, and investors raised concerns that insiders exploited perceived weaknesses in the rule by adopting plans shortly before anticipated disclosures, terminating plans opportunistically, or otherwise using Rule 10b5-1 plans in ways that undermined the purpose of the affirmative defense. In response, the SEC adopted a series of amendments in 2022, including mandatory cooling-off periods, enhanced disclosure requirements, restrictions on overlapping plans, and new certifications intended to reduce opportunistic trading while preserving the legitimate use of trading plans (SEC, 2022).

Kim, Kim, and Rajgopal provide compelling evidence that these amendments altered insider trading behavior. The paper's strongest evidence concerns the new cooling-off-period requirements, documenting a substantial reduction in short-lag trades and a decline in the ability of Rule 10b5-1 sales to predict subsequent stock-price declines. The paper also documents important changes associated with several ancillary provisions, including accelerated disclosure of stock gifts and new disclosure requirements surrounding plan terminations. Collectively, the evidence suggests that the amendments were successful in reducing opportunistic trading behavior.

The paper's research design is well suited to identifying whether opportunistic trading declined following the 2022 amendments. However, it leaves open an important question regarding the mechanism underlying these changes. The authors interpret their findings primarily as evidence that the amendments worked by directly constraining insiders' ability to trade on material nonpublic information. As we discuss, the evidence is also consistent with a broader institutional response. During this same period, regulators, practitioners, and enforcement developments encouraged many firms to revisit their insider trading policies and compliance programs. Because these internal governance mechanisms often impose trading restrictions that extend beyond the legal requirements of Rule 10b5-1, they provide an additional channel through which the amendments may have influenced insider trading behavior.

Distinguishing among these mechanisms is important for both research and policy. If the observed effects arise primarily from the amended rule itself, the findings support greater reliance on ex ante trading constraints. If, instead, the amendments operated in part by inducing firms to strengthen their compliance programs and governance practices, the results underscore the importance of private ordering in implementing securities regulation. More broadly, understanding how legal reforms interact with firms' internal governance systems may improve both the interpretation of empirical evidence and the design of future securities regulation.

Our discussion proceeds as follows. Section II explains that the 2022 amendments should not be viewed as a discrete legal intervention. Rather, they were implemented through firms' compliance programs, which were evolving both before and after the amendments in response to regulatory signals, enforcement developments, practitioner guidance, and changing legal risk. Section III then considers whether the evidence presented by Kim, Kim, and Rajgopal (2026) distinguishes between the direct legal effects of the amendments and these broader organizational responses. Section IV concludes.

2. Corporate Compliance and the Implementation of Insider Trading Law

The central question raised by Kim, Kim, and Rajgopal's (2026) findings is whether the 2022 amendments reduced opportunistic insider trading solely by imposing new legal constraints or also by inducing firms to strengthen their internal compliance systems. We believe the latter channel deserves greater attention. Because public companies implement insider trading law through internal governance mechanisms—including insider trading policies, preclearance procedures, blackout windows, legal oversight, and Rule 10b5-1 plan administration—the amendments may have influenced trading behavior through both direct legal constraints and organizational responses. This distinction complicates the interpretation of the paper's findings.

A. Rule 10b5-1 Operates Through Corporate Compliance Programs

The Supreme Court has described preventing insider trading as an "animating purpose" of the federal securities laws because doing so helps "insure honest securities markets and thereby promote investor confidence" (*United States* v. *O'Hagan*, 1997). Yet, as the SEC has acknowledged, "[n]either [the SEC] nor Congress have expressly defined insider trading in a statute or rule" (SEC, 1999). Instead, insider trading law has developed incrementally through judicial decisions interpreting the antifraud provisions of the federal securities laws (SEC, 1999). As Bharara et al. (2020) observe, this case-by-case development has produced an area of law that "suffer[s] uncertainty and ambiguity to a degree not seen in other areas of law," even with respect to fundamental questions regarding the elements of liability. This uncertainty imposes costs not only on individual executives but also on firms attempting to ensure that insiders trade lawfully.

Recognizing this uncertainty, the SEC adopted Rule 10b5-1 in 2000 to provide "greater clarity and certainty" regarding when trades made pursuant to pre-established trading plans would qualify for an affirmative defense to insider trading liability (SEC, 1999). Under the rule, an insider who adopts a qualifying trading plan before becoming aware of material nonpublic information may subsequently execute trades pursuant to that plan even if the insider later acquires such information. The rule was intended to facilitate legitimate liquidity and diversification while preserving the prohibition against knowingly trading on material nonpublic information.

In practice, however, Rule 10b5-1 is only one component of the institutional framework governing insider trading. Public companies rarely rely exclusively on the federal securities laws. Instead, they implement insider trading law through firm-specific compliance programs designed to translate broad legal standards into operational rules. Survey evidence indicates that more than 90 percent of public companies maintain formal insider trading policies (Bettis, Coles, and Lemmon, 2000), while more recent work documents substantial cross-sectional variation in the design of firms' trading windows and other trading restrictions

(Guay, Kim, and Tsui, 2023). These policies typically identify employees subject to trading restrictions, establish blackout periods, require preclearance by the legal department, regulate the adoption, modification, and termination of Rule 10b5-1 plans, provide employee training, and assign responsibility for monitoring compliance. Active oversight by general counsel has been shown to reduce informed insider trading substantially, suggesting that these governance mechanisms influence trading behavior beyond the legal rules themselves (Jagolinzer, Larcker, and Taylor, 2011).

Importantly, insider trading policies often impose restrictions that exceed the minimum requirements of federal securities law. Rather than asking executives to determine whether they possess material nonpublic information before every trade, firms frequently adopt bright-line rules that are easier to administer and monitor. For example, many companies require advance legal approval before any Rule 10b5-1 plan may be adopted, amended, or terminated (Jagolinzer et al., 2011) and prohibit trading during quarterly blackout periods regardless of whether an executive possesses material nonpublic information (Bettis et al., 2000). More generally, legal scholars argue that firms routinely translate broad regulatory standards into internal governance systems that are more restrictive than the underlying law in order to reduce legal uncertainty and enforcement risk (Min, 2023). Accordingly, legal reforms may influence insider trading behavior not only by changing the governing legal rules, but also by inducing firms to revise the internal compliance systems through which those rules are implemented.

B. Compliance Programs Can Shape the Legal Obligations Underlying Insider Trading

The importance of corporate compliance programs extends beyond their role in preventing unlawful trading. In some circumstances, they may also help define the legal obligations underlying insider trading liability. The SEC's enforcement action against Matthew Panuwat in 2021 illustrates this, substantially expanding attention to corporate insider trading policies.

Panuwat arose after a business development executive at Medivation allegedly purchased shares of another biotechnology company after learning confidentially that Medivation was about to be acquired. Rather than alleging that Panuwat traded in his employer's own securities, the SEC advanced a novel "shadow trading" theory, arguing that Panuwat misappropriated confidential information belonging to Medivation by trading in the securities of a peer company. The case was widely viewed as testing the boundaries of insider trading law and generated significant attention among securities practitioners.[1]

Importantly, the SEC's theory did not rely solely on the existence of confidential information. It also relied on Medivation's insider trading policy, which prohibited employees from using confidential information obtained through their employment for personal securities trading. In denying Panuwat's motion to dismiss, the district court relied in part on those internal policies in concluding that the SEC had plausibly alleged the duty and deceptive conduct necessary to state a claim under Rule 10b-5. Accordingly, the firm's insider trading policy was not merely evidence of good corporate governance; it helped define the legal obligations giving rise to the SEC's theory of liability.

[1] The SEC alleged that Panuwat misappropriated confidential information belonging to Medivation by purchasing shares of Incyte after learning that Medivation would be acquired by Pfizer. Because Incyte was viewed as a close economic peer, the SEC argued that Medivation's confidential information was material to Incyte's stock price even though Panuwat did not trade in Medivation's securities.

The significance of *Panuwat* therefore extends beyond the recognition of "shadow trading." More broadly, it highlights the close interaction between securities regulation and corporate compliance. Insider trading policies do not simply implement federal securities law within the firm; under some circumstances, they may also shape the duties that courts evaluate in determining liability under Rule 10b-5. As Min (2023) argues, firms frequently operationalize broad legal standards through internal governance mechanisms that are more restrictive than the law itself. *Panuwat* demonstrates that these internal governance mechanisms may influence the legal consequences of executives' trading behavior.

Accordingly, *Panuwat* provides an important institutional link between the legal requirements governing insider trading and the organizational systems through which those requirements are implemented. This interaction suggests that changes in insider trading behavior may arise not only because legal rules change, but also because firms revise compliance programs through which those rules are administered.

C. Compliance Programs Evolved Throughout the Rulemaking Process

The 2022 amendments to Rule 10b5-1 did not emerge in isolation. Rather, they were adopted during a period of heightened attention to insider trading in which regulators, investors, academics, and practitioners increasingly questioned whether existing Rule 10b5-1 plans and corporate insider trading policies adequately prevented opportunistic trading. Consequently, firms had incentives to revisit their insider trading policies well before the amendments became effective.

Regulators began signaling increased attention to insider trading compliance before proposing formal amendments to Rule 10b5-1. At the onset of the COVID-19 pandemic, the co-Directors of the SEC's Division of Enforcement cautioned that "a greater number of people may have access to material nonpublic information than in less challenging times" and urged public companies to be particularly mindful of their disclosure controls and insider trading policies (Avakian & Peikin, 2020). Later that year, SEC Chairman Jay Clayton emphasized in a letter to Congress that "good corporate hygiene" included giving "strong[] consider[ation]" to mandatory seasoning periods before trading under Rule 10b5-1 plans could begin or recommence (Clayton, 2020).

Although the Commission had not yet proposed amendments, the letter signaled that existing compliance practices surrounding Rule 10b5-1 plans warranted closer scrutiny. Around the same time, the SEC's *Andeavor* settlement[2] reinforced these concerns by criticizing deficiencies in the company's internal process for determining whether material nonpublic information existed before authorizing a share repurchase. Together, these developments emphasized that effective compliance depended not only on the technical requirements of Rule 10b5-1, but also on the governance processes through which trading plans were reviewed and approved.

Investor groups, academics, and regulators were also advocating stronger safeguards surrounding Rule 10b5-1 plans. For example, the Council of Institutional Investors petitioned the SEC in 2012 to require

[2] *In the Matter of Andeavor LLC (2020)* involved an SEC allegation that the company repurchased shares while aware of material nonpublic information. The Commission emphasized deficiencies in the company's internal accounting controls and governance procedures for determining whether it possessed material nonpublic information before initiating the repurchase program, highlighting the importance of robust compliance processes in addition to adherence to insider trading policies..

mandatory cooling-off periods and enhanced oversight of Rule 10b5-1 plans. And Larcker et al. (2021) identified three "red flags" associated with potentially opportunistic Rule 10b5-1 trading, including short cooling-off periods and single-trade plans. Next, the SEC's Investor Advisory Committee (IAC) recommended similar reforms proposed earlier by Acting SEC Chair Allison Herren Lee and Commissioner Caroline Crenshaw, including mandatory cooling-off periods, restrictions on overlapping and single-trade plans, expanded disclosures, and director and officer certifications. Shortly thereafter, *Panuwat* further heightened attention to insider trading policies by illustrating that a firm's own compliance policy could help establish the legal duty underlying Rule 10b-5 liability, as discussed in Section II.B. These developments reflected growing concern that existing governance practices surrounding Rule 10b5-1 plans were insufficient and contributed to increasing calls for reform.

These concerns were echoed by SEC Chair Gary Gensler, who stated in June 2021 that Rule 10b5-1 had created "real cracks in our insider trading regime" and directed the staff to "freshen up" the rule (Gensler, 2021). The SEC proposed amendments in December 2021 and adopted substantially similar reforms one year later. Following adoption of the amendments, the prosecution in *United States* v. *Peizer* reinforced that regulators would closely scrutinize not only whether Rule 10b5-1 plans satisfied the rule's technical requirements, but also the processes through which those plans were adopted and administered.[3]

Taken together, these developments suggest that firms were influenced by a steadily evolving compliance environment rather than a single regulatory shock. By the time the amendments became effective, companies had experienced several years of increasing regulatory scrutiny, expanding enforcement theories, and public calls for stronger governance of insider trading. As discussed in the next section, practitioners consistently interpreted these developments as requiring firms to revisit their insider trading policies, Rule 10b5-1 procedures, and broader compliance programs.

D. Practitioner Guidance Emphasized Revisions to Compliance Programs

Contemporaneous practitioner guidance provides perhaps the strongest evidence that firms were expected to respond to the evolving insider trading environment by revising their internal compliance programs. Importantly, these recommendations began well before the SEC adopted the 2022 amendments and continued after the amendments became effective. As illustrated in Table 1, securities practitioners commonly advised companies to revisit insider trading policies, Rule 10b5-1 governance, preclearance procedures, disclosure controls, and employee training in response to regulatory developments, enforcement actions, and the Commission's rulemaking. The examples presented are illustrative rather than comprehensive.

Several aspects of this guidance are noteworthy. First, recommendations to revise compliance programs predated the final amendments. Following *Panuwat*, practitioners advised companies to evaluate whether existing insider trading policies adequately addressed emerging enforcement theories, including shadow

[3] In *United States* v. *Peizer*, the SEC and the Department of Justice brought parallel civil and criminal actions alleging that a biotechnology executive adopted Rule 10b5-1 trading plans while already aware of material nonpublic information. The case underscored that Rule 10b5-1's affirmative defense is unavailable if a trading plan is adopted in bad faith or while the insider is aware of material nonpublic information. Following the enforcement actions, numerous securities law firms advised companies to revisit Rule 10b5-1 plan approval procedures, insider trading policies, and related governance practices.

trading. Likewise, after the SEC proposed amendments in December 2021—but before any amendments became effective—law firms recommended reviewing Rule 10b5-1 plans, insider trading policies, and governance procedures in anticipation of the forthcoming rules.

Second, practitioner guidance extended beyond the specific legal requirements contained in the amended rule. Rather than simply advising companies how to comply with new cooling-off periods or disclosure obligations, practitioners recommended broader revisions to insider trading policies, plan approval procedures, documentation, legal oversight, and governance practices. This pattern is consistent with the institutional framework described above, in which firms implement securities regulation through internal compliance systems rather than relying solely on the legal requirements themselves.

Accordingly, the practitioner literature provides direct evidence that many firms were encouraged to strengthen their compliance programs throughout the 2020–2023 period. These recommendations support the interpretation that the 2022 amendments were implemented not only through changes in the governing legal rules but also through contemporaneous changes in firms' internal governance systems.

Date	Firm	Trigger	Recommendations
Oct. 2020	Simpson Thacher & Bartlett LLP	SEC *Andeavor* settlement	Strengthen internal controls for buyback programs to verify whether a company may be in possession of MNPI
Aug. 2021	Sidley Austin LLP	*Panuwat* indictment	Assess adequacy of procedures to address whether confidential information is material and periodically test insider trading policies for accuracy and effectiveness
Aug. 2021	Sullivan & Cromwell LLP	Investor Advisory Committee hearing on 10b5-1 amendments	Anticipate SEC Staff will incorporate most, if not all, of IAC's proposal
Sept. 2021	White & Case LLP	*Panuwat* SEC enforcement action	Consider additional restrictions on trading in "economically linked" companies
Dec. 2021	Ballard Spahr LLP	SEC proposal of 10b5-1 amendments	Review existing Rule 10b5-1 plans and insider trading policies in preparation of SEC's adoption of some of the amendments
Dec. 2021	Meridian Compensation Partners LLC	SEC proposal of 10b5-1 amendments	Review design of Rule 10b5-1 plans and insider trading policies and procedures
Dec. 2021	King & Spalding LLP	SEC proposal of 10b5-1 amendments	Survey existing policies and procedures in advance of final rules being adopted
Jan. 2022	Paul, Weiss, Rifkind, Wharton & Garrison LLP	Court denying Panuwat efforts to dismiss case	Review scope of internal policies that cover trading of competitor securities while in possession of MNPI
Nov. 2022	Morrison & Foerster LLP	Increased DOJ/SEC scrutiny of 10b5-1 plans	Adopt cooling-off periods before the Rule requires it, consider updating executive trading procedures
Jan. 2023	Dentons	Rule 10b5-1 amendments	Implement cooling off periods and require director and officer certifications

June 2024	Bryan Cave Leighton Paisner LLP	Peizer conviction	Review preclearance procedures for Rule 10b5-1 plans to ensure directors and officers do not possess MNPI

Notes: *This table is illustrative rather than comprehensive. Numerous additional client alerts issued during 2020–2024 conveyed substantially similar recommendations.*

In sum, the regulatory developments, enforcement actions, and practitioner guidance discussed above suggest that the 2022 amendments were implemented through a broader process of organizational change. While the amendments undoubtedly imposed new legal constraints on the use of Rule 10b5-1 plans, they were preceded and accompanied by repeated recommendations that firms review and strengthen their insider trading policies, preclearance procedures, governance processes, and compliance programs. Consequently, firms may have responded not only by complying with the amended rule, but also by revising the internal governance systems through which insider trading law is implemented.

This institutional setting complicates the interpretation of post-amendment changes in insider trading behavior. If firms strengthened their compliance programs in anticipation of, or in response to, the evolving regulatory environment, the trading patterns documented by Kim, Kim, and Rajgopal (2026) may reflect both the direct effects of the amended rule and the indirect effects of changes in firms' internal governance—mechanisms that are not mutually exclusive. Indeed, the 2022 amendments may have been effective precisely because they prompted firms to reassess and strengthen their compliance systems.

The remainder of this discussion considers the extent to which the evidence presented by Kim, Kim, and Rajgopal (2026) supports the interpretation that the observed changes primarily reflect the legal constraints imposed by the amended rule or is also consistent with a broader compliance response. Rather than viewing these explanations as mutually exclusive, we suggest that the evidence is most consistent with the 2022 amendments operating through both direct legal constraints and firms' endogenous compliance responses.

3. What Do the Results Tell Us About the Mechanisms Underlying the 2022 Amendments?

Section II argues that the 2022 amendments were implemented through firms' compliance programs, which were evolving before and after the rulemaking process. The remaining question is whether the empirical evidence distinguishes between the direct legal effects of the amended rule and these broader organizational responses.

The authors appear to interpret the evidence primarily as demonstrating that the amended rule directly constrained insiders' ability to trade on material nonpublic information. As discussed below, the evidence is broadly consistent with that interpretation. At the same time, several of the paper's findings are also consistent with a broader institutional response in which firms strengthened their governance and compliance surrounding insider trading.

A. Evidence Supporting the Authors' Interpretation

Many key findings naturally support the authors' interpretation that the amendments directly constrained opportunistic trading. Most notably, the paper documents a sharp decline in trades executed after short cooling-off periods, the very behavior targeted by the 2022 amendments. This finding is particularly compelling because it demonstrates that the largest behavioral changes occurred precisely where the amended rule imposed its most direct legal constraint. Rather than documenting a general decline in insider trading, the paper shows a decline in the specific trading behavior that the SEC sought to eliminate.

The paper also finds that Rule 10b5-1 sales become substantially less predictive of subsequent stock-price declines following the amendments. This result suggests not merely that insiders traded less frequently under Rule 10b5-1 plans, but that the informational advantage associated with those trades diminished. To the extent that post-sale underperformance reflects opportunistic trading on material nonpublic information, the reduction in return predictability is consistent with the amendments limiting insiders' ability to exploit that information.

Finally, the largest behavioral changes occur among insiders who historically relied on short cooling-off periods. This heterogeneity is also consistent with the authors' interpretation. If the amendments operated primarily by constraining opportunistic trading, one would expect the largest effects among the insiders whose trading strategies depended most heavily on the ability to adopt and execute plans quickly. The evidence broadly accords with this prediction.

Collectively, these findings provide persuasive evidence that the 2022 amendments altered insider trading behavior through the direct legal constraints imposed by the amended rule.

B. Evidence Consistent with a Broader Compliance Response

Several findings are also consistent with the broader institutional changes discussed in Section II. As illustrated in Table 1, regulators, enforcement actions, and practitioner guidance consistently encouraged firms to revise their insider trading policies, preclearance procedures, Rule 10b5-1 governance, and related compliance processes during this period. If firms responded to these recommendations, some of the observed changes in insider trading behavior may reflect organizational changes in addition to the direct effects of the amended rule.

The paper's cross-sectional analyses show that the reduction in opportunistic trading is concentrated among firms with historically weaker insider trading controls. The authors interpret this result as evidence that the amendments were most effective where there was the greatest opportunity for opportunistic trading. An equally plausible interpretation is that these firms also had the greatest scope to strengthen their internal compliance programs in response to the evolving regulatory environment. Firms with already robust governance likely entered the amendment period with many of the relevant controls already in place, whereas firms with weaker compliance systems may have responded by revising insider trading policies, expanding preclearance procedures, strengthening legal oversight of executive trading, or imposing additional restrictions beyond those required by the amended rule. Viewed through this lens, the observed cross-sectional differences are consistent with heterogeneous compliance responses as well as heterogeneous exposure to the amended rule.

A similar point arises from the paper's evidence on Rule 10b5-1 plan participation. Although aggregate use of Rule 10b5-1 plans changes relatively little following the amendments, the reduction in opportunistic trading is concentrated among firms that decrease their reliance on trading plans. This finding suggests that firms may have reevaluated not only how trading plans were used, but also when they should be used and by whom. Such changes are naturally viewed as part of firms' broader governance response rather than simply the mechanical effect of the amended rule and are consistent with the practitioner guidance summarized in Section II.

None of these findings undermine the paper's conclusion that insider trading behavior changed following the 2022 amendments. Rather, they suggest that the observed changes likely reflect both the direct constraints imposed by the amended rule and firms' broader compliance responses. Indeed, the institutional evidence presented in Section II indicates that many firms were encouraged to revisit their insider trading policies and governance practices before, during, and after the rulemaking process. A key question concerns the extent to which those adjustments contributed to the observed changes in insider trading behavior. Distinguishing between these complementary channels would not only sharpen our understanding of the 2022 amendments but also provide broader insights into how securities regulation operates through firms' internal governance systems.

4. Conclusion

Kim, Kim, and Rajgopal (2026) provides compelling evidence that the SEC's 2022 amendments to Rule 10b5-1 reduced opportunistic insider trading. Their findings contribute to a growing literature demonstrating that carefully designed trading constraints can improve the integrity of insider trading plans while preserving their legitimate use.

This discussion suggests that the amendments may have operated through more than one channel. In addition to imposing new legal constraints on Rule 10b5-1 plans, the amendments were implemented during a period of heightened regulatory scrutiny, evolving enforcement theories, and widespread practitioner guidance encouraging firms to revisit their insider trading policies and compliance programs. Because public companies implement insider trading law through these internal governance mechanisms, changes in insider trading behavior may reflect both the direct effects of the amended rule and firms' broader organizational responses.

Importantly, these explanations are complementary rather than competing. The amendments may have been effective precisely because they prompted firms to reassess and strengthen the compliance systems through which insider trading law is implemented. Viewed from this perspective, the paper contributes not only to our understanding of Rule 10b5-1, but also to a broader literature examining how securities regulation affects corporate behavior through firms' internal governance and compliance systems.

More broadly, distinguishing between these channels remains an important opportunity for future research. Doing so would deepen our understanding of how firms translate legal reforms into organizational change and may inform the design of future securities regulation, particularly in areas where legal standards are implemented through corporate compliance programs rather than direct regulatory mandates.

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Declaration of Interest Statement

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