

ARTIGOS

BATTLING CORRUPTION THROUGH CSR CODES IN EMERGING MARKETS: OIL AND GAS INDUSTRY

COMBATENDO A CORRUPÇÃO COM OS CÓDIGOS DO CSR EM MERCADOS EMERGENTES: INDÚSTRIA DO ÓLEO E DO GÁS

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Recebido em 23.06.2004. Aprovado em 04.01.2008. Disponibilizado em 10.01.2008

Avaliado pelo Sistema *double blind review*

Editor responsável: Francisco Aranha

RAE-eletrônica, v. 7, n. 1, Art. 8, jan./jun./2008.

<http://www.rae.com.br/eletronica/index.cfm?FuseAction=Artigo&ID=3424&Secao=ARTIGOS&Volume=7&Numero=1&Ano=2008>

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GETULIO VARGAS



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ABSTRACT

Corporate social responsibility (CSR) codes of conduct are an effective mechanism for integrating responsible economic practices against corruption. This study intends to corroborate this assertion by means of a comparative analysis of CSR codes of conduct of major oil and gas companies operating in emerging markets. In this paper, we examine how oil and gas companies respond to corruption in their CSR codes of conduct. Further, we examine the provisions related to corruption issues embodied in international conventions and guidelines and the norms or standards of oil and gas associations, NGOs and international and multilateral organizations. In the final analysis, we assess the extent to which provisions included in oil and gas companies' CSR codes of conduct are consistent with the current international context.

KEYWORDS *Codes of conduct of social responsibility (CSR), oil and gas industry, corruption, political contribution, financial transparency.*

RESUMO

Os códigos de conduta de responsabilidade social (CRS) são um mecanismo efetivo para integrar práticas econômicas responsáveis contra a corrupção. Este estudo pretende corroborar esta afirmação por meio da análise comparativa de códigos de CRS de empresas de gás e petróleo com operações em mercados emergentes. Examina-se como as empresas de gás e petróleo respondem à corrupção nos seus códigos de CRS. Em seguida, analisam-se as normas relacionadas à corrupção presentes nas convenções e diretivas internacionais, normas ou padrões de associações de gás e petróleo, ONGs, organizações internacionais e multilaterais. Por fim, avalia-se até que ponto as disposições presentes nos códigos de CRS das empresas de gás e petróleo CSR estão em conformidade com o contexto internacional.

PALAVRAS-CHAVE Códigos de conduta de responsabilidade social (CRS), setor de gás e petróleo, corrupção, contribuição política, transparência financeira.

INTRODUCTION

Institutionalization “occurs whenever there is a reciprocal typification of habitualized actions by types of actors” (BERGER, LUCKMANN, 1966, p. 54). Over time these actions become institutionalized, resulting in traditional practices. In fact, these “interactions are reproduced and become taken for granted” (MEYER, ROWAN, 1991, p. 15; SCOTT, 2001, p. 166; JEPPERSON, 1991. p. 143). Myths, as defined by Meyer and Rowan (1991, p. 44), are “powerful institutional rules”. One may argue that corporate social responsibility (CSR) codes of conduct are myths that can be constructed in different areas of the organizational environment. This study intends to corroborate the assertion that CSR codes of conduct are an effective mechanism of voluntary institutionalization against corruption in emerging markets.

OBJECTIVES AND METHODOLOGY

This paper places a special emphasis on the oil and gas sector, because of its unique character and the additional complexity of its standard governance problems. For example, greater opacity, government control, and regulation compound questions of transparency, bribery and political contributions in the oil and gas sector. In order to confirm the theory of CSR codes of conduct for emerging markets, the corruption issues seen in the CSR codes of conduct of six major oil and gas companies operating in emerging markets have been analyzed and compared: Exxon Mobil Corporation (Exxon Mobil), Occidental Petroleum Corporation (Oxy), Petróleo Brasileiro SA (Petrobras), Repsol YPF (Repsol), Royal Dutch/Shell Group of Companies (Shell) and Statoil ASA (Statoil).

As for the international legal framework, this study examines and compares CSR codes of conduct with the most relevant provisions related to corruption issues embodied in international conventions, guidelines, norms or standards of oil and gas associations, NGOs and international and multilateral organizations.

The comparative method approach has been described in a number of well-know works (COLLIER, 1993; LIJPHART, 1975; KING, KEOHANE, VERBA, 1994). The logic of the comparative method for CSR codes of conduct is an appropriate research methodology for purposes of this study. The selection process for this study began with the choice of Petrobras as one of the cases. The other cases were subsequently selected according to their operations in Brazil, as well as in

emerging markets such as Argentina, Angola, Colombia, Nigeria, Uruguay, Thailand etc. Our analysis is based on a survey of CSR codes of conduct found on the sites of the selected companies.

Literature Review

Dissemination of CSR codes occurs as a result of the presence of a company in a particular sovereign country. Some recent empirical works have shown that governmental agencies have an important role to play in obtaining successful economic development (KNACK, KEEFER, 1997; LA PORTA and others, 1999). Other works have proved that CSR codes of conduct may be a valuable instrument for improving the local quality of life, (ZAIRI, PETERS, 2002; O'BRIEN, 2001). Thus, compliance with CSR codes of conduct may occur because other behaviors are inconceivable (SCOTT, 2001). CSR codes of conduct may be considered as a "common legal framework of meaning" (SCOTT, 2001, p. 58) for coping with corruption in emerging markets, despite local state regulations, legislation or court decisions.

However, different interests are involved in the relationship between companies and stakeholders. CSR codes of conduct must be controlled and one important mechanism for restraining CSR codes of conduct is the international legal framework. Supported by international organizations and associations, many studies, research projects, surveys, books, seminars, and conferences deal with the issue of corruption. The international coalition against corruption is expanding every day. In fact, one the mechanisms that produce isomorphic identities and interests is coercion through international legal norms and guidelines (DIMAGGIO, POWELL, 2005). Such isomorphism has been demonstrated across an important number of sectors (MEYER and others, 1997).

Following Zaheer's (1995) work, the issue of liability relating to foreign operations, and the extent to which this affects the performance of multinational companies in foreign countries has attracted much attention. This study intends to corroborate the assertion that corporate social responsibility (CSR) codes of conduct are an effective mechanism for integrating responsible economic practices against corruption. There is no disagreement among mainstream scholars that corruption has a negative impact on sustainable economic growth in emerging markets. Corruption is a social and global phenomenon that is not specific to emerging markets. Nevertheless, its negative effect seems to be stronger in developing countries, where companies may be important actors in the battle against corruption. In fact, CSR codes of conduct may have a vital role to play in tackling corruption through mimesis or emulation, one of the categories of isomorphic mechanism (DIMAGGIO, POWELL, 1991).

This study thus examines and compares two situations: CSR codes of conduct and an international legal framework, and how they may limit the negative effects of corruption.

CSR CODES OF CONDUCT MAY LIMIT THE NEGATIVE EFFECTS OF CORRUPTION

In very broad terms, corruption occurs and flourishes according to local circumstances and conditions (FLEISCHER, 2002). CSR codes of conduct may limit the negative impact of corruption issues. For comparison purposes, corruption issues have been divided into three common subcategories that are embodied in the companies' CSR codes of conduct, as follows: bribery and corruption, political contributions and financial transparency.

Bribery and corruption

"Bribes, kickbacks, 'grease', and 'speed' money are perhaps the most conspicuous types of corrupt activity" (DOH, RODRIGUEZ, UHLENBRUCK, COLLINS, EDEN, 2003, p. 114). All CSR codes of conduct included statements rejecting the payment or acceptance of bribes, collusion, pressure or illegitimate favors, either directly or through third parties, whether public officers or private individuals. Some companies like ExxonMobil, Petrobras and Repsol include general statements or policies regarding bribery and corruption in their ethical codes. In addition, Petrobras (2006), like Exxon Mobil (2006) and Oxy (2008), refers to "a Code of Ethics, guiding and training its staff regularly and undertaking regular reviews" (OXY, 2008). For instance, Petrobras (2006) Code of Ethics "specifically forbids the use of unlawful practices (corruption, bribery and "off-the-books" accounting) in order to obtain commercial advantages" (PETROBRAS, 2006). Many oil and gas CSR codes of conduct provide more specific statements. Shell, like Oxy, declares that "direct or indirect offer, payment, soliciting and acceptance of bribes in any form are unacceptable practices" (SHELL, 2008).

At a much greater level of detail, Statoil (2008) states that it "expressly prohibits receiving, offering or soliciting bribes. All forms of corruption are regarded as unacceptable, even facilitation payments – small sums typically paid to low-level officials to expedite tasks they are supposed to carry out anyway – must be eradicated" (STATOIL, 2008). Statoil (2008) recognizes that gifts or entertainment may be received in as far as they are limited to a certain value: "such payments are sometimes unavoidable, but they cannot be condoned" (STATOIL, 2008). However, if they are paid,

Statoil (2008) “requires that they are accurately recorded as such in [its] books and not disguised as something else” (STATOIL 2008). An extract of the CSR codes of conduct examined is shown in Table 1.

Table 1 - **CSR codes of conduct: bribery and corruption**

CSR CODES OF CONDUCT: BRIBERY AND CORRUPTION	
Exxon Mobil	<p>“Prohibits bribery and corruption... All employees and agents ... are required to comply with the ethics policy and applicable laws. Strictly observes all laws applicable to its business. .. if the law is permissive, the Corporation chooses the course of the highest integrity.</p> <p>Local customs, traditions ... must be recognized. But, honesty is not subject to criticism in any culture.</p> <p>Observes the highest standards in ethics.”</p>
Oxy	<p>“... business shall be conducted in accordance with all applicable laws of the U.S. and foreign jurisdictions and in a manner that will always reflect a high standard of ethics.</p> <p>No employee, agent or representative shall pay or offer any bribe or give or offer anything of value to any public official or any candidate for public office with the intent to influence any official act.”</p>
Petrobras	<p>“To ensue to the adoption and scope of values and ethical principles: the organization has a Code of Ethics, guiding and training its staff regularly and undertaking regular reviews. It specifically forbids the use of unlawful practices (corruption, bribery and “off-the-books” accounting) in order to obtain commercial advantages”</p>
Repsol	<p>“No employee will deliberately collaborate with third parties in violating any law, nor will they engage in any actions that compromise the respect for the law. They must act honestly and with integrity in all their contacts and transactions with the authorities and employees in governments and administrations”</p>
Shell	<p>“The direct or indirect offer, payment, soliciting and acceptance of bribes in any form are unacceptable practices.</p> <p>Shell companies in 82 countries operate a procedure to ensure that the use of intermediaries does not compromise business integrity.”</p>
Statoil	<p>“Does not accept corrupt behavior. Expressly prohibits receiving, offering or soliciting bribes. All forms of corruption are regarded as unacceptable, even facilitation payments – small sums typically paid to low-level officials to expedite tasks they are supposed to carry out anyway – must be eradicated. Recognizes that such payments are sometimes unavoidable, but they cannot be condoned. If they are paid, company requires that they are accurately recorded as such in our books and not disguised as something else.”</p>

Political contributions

All oil and gas companies' codes of conduct are against political contributions in some way, or another. Although Repsol (2008) simply "expresses its political neutrality and agrees to faithfully and respectfully comply with all the legal obligations assumed in any country where it carries out its activities" (REPSOL, 2008), Shell (2008) and Statoil (2008), in contrast, admit no political contributions whatsoever in the countries in which they operate. Statoil "does not support any political party or candidate. This means that we make no political contributions" (STATOIL, 2008). More specifically, Shell "treats this issue in the same way as Bribery and Corruption" (SHELL, 2008).

Other companies, however, like Exxon Mobil (2006), Oxy (2008) and Petrobras (2006), admit contributions to a political party or organization or to any individual who either holds public office or is a candidate for a public office, to the extent allowed by the applicable domestic law. Petrobras, "with regard to financing candidates for public positions and political parties, [...] does not support or supports with a transparent stance in terms of contributions" (PETROBRAS, 2006). Petrobras, like Statoil, also "encourages and provides facilities for discussions with the candidates suggested by the employees, which may be hosted on Company premises at pre-established times and places" (PETROBRAS, 2006). Table 2 presents the negative impact of political contributions on CSR codes of conduct.

Table 2 - CSR codes of conduct: political contributions

CSR CODES OF CONDUCT: POLITICAL CONTRIBUTIONS	
Exxon Mobil	“Does not make contributions to political candidates or political parties except as permitted by applicable laws and authorized by the Board of Directors.”
Oxy	“The direct or indirect use of the company's funds or assets for political contributions is prohibited unless authorized by the Board of Directors. Lobbying in any form on behalf of the company is prohibited, unless approved by the OPC or Segment Chief Executive Officer in consultation with the appropriate Compliance Officer.”
Petrobras	“With regard to financing candidates for public positions and political parties, the Company: does not support, or supports with a transparent stance in terms of contributions. It encourages and provides facilities for discussions with the candidates suggested by the employees, which may be hosted on Company premises at pre-established times and places.”
Repsol	“Repsol YPF expresses its political neutrality and agrees to faithfully and respectfully comply with all the legal obligations assumed in any country where it carries out its activities.”
Shell	“Does not make payments to political parties, organizations or their representatives or take any part in party politics. Does not make donations to political parties and treats this issue in the same way as Bribery and Corruption.”
Statoil	“Does not support any political party or candidate. This means that we make no political contributions. However, it does reserve the right to participate in public debates where this is in its business interest.”

Financial transparency

All companies surveyed have policies emphasizing measures to promote financial transparency. The nature and extent of such measures, however, are very different. For instance, one of Petrobras' "guiding principles" of its Code of Ethics and the Declaration of Values is "a commitment to the transparency and accuracy of the information provided to all the stakeholders" (PETROBRAS, 2006). Similarly, Repsol (2008) "believes that information transparency is an essential principle that should govern its relations with shareholders, and it is committed to ensuring that the information presented to shareholders, to the stock exchanges where its stock is listed, and to the bodies governing these markets is accurate and complete and faithfully reflects its financial situation as well as the results of its operations, and that this information complies with the deadlines and other requisites set out in the regulations and general principles governing stock markets and good governance that the Company has agreed to abide by" (REPSOL, 2008).

Exxon Mobil (2006), Shell (2008) and Statoil (2008) strongly emphasize the role of accounting procedures in their policies for promoting financial transparency. Exxon Mobil (2006) states that "all transactions must be accurately reflected in its books and records" (EXXON MOBIL, 2006); Statoil (2008) "makes its policy available to the public, openly reports its performance and uses a competent and independent body to verify its reported data" (STATOIL, 2006). Oxy also states explicitly that it will "make and retain books, records and accounts that, in reasonable detail accurately and fairly reflect the company's transactions and the disposition of its assets and conform to applicable legal requirements and generally accepted accounting principles as applied in the U.S." (OXY, 2008). The results of the comparative analysis of this topic are presented in Table 3.

Table 3 - CSR codes of conduct: financial transparency

CSR CODES OF CONDUCT: FINANCIAL TRANSPARENCY	
Exxon Mobil	<p>“System of management will not work without honesty, including honest bookkeeping, honest budget proposals, and honest economic evaluation of projects.</p> <p>All transactions must be accurately reflected in its books and records.</p> <p>Falsification of its books and records or the creation or maintenance of any off-the-record bank accounts is strictly prohibited.”</p>
Oxy	<p>“Occidental must establish and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are properly executed and recorded... all transactions and dispositions of assets must be properly recorded in all the books and accounts... make and retain books, records and accounts that, in reasonable detail accurately and fairly reflect the company's transactions and the disposition of its assets and conform to applicable legal requirements and generally accepted accounting principles as applied in the U.S.”</p>
Petrobras	<p>“Expressly stipulate a commitment to the transparency and accuracy of the information provided to all the stakeholders.”</p>
Repsol	<p>“Repsol YPF believes that information transparency is an essential principle that should govern its relations with shareholders, and is committed to ensuring that the information presented to shareholders, to the stock exchanges where its stock is listed, and to the bodies governing these markets is accurate and complete and faithfully reflects its financial situation as well as the results of its operations, and that this information complies with the deadlines and other requisites set out in the regulations and general principles governing stock markets and good governance that the Company has agreed to abide by.”</p>
Shell	<p>“All business transactions on behalf of the Shell company must be reflected accurately and fairly in the accounts of the company in accordance with established procedures and be subject to audit.</p> <p>Has comprehensive corporate information programmes and provides full relevant information about their activities to legitimately interested parties, subject to any overriding consideration of business confidentiality and costs.”</p>
Statoil	<p>“Makes its policy available to the public, openly reports its performance and uses a competent and independent body to verify its reported data.”</p>

AN INTERNATIONAL LEGAL FRAMEWORK MAY LIMIT THE NEGATIVE EFFECTS OF CORRUPTION

While all oil and gas companies surveyed have developed codes of conduct to fight corruption and to promote governance, it is necessary to compare these policies with the international legal framework. It

is not enough to promote social responsible corporate policies against corruption through CSR codes of conduct. It is also important that these anti-corruption policies be acceptable to all stakeholders, globally. In fact, the international framework helps to limit the negative effects of corruption and the “legislative” power of CSR codes of conduct. As far as the international framework is concerned, the main provisions relating to corruption issues are embodied in two major conventions: the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) and the United Nations Convention against Transnational Organized Crime (2001) and its Protocols.

Some relevant provisions related to the corruption issues embodied in international guidelines, norms or standards of oil and gas associations, NGOs, international and multilateral organizations have also been examined and compared, such as the Caux Round Table Principles for Business (1994); the Global Sullivan Principles (2005); the International Chamber of Commerce (2008) Business Charter on Sustainable Development (2008); the United Nations International Code of Conduct for Public Officials (1996); the Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean (ARPEL, 2008); the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises (2008); and the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003).

Bribery and corruption

As far as the international legal framework is concerned, articles 8 and 9 of the United Nations Convention Against Organized Crime and its Protocols (UNODC, 2001) refer to the intention of committing a crime and commit member-states to “adopt such legislative [...] to establish as criminal offences, when committed intentionally: a) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties”; and b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties”. In a very similar way, the OECD Convention on Bribery (1997) calls for effective measures to combat the bribery of foreign public officials related to international business transactions, in particular the prompt, effective and co-ordinated criminalisation of such bribery and in conformity with the jurisdiction and other basic legal principles of each country.

The Global Sullivan Principles (2005), like the ICC Business Charter (2008), state that fair competition includes “not offer[ing], pay[ing] or accept[ing] bribes”. Likewise, Article 11 of the United Nations Norms (2003) states that “Transnational corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or security forces, or any other individual or organization.” Advocating similar rigor are the Caux (1994) and OECD Guidelines (2008). The latter expressly provide that companies should not “directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Nor should enterprises be solicited or expected to render a bribe or other undue advantage”. Finally, articles 2 and 9 of the Code of Conduct for Public Officials (1996) determine that “Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity” and “shall not solicit or receive directly or indirectly any gift or other favor that may influence the exercise of their functions, the performance of their duties or their judgment”.

The results of the comparative analysis of CSR codes of conduct and the international framework reveal that oil and gas companies’ CSR codes of conduct are in consonance with the international framework regarding policies against bribery and corruption.

Political contributions

Despite the fact that few international associations have specific statements regarding political contributions, the OECD Guidelines (2008) state that enterprises should “not make illegal contributions to candidates for public office or to political parties or to other political organizations” (OECD, 2008), and that any “contributions should fully comply with public disclosure requirements and should be reported to senior management”. In much the same way, the ICC Business Charter establishes that “contributions to political parties or committees, or to individual politicians, may only be made in accordance with the applicable law, and all requirements for public disclosure of such contributions shall be fully complied with” (ICC, 2008).

Thus, it has been shown that all CSR codes of conduct, with the exception of Repsol’s code of conduct (2008), expressly forbid contributions to political parties. When accepted, political contributions are permitted only to the extent that is possible under domestic law. The CSR codes of

conduct of the oil and gas companies surveyed can thus be said to be consistent with the international framework.

Financial transparency

In accordance with Article 7 (1) of the UNODC (2001) “each State Party shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions”. The UN Norms (2003) state in a general way that the financial statements of companies shall show the financial conditions, results of operations and cash flows of the business. The OECD Guidelines for Multinational Enterprises (2008) reaffirm that enterprises should “ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation, and performance” (OECD, 2008), and further that they should “apply high quality standards for disclosure, accounting, and audits” (OECD, 2008). Some international associations, such as ICC Business Charter and ARPEL, also have policies encouraging and strengthening financial transparency. The ICC Business Charter (2008) acknowledges that “all financial transactions must be properly and fairly recorded in appropriate books of account available for inspection by boards of directors, if applicable, or a corresponding body, as well as auditors” (ICC, 2008).

One may argue that there is a clear collective commitment to financial transparency among all the oil and gas companies surveyed, although CSR codes of conduct demonstrate varying levels of transparency. In a broad sense, CSR codes of conduct comply with the spirit of the international framework.

CONCLUSION

This study examined and compared the corruption issues in CSR codes of conduct, in order to corroborate the assertion that CSR codes of conduct can be an effective mechanism for integrating responsible economic practices against corruption. This paper placed a special emphasis on the oil and gas industry in emerging markets. In order to confirm the theory of the CSR codes of conduct for emerging markets, the corruption issues seen in the CSR codes of conduct of six major oil and gas

industry were analyzed and compared. For comparison purposes, corruption issues were divided into three common subcategories, embodied in the companies' CSR codes of conduct, as follows: bribery and corruption, political contributions and financial transparency.

One important mechanism for restraining CSR codes of conduct is the international legal framework. For this reason, this study examined CSR codes of conduct and compared them to the most relevant provisions relating to corruption issues embodied in international conventions, guidelines, norms or standards of oil and gas associations, NGOs and international and multilateral organizations and associations.

One may argue that the assertion of this paper is true as far as corruption issues are concerned. The majority of oil and gas companies surveyed display some kind of commitment regarding bribery and corruption, political contributions and financial transparency. More importantly, this commitment is in accordance with the international legal framework. The results are thus compelling: CSR codes of conduct may be an effective mechanism for integrating responsible economic practices, globally, against corruption in emerging markets, in particular, and are consistent with the international framework. However, few oil and gas companies' codes of conduct enter into detail with regard to defining how these policies should be implemented and what happens in cases of non-compliance. CSR codes of conduct can promote the integration of responsible economic practices against corruption, globally, but they can also be used as a response to deflect criticism. It is a fact that some companies involved in corporate scandals, such as Enron, had excellent anti-corruption policy statements, but confirming the general rule, exceptions do exist. In any case, based on the conclusions of this study two questions may be raised: Is it possible to monitor compliance with CSR codes of conduct by the oil and gas sector, globally, only through the international legal framework or should a domestic legal approach also be adopted? Are the CSR codes of conduct in the oil and gas industry an effective mechanism for integrating responsible practices on a global scale, in general, e.g. labor, human rights, environmental and social issues?

The results of this study encourage future research for a better understanding of CSR codes of conduct, in general, and more specifically on the relationship of all the issues relating to CSR codes of conduct in the oil and gas sector within a determined domestic legislation, such as Brazilian law, for example.

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