

February 16 2022

Comment re: Principles for the effective management and supervision of climate-related financial risks

Basel Committee on Banking Supervision:

The Center for International Environmental Law (CIEL) is a nonprofit 501(c)(3) legal organization with offices in Washington DC, United States, and Geneva, Switzerland. Since 1989, CIEL has used the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. We appreciate the opportunity to provide feedback on the proposed Principles for the effective management and supervision of climate-related financial risks (“Principles”).¹

These Principles are an important starting point for ensuring better climate risk governance by banks and oversight by regulators, and below we have provided several recommendations that we believe could make these standards more robust. Temperature rise is already at 1.2°C, and the increasing frequency and intensity of extreme weather events is demonstrating that we are reaching the tipping point. Given the urgency and severity of the climate crisis, it is imperative that these Principles be strengthened with prescriptive requirements that shift financing away from climate change drivers and towards activities that are aligned with a 1.5°C scenario.

1) Commentary on Principles 1 & 6: Bank identification and management of material climate-related risks should be broadened to include the impact of the bank’s business on the climate and communities affected by their financing.

***Principle 1.** Banks should develop and implement a sound process for understanding and assessing the potential impact of climate-related risk drivers on their businesses and on the environments in which they operate. Banks should consider material climate-related financial risks that could manifest over various time horizons and incorporate these risks into their overall business strategies and risk management framework.*

***Principle 6.** Banks should identify, monitor and manage all climate-related financial risks that could materially impair their financial condition, including their capital resources and liquidity positions. Banks should ensure that their risk appetite and risk management frameworks consider all material climate-related financial risks to which they are exposed and establish a reliable approach to identifying, measuring, monitoring and managing those risks.*

Since the adoption of the Paris Climate Agreement, the world’s 60 largest commercial and

¹ Basel Committee on Banking Supervision (BCBS), [Principles for the effective management and supervision of climate-related financial risks \[Draft\]](#) (November 16 2021)

investment banks — aggregating their leading roles in lending and underwriting of debt and equity issuances — provided a total of \$3.8 trillion into fossil fuels from 2016–2020.² Of this financing, roughly 40% was directed to the 100 key oil, gas, and coal companies aggressively expanding fossil fuels globally. Wall Street banks, in the order of JPMorgan Chase, Citigroup, Bank of America and Wells Fargo, rank as the world’s top four largest bankers of fossil fuel expansion, despite their commitment to achieving Net Zero by 2050. Such financing undermines achievement of the 1.5°C goal of the Paris Climate Agreement, based on a recent International Energy Agency (IEA) report which found further development of fossil fuels is at odds with a net zero by 2050 pathway.³

Given the global nature of climate impacts, a bank should be required to also identify and account for the climate and human rights impacts of its financing, regardless of whether it affects the bank’s financial condition or the environment in which it operates. This double materiality approach to ESG-related risks is currently being pursued by the Task Force for Nature-related Financial Disclosures and has been expressly preferred by the European Financial Reporting Advisory Group (EFRAG), which is the group leading Europe’s development of a sustainability reporting standard.⁴

Banks typically rely on information disclosed by clients to determine the materiality of risks. However, given the scale of greenwashing (e.g. failure of companies to disclose Scope 3 emissions) and failure of regulatory bodies to monitor high-emitting activities (e.g. fracking operations and methane leaks in the Permian Basin⁵), banks should be required to diversify their sources of information to include consultation with independent experts who have no pecuniary interests in favor of the client or related industries. Experts, such as scientists and civil society organizations, often have more in depth knowledge of the negative impacts associated with certain client activities. Given the strong links between climate change destructive activities and human rights violations, banks should also be required to consult with affected communities to ground-truth the risks associated with the financing.

2) Commentary on Principle 2: Principle should recognize that Bank Board of Directors have a fiduciary duty to urgently address the climate crisis

Principle 2. *The board and senior management should clearly assign climate-related responsibilities to members and committees and exercise effective oversight of climate-related financial risks. The board and senior management should identify responsibilities for climate-related risk management throughout the organisational structure.*

Principle 2 should recognize that the Board of Directors of the bank also have a fiduciary duty to adequately consider and respond to climate-related risks, including being well-informed on climate

² Rainforest Action Network, BankTrack, Indigenous Environmental Network, Reclaim Finance, Sierra Club, Oil Change International, [Banking on Climate Chaos: Fossil Fuel Finance Report 2021](#) (March 2021)

³ International Energy Agency, [Net Zero by 2050](#) (May 2021)

⁴ ESG Investor, [European Sustainability Reporting Standards Within 18 Months](#) (April 23 2021)

⁵ See Center for International Environmental Law, Earthworks & Oil Change International, [Permian Climate Bomb: Ch. 6 Regulatory Failure](#) (2021)

risks when making corporate decisions, ensuring climate-related disclosures are accurate, and acting in the long-term interest of its shareholders by urgently shifting its portfolio away from the drivers of climate change, most notably fossil fuels. As such, Directors bear the ultimate responsibility for a bank's failure to properly disclose and manage climate-related risk.

3) Commentary on Principles 3 & 8: Banks should ensure their conditions for financing reflect their public commitments on climate change and include enforceable measures against clients that fail to mitigate climate risks.

***Principle 3:** Banks should adopt appropriate policies, procedures and controls to be implemented across the entire organisation to ensure effective management of climate-related financial risks.*

***Principle 8:** Banks should understand the impact of climate-related risk drivers on their credit risk profiles and ensure credit risk management systems and processes consider material climate-related financial risks.*

Banks with advanced risk management frameworks typically have measures to ensure their public climate commitments are fully integrated into their internal processes, including in how they vet potential clients and review ongoing financing. However, too many banks at present have demonstrated a clear disconnect between their net zero/climate commitments and their policies towards financing the primary drivers of climate change: fossil fuels and deforestation. Banks should be required to establish publicly available financing policies that are consistent with their high level climate commitments, specifically the commitment to align with the 1.5°C goal of the Paris Agreement, and reflect these policies in their conditions for financing as laid out in contractual agreements for loans, underwriting, and other financial services. Embedding these commitments into contracts is essential for ensuring enforceability, and can also be used to stipulate expectations of the client, such as disclosure of transition plans and scope 3 emissions (for further analysis, see below). Some good practices in bank due diligence on environmental and social risks, including on contractual agreements mentioned above, can be found in the OECD Responsible Business Conduct guidelines for commercial banks.⁶

4) Commentary on Principle 4: Increasing prevalence of greenwashing by banks requires additional verification by credible third party auditors.

***Principle 4:** Banks should incorporate climate-related financial risks into their internal control frameworks across the three lines of defence to ensure sound, comprehensive and effective identification, measurement and mitigation of material climate-related financial risks.*

While many large banks have made public commitments on achieving net zero by 2050, their financing practices remain largely at odds with these commitments, as most clearly evidenced by their continued financing of fossil fuels. Additionally, the use of “green” bonds and “sustainability”-linked loans have been on the rise, but there have been many instances where these instruments have been used to greenwash business-as-usual activities. For example, JBS -

⁶ OECD, [Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises](#) (2019)

the largest meat company in the world with strong ties to Amazon deforestation, sold \$1 billion USD of sustainability-linked bonds to reduce its Scope 1 and 2 emissions - however, 90% of its emissions are associated with its Scope 3 supply chain activities, thus severely limiting the climate impact of the bond.⁷ A similar strategy was pursued by the Canadian tar sands company Enbridge, which recently completed construction of an extremely controversial and high-carbon tar sands pipeline in Minnesota called Line 3: it deliberately excluded its largest climate footprint - Scope 3 emissions - from its sustainability-linked credit facility, while continuing to expand fossil fuel infrastructure.⁸ The proliferation of these deceptive instruments⁹ can implicate banks in fraudulent misrepresentation if, for example, they underwrite such bonds or serve as bookrunners and lead arrangers to such loans. Moreover, these instruments fail to mitigate the climate crisis or the banks' exposure to climate risk.

Bank climate-risk assessment processes and conclusions should therefore be subject to credible third party audits in order to prevent greenwashing and deception of shareholders and regulators. Banks should also be required to be very explicit in their criteria for labeling financial services as “sustainable”, “green” or “clean”, and to make public an exclusion list of the activities that would not qualify.

5) Commentary on Principles 5: Capital and liquidity adequacy requirements should be strengthened to disincentivize financing of climate change drivers

***Principle 5:** Banks should identify and quantify climate-related financial risks and incorporate those assessed as material over relevant time horizons into their internal capital and liquidity adequacy assessment processes.*

The adjustment of capital and liquidity adequacy requirements can be a powerful tool to shift bank financing away from climate change drivers and towards sustainable activities. As noted above, given the scientific consensus on the urgency to address the climate crisis and the primary role played by fossil fuels, new financing for exploration and production of fossil fuels is not consistent with the sound management of climate risk. The Principles should reflect that understanding. At minimum, as the Basel Committee has done with respect to other high risk exposures, adopting a “one for one” capital requirement for any financing of major climate change drivers, starting with the financing of new exploration and production of fossil fuels, would be a step towards recognizing the material financial as well as societal and planetary risks associated with fossil fuel expansion.¹⁰ This would mean that any financing towards fossil fuel expansion is matched by the bank's own funds. Such a policy would mitigate the financial risks of banks in the event of worsening climate change, and together with other sound risk management measures would mitigate the negative impacts of bank financing on the climate.

⁷ Forests & Finance, [Brazilian Meat Company JBS Issues “Sustainability-Linked” Bonds](#) (June 23 2021)

⁸ Reclaim Finance, [Enbridge’s “sustainable” credit: tar sands and rights violations](#) (October 3 2021)

⁹ For further analysis, see Reclaim Finance, [Green Bonds: Watch Out It Could Be A Trap!](#)

¹⁰ For further analysis, see Finance Watch, [The One-for-One Rule: A way for COP26 ambitions to manifest in financial regulation](#) (October 27 2021)

6) Commentary on Principle 7: Banks must ensure reporting of climate-related financial risks disaggregates GHG emissions, removals and offsets, and encompasses Scope 3 emissions of their clients in order to ensure accuracy.

***Principle 7:** Risk data aggregation capabilities and internal risk reporting practices should account for climate-related financial risks. Banks should seek to ensure that their internal reporting systems are capable of monitoring material climate-related financial risks and producing timely information to ensure effective board and senior management decision-making.*

While many large banks have made public commitments on achieving net zero by 2050, their financing practices remain largely at odds with these commitments. This is particularly evident in their continued financing of climate change drivers, most notably fossil fuel production and expansion, indicating fundamental flaws in their internal reporting systems.

Flaw #1: False climate solutions

In the absence of clear commitments to phase out fossil fuel financing or even fossil fuel expansion, many banks purport to be mitigating the risks associated with such financing by relying on ineffective or unrealistic climate solutions, such as carbon capture and storage (CCS), technological carbon dioxide removal (CDR), or carbon offset strategies (collectively, “false climate solutions”). However, none of these have proven to be viable at scale, and all pose other social and environmental risks such as air pollution and displacement of local communities. Bank tolerance for false climate solutions as a means to achieving their net zero commitments prolongs the operation of the underlying emitting facilities, delaying their replacement and the necessary transition to cleaner alternatives. Specific concerns include the following:

- (1) CCS does not remove carbon from the atmosphere, nor does it capture all carbon emissions from the underlying source; it merely reduces them. CCS itself then adds back carbon emissions from the energy used in capturing, transporting, and storing carbon dioxide. CCS infrastructure is also extremely costly and expansive, and misrepresentations regarding the financial and physical feasibility of CCS may lead to significantly increased costs for the company, stranded assets, carbon risk, or all of the above.
- (2) Technological CDR typically encompasses Direct Air Capture (DAC) or bioenergy with carbon capture and storage (BECCS). DAC proposes to use large machines to pull ambient carbon dioxide out of the atmosphere for use or storage. BECCS purports to make the combustion of bioenergy emissions negative by capturing and storing the carbon dioxide produced through CCS. Both DAC and BECCS require large amounts of land, water, and energy to function as envisioned by proponents. This input intensity has potentially devastating consequences for food security, livelihoods, and health of those affected, as well as significant opportunity costs in terms of other beneficial ways in which the energy and resources could be used. As such, neither is viable at scale without threatening human rights and present challenges similar to CCS above.

- (3) Offsets, which often involve land-based carbon sequestration, present various challenges in terms of quality assurance, effectiveness, and human rights, as described in the coalition letter referenced above, and fundamentally delay the need to reduce emissions overall as required to achieve the 1.5°C goal of the Paris Agreement. In the timescale needed for climate action, the projects marketed as offsets, whether they be emissions avoidance offsets or carbon-removal offsets, can at best only limit the increase of emissions in the atmosphere overall rather than reduce global emissions owing to the different pace of carbon cycles between fossil fuels and ecological carbon sinks.¹¹ Moreover, land-based sequestration projects are only impactful if permanent, which is increasingly uncertain due to the surge in forest fires. Numerous studies have demonstrated the ineffectiveness of offsets to operate as intended, increasing emissions instead.¹² Financing offsets therefore fails to address the issues of financial stability associated with climate change, as it allows business as usual by climate drivers such as the fossil fuel industry to continue, despite the urgent need for a fossil fuel phase out, while putting unsustainable pressure on a finite area of land and forests to serve as carbon sinks. This in turn threatens local communities, food production, and the world's biodiversity and exacerbates legal and reputational risks.¹³

Banks are also increasing their financing of fossil-based blue hydrogen, liquefied natural gas or large-scale biomass as purported transition fuels or alternatives to fossil fuels. Such categorization obscures the significant climate impact of these options.¹⁴

For banks with borrowers who intend to rely on any of the false climate solutions listed above, it is important that they report on not only the projected emissions, emissions reductions or carbon removals, but also their actual quantities upon verification by a credible third party, given the history of failure and/or misrepresentation with respect to climate benefits associated with such technologies. For example, the history of carbon capture projects is a long series of overpromising and under-delivering,¹⁵ with facilities failing to achieve anticipated capture rates, failing to operate as consistently as expected, or both.

Bank reporting should therefore distinguish between reductions in financed emissions that result from financing fewer climate change-causing activities (e.g. fossil fuels), and the financing of projects intended to remove carbon dioxide from waste streams or the atmosphere (CCS, carbon removal) or offset existing emissions, and report each separately. Banks should also articulate and quantify the emissions impact and associated costs of any technologies and offset mechanisms

¹¹ See, for example, Brink News, [Carbon Offsets Do Not Reduce Carbon Emissions. Only Delay Them](#) (March 7 2021)

¹² See, for example, CESifo, [Do Carbon Offsets Offset Carbon?](#) (October 2021)

¹³ See, for example, Friends of the Earth International et al, [Chasing Carbon Unicorns: The Deception Of Carbon Markets and "Net Zero"](#) (February 2021)

¹⁴ See, for example, Global Witness, [Why 'blue hydrogen' is fossil fuel industry greenwash and won't fix the climate](#) (Oct 28 2020); Sierra Club, [LNG Exports: A Bridge Too Far](#) (June 29 2021); Guardian, [Biomass is promoted as a carbon neutral fuel. But is burning wood a step in the wrong direction?](#) (Oct 5 2021)

¹⁵ See, e.g., David Schlissel et al., [Institute for Energy Economics and Financial Analysis. Blue Hydrogen: Technology Challenges, Weak Commercial Prospects, and Not Green](#) slides 18-23 (2022).

used, and explain whether and how they intend to rely on these false climate solutions to tackle the climate crisis and achieve net zero by 2050.

Flaw #2: Absence of Scope 3 emissions

As illustrated in the examples above, borrowers' measurement and disclosure of Scope 3 emissions can be extremely important for understanding climate risk exposure, particularly in the case of borrowers involved in fossil fuels, including related infrastructure, or those with carbon-intensive supply chains such as the beef sector. Where such relevant information is lacking, it is critical that banks disclose such information deficiencies that result in an undercounting of their financed emissions.

Scope 3 emissions reporting, including reporting for emissions over time, is especially critical in the context of financing for carbon capture or carbon removal schemes. For example, financing for a carbon dioxide pipeline as part of a carbon capture and storage project might appear carbon-negative if only Scopes 1 and 2 emissions are considered. The entire project, however, may increase emissions overall, if CCS extends the useful life of the emitting facility, if the captured carbon is used for enhanced oil recovery (a form of oil production), or both.

We reiterate that requiring the disclosure of Scope 3 emissions is critical to enabling banks to accurately report on their exposure to climate-related financial risks. Where methodologies to calculate such emissions are still in development, as an interim measure, companies should be required to clearly explain any emissions that are not being accounted for and their plans to address the deficiency.

7) *Commentary on Principles 8, 9, 10, 11: Risk management systems and processes should place more weight on short-term climate mitigation measures given the urgency of the climate crisis*

Principle 8: *Banks should understand the impact of climate-related risk drivers on their credit risk profiles and ensure credit risk management systems and processes consider material climate-related financial risks.*

Principle 9: *Banks should understand the impact of climate-related risk drivers on their market risk positions and ensure that market risk management systems and processes consider material climate-related financial risks.*

Principle 10: *Banks should understand the impact of climate-related risk drivers on their liquidity risk profiles and ensure that liquidity risk management systems and processes consider material climate-related financial risks.*

Principle 11: *Banks should understand the impact of climate-related risk drivers on their operational risks and ensure that risk management systems and processes consider material climate-related risks. Banks should also understand the impact of climate-related risk drivers on other risks and put in place adequate measures to account for these risks where material. This includes climate-related risk drivers that might lead to increasing strategic, reputational, and regulatory compliance risk, as well as liability costs associated with climate-sensitive investments and businesses.*

As recently warned by the Intergovernmental Panel on Climate Change, the planet is likely to reach the crucial threshold of 1.5°C above pre-industrial levels by as early as 2030, precipitating the risk of extreme drought, wildfires, floods and food shortages for hundreds of millions of people.¹⁶ Global mean temperatures are expected to continue to increase until net zero CO₂ emissions are reached, and therefore whether temperatures overshoot 1.5°C will depend on how quickly emissions are lowered. However, the potential reversibility of global mean temperature does not mean that the impacts of climate change can be reversed, and impacts such as sea level rise, loss of ecosystem functionality, accelerated species extinction, and loss of glaciers for example may not be reversible for millenia.¹⁷ The risk of overshoot of 1.5°C and the risk of irreversibility underscores the critical importance of near term measures to drastically reduce emissions and not rely on mechanisms that may incentivize delay.

Given the importance of short-term measures to avoid the most catastrophic impacts of climate change, including halving emissions by 2030, any risk management metrics and tools should therefore place more weight on short-term climate mitigation measures, with a priority on emissions reduction. Banks would also benefit from a requirement that companies disclose their transition plans for aligning with the 1.5°C scenario, including short term (2~3 years) and medium term (2030) measures, in order to better assess bank exposure to risk.

8) *Commentary on Principle 11: Bank exposure to litigation risk, including for violations of fiduciary duty by its Directors, should be elevated in the Principles.*

Principle 11 (see above)

Climate change-related cases are on the rise, with over 1,000 cases having been brought to courts around the world in the last six years. Private sector actors, including financial actors, are increasingly being targeted. Already in 2015, then Governor of the Bank of England Mark Carney observed that the risks arising from such litigation are “significant, uncertain and non-linear” and “will only increase as the science and evidence of climate change hardens.”¹⁸

In 2021 alone, a Netherlands court ruled that the oil and gas company Royal Dutch Shell has to cut its greenhouse gas emissions by 45% by 2030 to align its policies with the Paris Agreement,¹⁹ and the first climate-related case was brought against a central bank, the National Bank of Belgium.²⁰ The former case is on appeal, while the latter case is pending.

Owing to this trend, the Network for Greening the Financial System (NGFS) has recently identified climate-related litigation as a growing source of risk, and one that can have significant material

¹⁶ IPCC, [Climate Change 2021: The Physical Science Basis - Summary for Policymakers](#) (2021), IPCC, IPCC, [Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels](#) (2018)

¹⁷ Climate Analytics, [The science of temperature overshoots: Impacts, uncertainties and implications for near-term emissions reductions](#) (October 2021)

¹⁸ [Breaking the Tragedy of the Horizon – climate change and financial stability](#), speech given by Mark Carney at Lloyd's of London (September 29 2015)

¹⁹ [Milieudefensie et al. v. Royal Dutch Shell plc](#) (filed April 5 2019 with the Hague District Court)

²⁰ [ClientEarth v. Belgian National Bank](#) (filed April 13 2021 with the Brussels Court of First Instance)

impact on financial actors. Five potential impacts identified by the NGFS include: (1) successful litigation against a bank's client, resulting in fines and costs that affect the value of the firm, its creditworthiness and/or its financing costs; (2) cases against financial actors for failing to appropriately disclose and manage climate-related risks; (3) breach of contract claims relating to green financial products; (4) cases alleging breaches of fiduciary duties by the bank's directors for continuing to favor the financing of climate change drivers; and (5) cases against financial actors as "indirect polluters" for financing polluting projects. In addition, climate-related cases brought on the grounds of human rights violations are on the rise,²¹ targeting both governments and corporations; banks could be impacted in ways similar to (1), (4) and (5) above from the perspective of human rights, particularly in light of their human rights responsibilities as articulated in the UN Guiding Principles on Business and Human Rights.

NGFS has recommended that "the risks associated with climate-related litigation vis-à-vis financial and non-financial corporations should be taken into account in microprudential supervision and financial stability monitoring."²² They note that this is because of the potential magnitude of the financial impact from these suits; wide scope of entities that can be affected, that the impact of climate-related litigation could materialize in a non-linear manner resulting in a surge of litigation; the increasing incorporation of climate commitments into laws and regulations; and the unique characteristics of climate change as a global risk.

Given this, the risk of climate-related litigation should be elevated in the Principles and require financial institutions to be more explicit in how they are managing financial and operational risks resulting from potential litigation against themselves as well as against institutions to which they are exposed.

9) *Commentary on Principle 12: Scenario analysis should include 1.5°C to accurately understand preparedness of banks to meet its net zero by 2050 commitments and align with the Paris Agreement goals.*

Principle 12: *Where appropriate, banks should make use of scenario analysis, including stress testing, to assess the resilience of their business models and strategies to a range of plausible climate-related pathways and determine the impact of climate-related risk drivers on their overall risk profile. These analyses should consider physical and transition risks as drivers of credit, market, operational and liquidity risks over a range of relevant time horizons.*

Given the significance of limiting warming to 1.5°C and the prevalence of net zero by 2050 commitments, companies should be required to utilize a 1.5°C scenario, at minimum. The scenario analysis should also be verified by a credible third party entity. In such a scenario analysis, banks should be required to clarify the role of false climate solutions such as CCS and offsets and be limited in their reliance on these mechanisms to the extent that they are feasible.

²¹ For further analysis, see Joana Setzer and Catherine Higham, [Global trends in climate change litigation: 2021 snapshot](#) (July 2021)

²² Network for Greening the Financial System, [Climate-related litigation: Raising awareness about a growing source of risk](#) (November 2021)

10) Commentary on Principles 16 & 17: Supervisors should be equipped with enforcement authority to tackle the increasing threat of greenwashing by banks on their climate impacts

Principle 16: *In conducting supervisory assessments of supervised banks' management of climate-related financial risks, supervisors should utilise an appropriate range of techniques and tools and adopt adequate follow-up measures in case of material misalignment with supervisory expectations*

Principle 17: *Supervisors should ensure that they have adequate resources and capacity to effectively assess supervised banks' management of climate-related financial risks. ... 58. Supervisors should engage a broad and diverse range of stakeholders to facilitate a collective understanding and measurement of climate-related financial risks and allow for optimisation of climate-dedicated resources.*

As mentioned above, there is an increasing prevalence of greenwashing by banks of their role in fueling the climate crisis and measures being taken to address their financing of climate change drivers. For this reason, it is critical that supervisors are equipped with enforcement authority to ensure accurate disclosures by banks of their climate impacts and the taking of meaningful measures to tackle the climate crisis.

In assessing supervised bank's management of climate-related financial risks, it should be stipulated to include consultation with independent experts who have no pecuniary interests in favor of the banking industry or high-emitting industries. Experts, such as scientists and civil society organizations, often have more in depth knowledge of the negative impacts associated with bank financing and can offer relevant information that banks choose not to disclose.

We thank you for your leadership and attention to this urgent issue. We look forward to continuing to engage in the formulation of further guidance to support the Basel Committee on Banking Supervision in producing a robust and comprehensive framework for climate-related risk management by banks. Should you have any questions on the content of this submission, please contact Hana Heineken at hheineken@ciel.org.

Sincerely,



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