

## 2006 BCSECCOM 347

April 13, 2006

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act ss. 48, 76 Corporate Acquisitions & Reorganizations - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution in connection with a corporate acquisition or reorganization - Trades in an issuer's securities as part of its demutualization - The issuer is undergoing a demutualization under a legislative scheme; as part of the demutualization and subsequent listing on an exchange, the issuer will conduct an offering that its current members may participate in; the issuer will describe the various trades in connection with the demutualization and related offering in a circular and in an offering document prepared in accordance with the laws governing the demutualization; the issuer will provide contractual rights of action for damages and rescission; the issuer's connection to Canada is *de minimis*; the issuer will set up an assisted sales programme to facilitate the resale on a foreign exchange of shares received in connection with the demutualization and offering; the programme is administered by a Canadian trust company or financial institution, with assistance from its foreign affiliates; sales will occur through dealers registered in the foreign jurisdiction where the securities are listed; the only act that may be considered a solicitation of sell orders is providing information to the sellers about the programme

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, . 34(1)(a), 48, 61 and 76

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova  
Scotia, New Brunswick, Prince Edward Island Newfoundland and Labrador,  
Northwest Territories, Yukon Territory and Nunavut  
(the "Jurisdictions")

and

In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
The Standard Life Assurance Company and SLGC Limited  
(the "Filers")

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## MRRS Decision Document

### **Background**

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that:

- (i) the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the “Prospectus Requirement”) shall not apply to the distribution of Ordinary Shares (as defined below) of Standard Life plc (“SL plc”) to Eligible Policyholders (as defined below) under the Preferential Offer (as defined below) (the Ordinary Shares purchased by Eligible Policyholders under the Preferential Offer are referred to as the “Shares”) made in connection with the demutualization (the “Demutualization”) of The Standard Life Assurance Company (“SLAC”) and flotation of SL plc on the London Stock Exchange (“LSE”) (collectively, the Demutualization and the Offers (as defined below) are referred to as the “Reorganization”) or to the distribution of Bonus Shares (as defined below) to Eligible Policyholders; and
- (ii) the Registration Requirement shall not apply to the Filers, the Eligible Policyholders or the Administrator(s) (as defined below) acting as an agent for Eligible Policyholders for the purpose of facilitating the sale of Free Shares (as defined below), Shares, Bonus Shares (as defined below) or ordinary shares of SL plc (“Ordinary Shares”) subscribed for by Eligible Policyholders pursuant to rights granted to the Eligible Policyholders as holders of Free Shares, Shares or Bonus Shares (“Rights Shares”) post flotation.

Under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”):

- (a) the Autorité des marchés financiers is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

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### **Representations**

This decision is based on the following facts represented by the Filers:

#### The Filers

1. SLAC was established in Scotland in 1825. SLAC is not presently, and does not intend to become, a reporting issuer under the Legislation.
2. SLAC and its subsidiaries constitute one of the U.K.'s largest financial services groups. SLAC is one of the largest mutual insurance companies in Europe, with operations in other jurisdictions including Canada, Austria, Germany, Ireland, India, China and Hong Kong, conducted through branches, joint ventures and subsidiaries.
3. SLAC is currently constituted by private Act of Parliament pursuant to the *Standard Life Assurance Company Act of 1991* (the "SLAC Act") and is registered in Scotland. Certain of the provisions of the U.K. *Companies Act 1985* also apply to SLAC. As a private company without share capital, SLAC has no shareholders. Rather, SLAC is a mutual company with members. Its members comprise certain of the legal holders of various life assurance, pension and annuity products issued by SLAC. There are two classes of members: holders of policies that are invested in "with profits" ("Par Members") and holders of policies not invested in "with profits" ("Non-Par Members").
4. Par Members with policies continuously invested in "with profits" for more than six months which are in good standing, subject to certain exceptions, have the right to vote at general meetings of SLAC. Each voting member has one vote regardless of the number of SLAC policies held by the member or the amount invested in "with profits". Par Members also have the potential to share in the profits of SLAC that the directors declare for distribution and, on winding up, to share in those surplus assets of SLAC remaining after SLAC meets all its other liabilities to creditors (including liabilities under all policies).
5. Non-Par Members do not have the right to vote or share in the profits or surplus assets of SLAC. They do have limited rights under the Regulations to the SLAC Act being, (i) the right to receive and inspect minutes of meetings of SLAC; (ii) the right to receive a copy of SLAC's annual report and accounts; and (iii) if authorized by the Board of SLAC or at a general meeting of SLAC, the right to inspect SLAC's accounting and other records.

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6. Membership of SLAC is not an asset with a realizable value as membership cannot be sold separately from the policy giving rise to that membership right. Membership terminates when a policy is transferred or surrendered or a policyholder otherwise has not complied with the terms of a policy.
7. SLAC is an authorized insurance company under the U.K. *Financial Services and Markets Act 2000* (“FSMA”). Its Canadian operations are regulated by the Office of the Superintendent of Financial Institutions (Canada).
8. As of February 28, 2006, SLAC and its subsidiaries had approximately 6 million policyholders in over 130 countries of which approximately 2.4 million are Par Members and 3.6 million are Non-Par Members. There are approximately 60,000 Par Members and 315,000 non with-profits Eligible Policyholders currently resident in Canada.
9. Offers (the “Offers”) of Ordinary Shares will be made by SL plc on its flotation on the LSE following the Demutualization. The Offers will be made in the U.K. and other countries and include (i) an offer to institutional and other investors (the “General Offer”), (ii) a preferential offer (the “Preferential Offer”) to persons who are eligible customers of Standard Life Group as at April 18, 2006 (“Eligible Customers”) including Par Members and Non-Par Members and possibly also to eligible employees of the Standard Life Group (“Eligible Employees”). Eligible Employees may also receive a fixed allocation of Ordinary Shares for no consideration upon flotation (“Employee Shares”). In Canada, the Preferential Offer will be made to Par Members and to Non-Par Members of the Canadian branch of SLAC as well as the policyholders of its Canadian subsidiary, The Standard Life Assurance Company of Canada (“SCDA”), which include those former members of the Canadian branch of SLAC who are holders of policies assumed by SCDA following the domestication in 2004 (policyholders in Canada of SLAC or SCDA as at April 18, 2006 to whom the Preferential Offer is made are referred to herein as “Eligible Policyholders”) and may also be made to Eligible Employees.
10. If the flotation proceeds, the Filers expect that few Canadian resident Eligible Par Members (as defined below) will elect to retain their Free Shares and that the take up under the Preferential Offer by Canadian resident Eligible Policyholders will be even lower. These expectations are based in part on the fact that the Ordinary Shares will be denominated in pounds sterling, and the Ordinary Shares will be listed solely on the LSE, and in part based upon the Filers’ understanding that in a previous similar demutualization reorganization, very few shares were ultimately placed in Canada. The percentage of outstanding Ordinary Shares held by Eligible Policyholders will

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be further diluted by the issuance of Ordinary Shares to institutional and other investors under the General Offer.

11. SLGC Limited has been incorporated under the U.K. *Companies Act 1985*. It will convert to a public limited company under the name “Standard Life plc” in the second quarter of 2006. Once SL plc becomes listed on the LSE, SL plc will become subject to the continuous disclosure obligations under the U.K. *Companies Act 1985* and the U.K. Financial Services Authority (“FSA”) Disclosure and Listing Rules. SL plc does not intend to become a reporting issuer under the Legislation.

### The Demutualization

12. On October 18, 2005, the Board of Directors of SLAC confirmed its intention to recommend to members that SLAC demutualize and list on the LSE, subject to satisfactory completion of all legal, regulatory and other processes, and that Demutualization continued to be in the best interests of SLAC and its members and policyholders.
13. Under the Demutualization, SLAC will transfer substantially all of its business, undertakings and assets to one or more wholly-owned subsidiaries of SL plc and the membership rights of all of SLAC’s members will cease. As compensation for the loss of membership rights, SL plc will issue Ordinary Shares (“Free Shares”) to or to the order of eligible Par Members (“Eligible Par Members”) immediately after Demutualization. The amount of Free Shares to be issued to an Eligible Par Member will be determined by allocating a fixed amount designed in particular to compensate for loss of a voting right and a variable amount designed in particular to compensate for the loss of the potential to share in the surplus assets of SLAC on winding up. Because Non-Par Members are not entitled to vote or to share in the surplus assets of SLAC on winding up, they will not receive Free Shares in connection with the Demutualization. Following the Demutualization, Non-Par Members will no longer have the rights they had in respect of SLAC described in paragraph 5 above.
14. No amount will be payable by Eligible Par Members for the Free Shares. The Free Shares will be issued as fully paid Ordinary Shares as part of the Demutualization and may be traded separately from any policy or policies with the SL plc Group that the Eligible Par Member holds after Demutualization.
15. Immediately following Demutualization, the only issued shares of SL plc will be the Free Shares issued to or to the order of the Eligible Par Members.

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Shortly after the Demutualization and the issuance of the Free Shares to Eligible Par Members and on the same day that Demutualization comes into effect, SL plc will be floated on the LSE.

16. Eligible Par Members in Canada will only be able to retain the Free Shares to be issued to or to their order on Demutualization if they make an express election to retain them. If Canadian residents do not elect to retain their Free Shares, their Free Shares will be sold immediately on flotation as part of the Offers and such Canadian residents will receive the sale proceeds of those Free Shares (the “Corresponding Entitlement”) in Canadian dollars. For those Eligible Par Members who are defaulted to have their Free Shares sold on flotation, their Free Shares will be issued to a nominee incorporated and resident in the U.K., for sale as part of the Offers. No brokerage commissions or associated sales costs will be payable by the Eligible Policyholders on the sale of the Free Shares immediately on flotation as part of the Offers.
17. The Demutualization will be subject to the prior approval of at least 75% of those voting members of SLAC who vote in person or by proxy at the special general meeting (the “Special General Meeting”) of members called to consider the Demutualization (scheduled for the end of May or early June, 2006). Under Scottish law, the transfer of the rights and liabilities of SLAC under insurance policies, and the corresponding insurance assets, forming part of SLAC’s UK business and (with the consent of the relevant European Economic Area (“EEA”) regulators) EEA business require the approval of the Court of Session in Scotland under section 111 of FSMA as an insurance business transfer scheme (the “Scheme”). The Scheme can only come into effect by way of the Court order. The Scheme may not be able to transfer the businesses of SLAC outside the EEA or assets and liabilities, other than rights and liabilities under insurance policies, in EEA jurisdictions and this will require local transfer arrangements in the relevant jurisdictions to effect these transfers, such as the proposed Canadian assumption reinsurance arrangements. The compensation scheme will form part of the Scheme setting out the allocation and distribution of demutualization entitlements to eligible members, including the allocation of Free Shares to Eligible Par Members.
18. SLAC will send to Eligible Par Members and other members entitled to vote on the Demutualization and its other policyholders (subject to any waivers obtained from the Scottish Court of Session) in April 2006 a proposal to members (the “Circular”) which will include a copy of the notice of the Special General Meeting, details of the Demutualization and a summary of the independent actuarial report to be submitted to the Scottish Court of Session by Mike Arnold, a qualified actuary whose appointment as Independent Expert for the Demutualization has been approved by the FSA. The

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Independent Expert is required to provide a report to the Court on the Demutualization, including its impact on the reasonable expectations and security of policyholders and the fairness and appropriateness of the compensation arrangements. The Circular will also be accompanied by a share allocation statement indicating the provisional number of Free Shares to be allocated to an Eligible Par Member if Demutualization proceeds.

19. The Circular and share allocation statements will be sent to Eligible Par Members in Canada. The Circular will also be sent to non with-profits Eligible Policyholders of the Canadian branch of SLAC. At the time of the mailing of the Circular, the holders of policies issued or assumed by SCDA, may receive a short letter notifying them of the Demutualization transaction, which may advise them of the existence and availability of the Preferential Offer. In Canada, policyholders of SLAC's Canadian branch will also receive a policyholder notice with respect to the proposed Canadian transactions affecting their policies.
20. The purpose of the Circular is to meet the FSMA requirement to provide policyholders with information on the Demutualization, in particular (a) its impact on their security and benefit expectations, and (b) the reorganization to be effected by the Demutualization, as well as sufficient information for voting members to decide whether and how to vote on the proposals put to them in connection with the Demutualization at the Special General Meeting. The Circular will mention that there will be a General Offer, a Preferential Offer and a distribution of Employee Shares. However, this will be in general terms, and Eligible Par Members will not be given the opportunity to apply for Shares under the Circular or any mailing attached to the Circular or given any form to make an election in respect of the sale or retention of their Free Shares.
21. It is anticipated that the Reorganization will occur in July 2006.

### The Offers

22. A necessary part of the Demutualization plan is that SL plc raise further capital on flotation by making the General Offer in certain jurisdictions. The General Offer is expected to be made as a public offer in the U.K. and as an offer to institutional investors outside the U.K., including a private placement to accredited investors in Canada and a Rule 144A offering in the U.S.
23. SL plc will make the Preferential Offer to certain Eligible Customers (including Eligible Policyholders) in certain jurisdictions including to Eligible Policyholders in Canada.

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24. The Preferential Offer in Canada involves (a) giving Eligible Policyholders the opportunity to rank ahead of those buying Ordinary Shares through the General Offer in share allocation on oversubscription; and (b) an offer of Ordinary Shares to Eligible Policyholders at a five per cent discount to the General Offer price. The maximum amount an Eligible Policyholder may subscribe for at the discounted price pursuant to the Preferential Offer is £50,000. There will also be a bonus issue of Ordinary Shares (the “Bonus Shares”), for no additional consideration, to shareholders who elect to retain their Free Shares and/or have subscribed for Shares and hold such Free Shares and/or Shares continuously up to and including the first anniversary of admission of the Ordinary Shares to trading on the LSE, on the basis of one additional Ordinary Share for every twenty Free Shares acquired and/or Shares, respectively, so held. While the Preferential Offer is part of the Reorganization, it would not be made pursuant to the Demutualization and does not represent compensation for the loss of membership or other rights in SLAC.
25. In connection with the Offers, a U.K. price range prospectus (the “Price Range Prospectus”) will be prepared and filed in accordance with the requirements of the Prospectus Directive (2003/71/EC) of the European Union and FSMA and the applicable regulations and rules thereunder. As permitted under the FSA Prospectus Rules, the Price Range Prospectus will consist of three separate documents: a summary (the “Summary”), a share registration document and a share securities note.
26. The Summary will be delivered to Eligible Customers and Eligible Employees in Austria, the Channel Islands, Germany, Ireland, the Isle of Man and the U.K., together with a covering letter and subscription forms with related instructions (the “Share Pack”). In Canada, rather than delivering the Share Pack to all Eligible Policyholders, SLAC may notify non with-profits Eligible Policyholders by letter and/or will notify them through a posting on its website, of the opportunity to participate in the Preferential Offer and ask them to contact SLAC if they wish to receive the Share Pack. SLAC may deliver the Share Pack to non with-profits Eligible Policyholders who were delivered the Circular. Eligible Par Members entitled to Free Shares will receive the Share Pack and will be able to choose on the subscription application form included in the Share Pack to retain their Free Shares on flotation as well as buy Shares (if they choose to retain their Free Shares). The Share Pack will also describe the terms and conditions of the sale of the Free Shares.



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27. The Summary is required to convey the essential characteristics and risks associated with SL plc and the Ordinary Shares and summarize information that in the opinion of SL plc would be most likely to influence an investor's decision to purchase Ordinary Shares. The Summary will include a description of (a) the principal business of SL plc and its subsidiaries, (b) the Ordinary Shares, including the price range; (c) use of proceeds; (d) risk factors; and (e) financial information.
28. The Summary will contain instructions on how investors can access or obtain the full text of the Price Range Prospectus. Investors will be able to access the full text of the Prospectus on SLAC's website. Access may be subject to certain access restrictions (such as requiring representations that an Investor is not resident in the U.S.). Investors may also request that a print copy of the full text of the Price Range Prospectus be mailed to them at SL plc's expense.
29. The Price Range Prospectus will contain historical financial information prepared in accordance with U.K. Generally Accepted Accounting Principles for: (a) the financial period from November 16, 2003 to December 31, 2004 and (b) the financial year ended November 15, 2003. The 2004 financial information will be restated, and the financial information for the period from January 1, 2005 to December 31, 2005 will be prepared, in accordance with International Financial Reporting Standards and, in the case of the audited statements, audited in accordance with International Standards on Auditing. Standards for Investment Reporting 2000 accountants' reports on the financial statements for these financial periods will be prepared and signed by PricewaterhouseCoopers LLP.
30. A short supplementary document to the Price Range Prospectus will be published once the price is finalized shortly prior to listing (the "Pricing Statement").
31. In connection with the Preferential Offer, the Summary delivered to Eligible Policyholders in Canada would be expanded to include a Canadian wrapper containing, among other things, a description of the contractual rights of action for rescission or damages granted by SL plc to purchasers of Shares and the tax implications to Canadian residents and instructions on how to access the Prospectus. The Standard Life website will advise (in English and French) Eligible Policyholders in Canada of the existence of the Preferential Offer and describe how to access or obtain a copy of the Price Range Prospectus (including the Canadian wrapper) and how to subscribe. A French language version of the Share Pack and Canadian wrapper will be prepared.

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32. Also in connection with the Preferential Offer, the Price Range Prospectus, the Pricing Statement and the Canadian wrapper distributed to Eligible Policyholders will be filed with the applicable Canadian securities regulatory authorities as a disclosure document or offering memorandum. SL plc will grant Eligible Policyholders that purchase Shares contractual rights of rescission or damages if the offering memorandum contains a misrepresentation. If the offering memorandum contains a misrepresentation, Eligible Policyholders who purchase Shares during the period of distribution will be granted, without regard to whether the Eligible Policyholders relied on the misrepresentation, a right of action for damages against SL plc or the Eligible Policyholders may exercise a right of rescission against SL plc.
33. Every holder of Free Shares, Shares, Bonus Shares or Rights Shares resident in Canada will be delivered all continuous disclosure documents required to be delivered to holders of Ordinary Shares resident in the U.K. pursuant to the U.K. *Companies Act 1985* and the FSA Disclosure and Listing Rules.

### **Assisted Sales Programme**

34. Free Shares and Shares issued to Eligible Policyholders will be registered in the name of the policyholder. SLAC proposes to establish an assisted sales programme following flotation.
35. Under the assisted sales programme, Eligible Policyholders resident in Canada who own Free Shares and/or Shares and/or Bonus Shares and/or Rights Shares will be able to sell those shares by contacting the Administrator of the assisted sales programme, Computershare Trust Company of Canada or any other Canadian financial institution appointed by SL plc from time to time as the administrator. The Administrator will refer the sales orders to its U.K. affiliate, an entity regulated for these purposes by the FSA under the FSMA. The U.K. affiliate of the Administrator will establish an account with a broker dealer registered under the FSMA (the "Assisting Dealer") and, through the Assisting Dealer, will arrange to sell Eligible Policyholders' shares and remit the proceeds in Canadian dollars, less applicable fees, to Eligible Policyholders. The assisted sales programme will be available for sales by Eligible Policyholders of Free Shares, Shares, Bonus Shares and Rights Shares; the assisted sales programme will not otherwise be available in Canada to facilitate purchases or sales of Ordinary Shares.
36. Under the assisted sales programme, only sell orders will be accepted by the Administrator and no advice regarding the decision to sell or hold Free Shares, Shares, Bonus Shares or Rights Shares or purchase of additional Ordinary Shares will be offered to any Eligible Policyholder. SL plc will not subsidize

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the costs of trading shares under the assisted sales programme, although Eligible Policyholders will benefit from any reduced commission that can be negotiated with the Assisting Dealer. Any Eligible Policyholders who wish to sell shares in another manner (for example, by transferring their holdings to another dealer with whom they have a brokerage relationship) will be free to do so. Any information distributed to Eligible Policyholders regarding the assisted sales programme will not contain any investment advice as to the desirability of Eligible Policyholders holding or selling their shares or purchasing additional shares. The Assisting Dealer will not open individual accounts or engage in “know-your-client” procedures with respect to individual Eligible Policyholders utilizing the assisted sales programme. Documents describing the assisted sales programme will be available to Eligible Policyholders.

37. SL plc may maintain a call centre through which questions of Eligible Policyholders regarding the mechanics of selling shares under the assisted sales programme can be answered. The call centre staff will be instructed not to provide investment advice as to the desirability of an Eligible Policyholder holding, selling or purchasing shares.

### **Decision**

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.

The decision of the Decision Makers under the Legislation is that:

1. the Registration Requirement and Prospectus Requirement shall not apply to trades or distributions by the Filers of Ordinary Shares to Eligible Policyholders under the Preferential Offer or the distribution of Bonus Shares to Eligible Policyholders, provided that, in each case, the first trade in such securities shall be a distribution (or a primary distribution to the public) under the Legislation unless the conditions set out in Subsection 2.14 (1) of National Instrument 45-102 *Resale of Securities* are satisfied at the time of such first trade;
2. the Registration Requirement shall not apply to the Filers, the Administrator(s) pursuant to the assisted sales programme or to an Eligible Policyholder in respect of
  - (a) the execution of an unsolicited order to sell, on behalf of the Eligible Policyholder, through the Assisting Dealer by the Administrator, securities that are Ordinary Shares purchased by Eligible Policyholder under the

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Preferential Offer, or Free Shares, Bonus Shares or Rights Shares issued to (or to the order of) the Eligible Policyholder; or

- (b) the Eligible Policyholder placing the unsolicited order with the Administrator, in connection with the assisted sales programme

if

- (c) SL plc was not a reporting issuer in any jurisdiction of Canada at the date of distribution of the securities;
- (d) at the date of the distribution of the securities, after giving effect to the issue of the securities and any other Ordinary Shares that were issued at the same time as the securities , residents of Canada
  - (i) did not own directly or indirectly more than 10 percent of the outstanding Ordinary Shares, and
  - (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of Ordinary Shares; and
- (e) the trade is made
  - (i) through an exchange, or market, outside of Canada, or
  - (ii) to a person or company outside of Canada,

and for the purposes of this MRRS Decision Document, a trade shall not be considered “solicited” by reason of the Filers (or the Administrator on their behalf) distributing to Eligible Policyholders disclosure documents, notices, brochures or similar documents advising of the availability of the Administrator to facilitate sales of the securities or by reason of the Filers and/or the Administrator advising Eligible Policyholders of the availability, and informing Eligible Policyholders of the details of the operation of the assisted sales programme in response to enquiries from Eligible Policyholders by telephone or otherwise.

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