



## Regulatory Reporting Newsletter



## INTRODUCTION

Welcome to the Quorsus November Newsletter. In this issue we are focussing on the CFTC Rewrite which goes live on 5th December 2022. Most of the industry will be deep into UAT by now and we hope the information provided here will help ensure that nothing has been missed. The adoption of UTI and CDE elements this December, and the planned adoption of UPI and ISO 20022 (the new messaging format) next year, signal the first moves in a concerted round of convergence and standardisation amongst global regulations which will be played out over the next few years.

We will be taking a closer look at CFTC's new error correction and verification rules, conducting a deep dive into the requirements of the new notification form, and highlighting some of the key testing issues. But first, a roundup of the regulatory news since our last edition.

### Newsletter Terminology

- **ASIC** Australian Securities and Investments Commission
- **CDE** Critical Data Elements
- **CFTC** Commodity Futures Trading Commission
- **CSA** Canadian Securities Administrators
- **DMO** Division of Market Oversight
- **EC** European Council
- **EMIR** European Market Infrastructure Regulation
- **EONIA** Euro Overnight Index Average
- **ESMA** European Securities & Markets Authority
- **FCA** Financial Conduct Authority
- **FCM** Futures Commission Merchant
- **FIRDS** Financial Instruments Reference Data System
- **HKMA** Hong Kong Monetary Authority
- **HKTR** Hong Kong Trade Repository
- **ISIN** International Securities Identification Number
- **ISO** International Organisation of Standardisation
- **JFSA** Japan Financial Services Agency
- **LEI** Legal Entity Identifier
- **LIBOR** London Inter-Bank Offered Rate
- **MAS** Monetary Authority of Singapore
- **MiFID** Markets in Financial Instruments Directive
- **MiFIR** Markets in Financial Investment Regulation
- **OTC** Over-the-Counter
- **PPD** Public Price Dissemination
- **PRA** Prudential Regulation Authority
- **PTRR** Post trade risk reduction
- **REFIT** Regulatory Fitness & Performance Program
- **ROC** Regulatory Oversight Committee
- **SDR** Swap Data Repository
- **SEC** Securities Exchange Commission
- **SFT** Securities Financing Transactions
- **SFTR** Securities Financing Transaction Regulation
- **SFT** Securities Financing Transactions
- **TR** Trade Repository
- **UAT** User Acceptance Testing
- **UPI** Unique Product Identifier

## WHAT'S INSIDE THIS ISSUE:

### Regulatory Updates

*A regional view of the regulatory pipeline for EU, APAC, the UK & North America. This includes consultation papers from ESMA, FCA and ASIC, amendments to electronic record-keeping for SEC, and updates on UAT from CFTC & HKTR. This section also summarises key fines recently handed down by regulators*

### EMIR REFIT

*With the publication of the final rules having taken place in October, our experts examine what this will mean for firms*

### Error Correction & Verification for CFTC 45.14

*As the CFTC Rewrite compliance date fast approaches, firms should be in the closing stages of their implementation and finalising their new operating models*

### Testing Times Ahead

*We look at the importance of establishing a comprehensive testing plan as part of CFTC Rewrite Go-Live preparations*

## WHO WE ARE

Quorsus provides consultancy services to financial institutions facing a range of challenges and constraints across the post-trade landscape. We offer **unparalleled expertise in post-trade technologies, operations, regulatory solutions, and market infrastructure, helping our clients to achieve their goals through intelligent reengineering of platforms and process.** We pride ourselves on the strength and character of our consultants. This, combined with decades of industry expertise, ensures that our clients meet their objectives, however steep the challenge

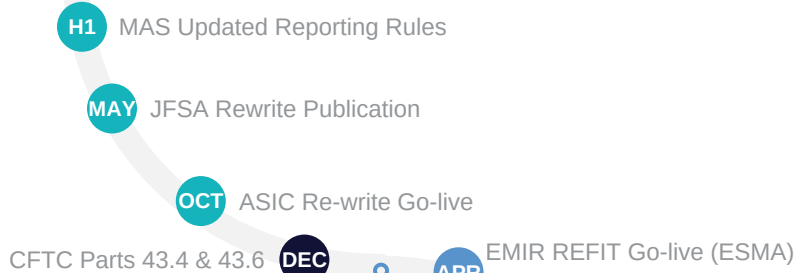
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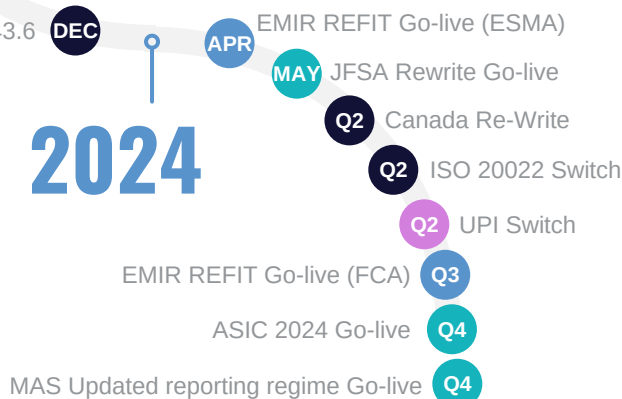
## Global Regulatory Roadmap



# 2023



# 2024



## REGULATORY FINES AND PENALTIES

**"THIS CASE SHOULD SERVE AS A MESSAGE TO ALL SWAP DEALERS THAT THE CFTC WILL BRING JUSTICE FOR FAILURES IN SWAP DATA REPORTING. IT HAS BEEN MORE THAN 10 YEARS SINCE THE DODD-FRANK ACT SWAP DATA REPORTING RULES WERE PUT IN PLACE. IT IS FAR PAST TIME FOR SWAP DEALERS TO COME INTO COMPLIANCE WITH THE LAW."**

CHRISTY GOLDSMITH ROMERO,  
CFTC COMMISSIONER

On 5th July, the CFTC fined two firms a combined total of ~\$7million because of control failures and sustained breaches in their swap reporting. The importance of a robust control framework and oversight has never been clearer, particularly as stringent new requirements for error correction come into force as part of the CFTC Rewrite this December. Commissioner Christy Goldsmith Romero commented, "This case should serve as a message to all Swap Dealers that the CFTC will bring justice for failures in swap data reporting. It has been more than 10 years since the Dodd-Frank Act swap data reporting rules were put in place. It is far past time for Swap Dealers to come into compliance with the law."

On 27th September, the SEC charged 16 Wall Street firms with widespread recordkeeping failures. Charges were brought against 15 broker-dealers and one affiliated investment adviser for widespread and longstanding failures by firms and their employees to maintain and preserve electronic communications. From January 2018 through September 2021, the firms' employees routinely communicated business matters using text messaging applications on their personal devices.

Similarly, on the same day, the CFTC also ordered 11 Financial Institutions to pay over \$710 million for recordkeeping and supervision failures for widespread use of unapproved communication methods. The Registered Swap Dealers and Futures Commission Merchants in question admitted to the use of texts messages, WhatsApp, and other unapproved methods to conduct business. The two cases show the importance of accurate record keeping for market participants, and the potential regulatory consequences caused by a lack of transparency and oversight.

# REGULATORY UPDATES

## EU

On 11th July ESMA published a consultation paper on amending the clearing obligation and Derivative Trading Obligation for OTC derivatives under EMIR and MiFIR scope, plus the transitioning away from EONIA and LIBOR and addition of new risk-free rates for in-scope products.

On the same day, they released an opinion clarifying how third-country financial entities should be classified in weekly commodity and emission derivatives position reports under MiFID II. Previously this classification had been inconsistent.

On 6th September ESMA updated the Public Register for the Clearing Obligation under EMIR and Trading Obligation for derivatives under MiFIR. The key update was to remove interest rate products that referenced LIBOR.

SFTR added details to its Q&As clarifying that collateral and valuation submissions are required for SFTs maturing on T+1 but not required for SFTs with same-day maturity. Additionally, it has indefinitely extended an exemption to submitting the LEI for third-country issuers of securities lent, borrowed, or used as collateral. ESMA updated the MiFID II and MiFIR Q&A on transparency requirements between a branch and its head office. ESMA's response was that transfers of financial instruments between two branches of the same legal entity, or a branch and its parent company, are not subject to the transparency or transaction reporting requirements as they do not entail a change in the ownership of a financial instrument. Additionally, MiFIR has clarified which ISINs are to be used for EU emission allowances and expects FIRDS data and submission data to be updated if a non-EU ISIN has been used previously.

On 7th October ESMA published the EMIR REFIT regulation confirming the go-live date to be 29th April 2024. We cover the details of this in our final article of this edition.

## UK

The FCA and PRA released a joint consultation paper on amending margin requirements for non-centrally cleared derivatives under UK EMIR. It expanded the list of instruments eligible as collateral when exchanging initial margin to include some third-country funds. Additionally, it introduced a six-month transitional provision for implementing margin rules to allow firms time to establish margin arrangements.

The Bank of England announced it is returning to the Annual Cyclical Scenario (ACS) stress-test framework. This follows two years of Covid-19 pandemic crisis-related stress testing and a postponed March test following Russia's invasion of Ukraine. The results of the new test will be published in summer 2023.

## NORTH AMERICA

The SEC voted to adopt amendments to electronic recordkeeping, prompt production of records, and third-party recordkeeping service requirements applicable to Broker-Dealers, Security-Based Swap Dealers (SBSDs), and Major Security-Based Swap participants (MSBSPs). Compliance dates will be 6 months following publication in the Federal Register for broker-dealers and 12 months for SBSDs / MSBSPs. Publication is expected to be within the next few months.

On 26th October DTCC released the latest version of their CFTC Test Pack for use in their UAT environment. DTCC has worked extensively with the industry to develop the pack which has proved very popular.



**ESMA'S RESPONSE WAS THAT TRANSFERS OF FINANCIAL INSTRUMENTS BETWEEN TWO BRANCHES OF THE SAME LEGAL ENTITY, OR A BRANCH AND ITS PARENT COMPANY, ARE NOT SUBJECT TO THE TRANSPARENCY OR TRANSACTION REPORTING REQUIREMENTS**



# REGULATORY UPDATES (CONT.)

## APAC

The HKTR opened their UAT environment as of 17th October for testing HKMAs new fields due to go live on 19th December 2022.

ASIC is expected to publish a third consultation paper containing OTC derivatives reporting technical guidance along with the final ASIC rules in Q4 2022. Repeal of the 2013 ASIC reporting rules is due in October 2023 however the implementation date of the new “ASIC Derivative Transaction Rules (Reporting) 2024” is still to be agreed.

## INDUSTRY WIDE

The ROC has proposed key changes and additional data elements to the CDE Technical Guidance v3 (August 2022) paper. These include Action, Event, Notional and Valuation details as well as several other elements. Market participants should be aware of these changes in order to ensure their internal interpretations are in-line with global standards. One of the experts in our Regulatory Reporting Practice, Paul Grainger, has detailed the need-to-know information in an article on the Quorsus website.

ISDA updated its global calendar of compliance deadlines and regulatory dates for the over-the-counter (OTC) derivatives space.

## CFTC P45.14 ERROR CORRECTION & VERIFICATION REQUIREMENT

With the CFTC Rewrite compliance date fast approaching, firms should now be in the final stages of their implementation and finalising their new operating models.

One requirement of the regulation that has triggered animated industry discussions and will undoubtedly result in significant changes to firms’ overall regulatory operating models, is CFTC Part 45.14 “Correcting Errors in Swap Data and Verification of Swap Data Accuracy,” sometimes incorrectly referred to as Part 49 (which is its companion requirement for Swap Data Repositories - SDRs).

### KEY POINTS

#### *Verification of Data*

Each Reporting counterparty should verify there are no errors in reporting for all “open swaps data”. They need to do this monthly by reconciling the data maintained by their SDR against their “internal books and records.” Most firms are conducting this official reconciliation as a standalone activity outside of their daily BAU reconciliation; however, it is feasible that this process could be incorporated into a firm’s daily BAU.

The CFTC have provided limited guidance on what is considered to be a firms’ “Internal books and records”. Therefore, firms are determining this based on their technical architecture, process workflows, and taking into consideration their existing data quality controls.

The CFTC have stipulated that “open swap data” is in scope for this process; this has been widely interpreted as meaning every field. Therefore, most firms are assuming all fields are equally important and need to be included in the verification process.

**FIRMS NEED TO ACT MONTHLY BY RECONCILING THE DATA MAINTAINED BY THEIR SDR AGAINST THEIR “INTERNAL BOOKS AND RECORDS.” THIS IS A SEPARATE PROCESS TO A FIRM’S DAILY BAU RECONCILIATION**

# CFTC P45.14 ERROR CORRECTION & VERIFICATION REQUIREMENT (CONT.)

Swap dealers, Major Swap Participants and Derivatives Clearing Organisations need to perform the verification process monthly and log breaks and their respective correction status in a “Verification Log”. This log needs to be maintained and available for regulatory inspection on request.

## **Correction of Errors**

The rule requires all errors or omissions to be corrected as soon as technologically practicable after their discovery, but by no later than seven business days.

The definition of “discovery” has initiated interesting debate within and between firms. The notion of a “shot-clock” (where regulation meets Basketball) was introduced as the moment you start counting down the seven working days.

However, it is still far from clear when the “shot clock” should begin. Is it the moment firms receive the rejection or break, or is it after they conduct analysis and confirm there is an issue? The regulation only provides clear guidelines for errors discovered during the monthly verification process but leaves room for interpretation in other scenarios. Consensus is forming around the following:

- For the monthly reconciliation, the shot clock begins when the process begins
- For submissions rejected by a GTR, the shot clock begins when the GTR response is received
- For internal breaks the industry interpretation is split, the shot clock begins either:
  - when the break/issue is first identified
  - when it is confirmed to be a legitimate issue – how long is reasonable to make this confirmation has been left with firms to decide
  - some firms change their view depending on if the break would result in a rejection

## **DMO Notifications**

If firms, for any reason, fail to correct their errors in a timely manner, they will need to notify the Division of Market Oversight (DMO) within 12 hours of determining they will not be able to correct the error in time.

This has triggered a whole set of new questions:

- How will firms manage this additional operational workload?
- What if firms end up communicating breaks that are not genuine issues?
- The DMO could potentially be overwhelmed with notifications and may have difficulties managing them
- After notifying the DMO of an issue, should firms keep them updated on their status?

The industry has been pushing to have a standardised approach to comply with this requirement. For more detail see the article below “New CFTC Notification requirements are not as straight forward as may be thought

## **Conclusion**

These changes are expected to have a significant impact on all firms. In addition to the extensive system investment across both regulatory submission and operations, there will be an increased pressure on the exception management processes and the BAU teams supporting it. The months following go-live will require firms to be flexible and resilient. The new operational processes will undoubtedly need to be improved and optimised as firms learn how to manage these new obligations.



**IT IS STILL FAR FROM CLEAR WHEN THE “SHOT CLOCK” SHOULD BEGIN. IS IT THE MOMENT FIRMS RECEIVE THE REJECTION OR BREAK, OR IS IT AFTER THEY CONDUCT ANALYSIS AND CONFIRM THERE IS AN ISSUE?**



## NEW CFTC NOTIFICATION REQUIREMENTS ARE NOT AS STRAIGHT FORWARD AS MAY BE THOUGHT

Looking at the regulations 45.14 and 43.3 “Notification of Failure to Timely Correct: Required Form and Manner” – the details to be sent are by no means simple and will require a substantial effort to either automate their generation or to hand craft each notification. Reporting entities should put in place processes and procedures well ahead of the need to send the first notification. It is possible that the largest number of notifications will be required immediately after go-live, as the new reporting regime beds in.

What does the notification consist of? Firstly, it asks for basic details confirming the date and entities involved in the notification. The second section confirms if the issue is new or existing and provides a list of impacted UTIs. The third section provides details of the asset class and products involved followed by some complex statistics which will require calculation against a firm’s overall reporting volumes. It should be noted that exception management systems will need to have the capability to group all affected trades impacted by a particular issue over a set time period.

- 7(a). Number of transactions impacted by the error(s)
- 7(b). Number of swap reports impacted by the error(s)
- 7(c). Time period during which error(s) occurred (“Relevant Time Period”)
- 7(d). The percent of the Notifying Entity’s reportable transactions impacted during the Relevant Time Period
  - e.g. (number of transactions impacted by the error(s) / number of transactions reported by Notifying Entity during the Relevant Time Period) \* 100
- 7(e). The percent of the Notifying Entity’s reportable transactions impacted during the Relevant Time Period for each asset class.

The final section requires commentary covering the date the error was discovered, how it was discovered, a detailed description of the error and a remediation plan including an expected implementation date. Additionally, it should include clarification of which regulatory obligation is impacted and if there are plans in place to avoid a similar issue in the future.

A large amount of the commentary will require careful consideration involving input from trading, operations, technology, compliance, and potentially legal departments. This is not something that will be quick or easy to produce.

## TESTING TIMES AHEAD

The CFTC Rewrite compliance date of 5th December is only a month away and firms are now in the final stages of their implementation. As expected, interpreting new field-level requirements for a vast amount of unique trading scenarios continues to be a challenging exercise highlighting the importance of including a comprehensive testing plan as part of go-live preparations.

The UAT environment at DTCC opened on 12th August for Part 45 (Trade State, Collateral and Valuations) and on 23rd September for Part 43 PPD.

On top of running a set of tests to ensure reports pass through each step in the reporting architecture and are accepted by the GTR, there are some key testing scenarios, for which specific test cases will need to be executed.

**IT SHOULD BE NOTED THAT EXCEPTION MANAGEMENT SYSTEMS WILL NEED TO HAVE THE CAPABILITY TO GROUP ALL AFFECTED TRADES IMPACTED BY A PARTICULAR ISSUE OVER A SET TIME PERIOD**

# TESTING TIMES AHEAD (CONT.)

## KEY POINTS

### *Number of Changes*

The sheer volume of field validation changes that are taking place is the most obvious challenge for firms to deal with. Testing will need to assess reporting at a granular level, ensuring each field is reported in line with the technical specifications.

On top of this, SEC\* and CSA are updating their reportable fields to align with CFTC, so testing needs to consider all three regulations.

\*(Note that there are no changes required for SEC reporting where firms only have an SEC reporting obligation)

### *Introduction of All New Action Types & Event Types*

Not only do firms need to ensure the correct action and event types are reported on the relevant trading events, but also that the sequencing of events operates as required. Of the new event types, "Update" is of particular importance as firms need to decide how they intend to upgrade their existing CFTC population to conform with the new requirements.

### *Introduction of Reporting Collateral Haircuts*

Whilst firms with SFTR and EMIR reporting requirements will be familiar with reporting margin data, CFTC introduces the concept of reporting pre-haircut and post-haircut margin data. Testing will be required to ensure collateral data, including these new values, is reported in line with CFTC requirements.

Additionally, ensuring there is usable reference and collateral data (both initial margin and variation margin) within a UAT environment is crucial and something that should be considered during a test planning phase.

### *Public Dissemination Changes*

Changes have been made to the delay mechanism for publicly disseminated data, there is a new methodology for determining block trades and large notional off-facility swaps with the introduction of the change in notional field.

Additionally, firms will need to test swap transactions that reach a certain notional to ensure the notional is capped appropriately when the transaction is publicly disseminated. The fact that there is different capping logic and large notional calculations, means firms will need many tests to ensure this behaviour is tested fully.

### *Negative Testing*

Negative testing is an area worthy of focus and should be utilised to ensure internal controls raise exceptions or alerts as expected to avoid overreporting and potential errors. Some examples of negative tests to be considered are:

- Generating an internal exception if a reporting engine tries to submit a modify event before a new or after a termination
- Generating an internal alert if an event is reported to reduce the notional to zero but the event type is a modify rather than a termination (this would be accepted at the GTR)
- Ensuring no report submission is sent if a non-reportable amendment takes place in the trade booking system (e.g., free text comment field)
- Ensuring no submission is sent for transactions for which the other party should be the reporting counterparty, testing both straightforward party status/type logic as well as detailed tiebreaker logic



**NOT ONLY DO FIRMS NEED TO ENSURE THE CORRECT ACTION AND EVENT TYPES ARE REPORTED ON THE RELEVANT TRADING EVENTS, BUT ALSO THAT THE SEQUENCING OF EVENTS OPERATES AS REQUIRED**



**IT IS THEREFORE  
CRITICAL THAT  
TEST STRATEGIES  
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ITS COURSE AND  
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UNCOVERED IN  
TESTING**

## TESTING TIMES AHEAD (CONT.)

### ***PART 45.14 CORRECTING ERRORS IN SWAP DATA & VERIFICATION OF SWAP DATA ACCURACY***

Whilst this article is specific to testing, it is difficult to talk about the CFTC Rewrite and not mention these changes. To reduce the impact of this change, as much as possible, firms are encouraged to correct reporting errors before go-live. It is therefore critical that test strategies are detailed enough to allow for a remediation process to run its course and fix issues uncovered in testing, whilst also testing fixes for existing production issues that need to be remediated before the rewrite go-live date.

This is only a small sample of some of the key challenges that firms need to consider in their testing approach and there are many more complexities to be considered.

DTCC have produced a CFTC Test Pack which contains a breadth of scenarios that are flexible and can be adapted to a firm's unique business or if you would like to learn how our team of regulatory experts can help you with your testing efforts, [get in touch](#).

## THE COUNTDOWN HAS STARTED FOR EMIR REFIT

ESMA published the EMIR REFIT regulation on 7th October 2022 confirming the go-live date to be 29th April 2024.

One of the main focuses of this rule update is to improve data quality, and firms will have to make some major changes to their reporting infrastructure and processes to meet the new standards.

One of the key changes will be the adoption of the ISO 20022 messaging schema. This will be a huge contributor to improving data quality by restricting and standardising values populated for each reportable field.

The adoption of CDE showcases the efforts undertaken by the regulators to harmonise reporting across the different OTC jurisdictions.

Reconciliation requirements will be extended to cover a larger number of fields and tolerances will be stricter. Trade Repositories (TR) will play an active role in ensuring firms have sufficient and timely information to support their reconciliation processes.

The key points from the rule publication are summarised overleaf.



# THE COUNTDOWN HAS STARTED FOR EMIR REFIT (CONT.)

## KEY POINTS FROM THE RULE PUBLICATION

Whilst the final report in December 2020 contained significant changes to the current implementation, the final rule has incorporated additional changes that should be noted. Below is a consolidated list of the major changes:

- An increase in the number of reportable fields from 125 to 203
- An increase in reconcilable fields to 85 followed by a further increase to 151 two years after go-live
- The introduction of new key fields such as:
  - Unique Product Identifier which must be an [ISO 4914](#) UPI value
  - Prior UTI used for linking of transactions
  - PTRR ID used to link trades following compression events
  - Notional Schedule field whereby firms need to build notional schedules into their reporting
  - Package fields
  - Requirement for reporting of post haircut collateral values
- The requirement to use XML ISO 20022 as reporting format
- Amendments to life cycle events, including:
  - The change from Action Type “Collateral” to “Margin Update and Correct”
  - The new Action Type “Revive” allowing submitting entities to reopen errored trades
- Modifications of reporting formats for Timestamps and the Collateral Event Type
- Frequency Multiplier fields limited from 18 to 3 numerical places to encourage firms to report in a consistent manner, e.g., 1095 Days = 3 Year
- Amendments to pairing, matching and reconciliation:
  - Removal of the 30-day window for TRs to reconcile reported submissions
  - Removal of the 2-year delay for the implementation of reconciliation requirements for fixed rate fields (x5), this will now be required on go-live
- The requirement for firms to have written procedures in place for resolving pairing and matching reconciliation breaks
- The obligations for counterparties to notify relevant authorities of significant reporting issues, including where industry participants delegate their EMIR reporting obligation or use 3rd party vendors for their EMIR submissions
- The increased level of responsibility for TRs:
  - Appointment of individuals responsible for communicating with report submitting entities
  - Include instructions on their websites for accessing reporting data
  - Submit data to ESMA with a letter signed by a member of the Board and senior management
- The TR is required to attempt to reconcile and match a reported derivative for up to 30 days after the derivative is no longer outstanding



**AMONGST THE MAJOR CHANGES IS AN INCREASE TO THE NUMBER OF REPORTABLE FIELDS FROM 125 TO 203 AND THE REMOVAL OF THE 2-YEAR DELAY FOR THE IMPLEMENTATION OF RECONCILIATION REQUIREMENTS FOR FIXED RATE FIELDS, WHICH WILL NOW BE REQUIRED ON GO-LIVE**

# If you would like to discuss more please reach out to our regulatory reporting leads:



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