



NATIONAL  
SECURITIES  
CLEARING  
CORPORATION

RULES & PROCEDURES

TEXT OF PROPOSED RULE CHANGE

**Bold and underlined** text indicates proposed added language.

**~~Bold and strikethrough~~** text indicates proposed deleted language.

## RULE 10. FAILURE TO DELIVER ON SECURITY BALANCE ORDERS

If a Member shall not make delivery of all the Cleared Securities to be delivered pursuant to a security balance order by the time on business days specified by the Corporation, the Member to whom the Cleared Securities are to be delivered may cause such securities as are not so delivered to be bought-in as provided for in the **Procedures rules of the applicable marketplace.**

RULE 11.CNS SYSTEM

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SEC. 7. ~~(a)~~ In the event a Member has a Long Position in a CNS Security, the Member (the "originator") may demand immediate delivery thereof by ~~filingsubmitting~~, at or before the time specified in the Procedures, ~~withto~~ the Corporation a ~~Notice of Intention to Buy-In Intent~~, in the form prescribed by the Procedures. The originator will be given priority ~~for CNS allocation~~, in the manner prescribed by the Procedures, in respect of the allocation by the Corporation of securities covered by the ~~a Notice of Intention to Buy-In Intent~~, in the settlement on the settlement day prior to the expiration of the buy-in and if the securities are not allocated to the originator in that settlement, in the settlement on the settlement day the buy-in expires.<sup>†</sup> The processing of a Buy-In Intent through the delivery of CNS Retransmittal Notices to Members with Short Positions shall be accomplished in accordance with Section J of Procedure VII, and the subsequent execution of such buy-in by the originator, as necessary, shall be accomplished in accordance with Procedure X.

With respect to buy-ins of municipal securities, in lieu of receiving priority for CNS allocation, the filing of a Buy-In Intent will be treated as an instruction to remove the securities subject to the buy-in from the CNS System, which shall be accomplished in accordance with the procedures in Section J of Procedure VII.

~~(b) If, at any time after a Notice of Intention to Buy-In is submitted and processed, until the completion of CNS allocation processing on N+2, the originator has settling trades or miscellaneous activity that reduce their Long Position such that the originator becomes either short or flat in a security covered by the Notice of Intention to Buy-In, or such that the originator's Long Position in CNS is less than its Buy-In Position, NSGC will consider that Buy-In Position (or portion thereof) satisfied, and will either reduce its Buy-In Position accordingly or the Notice of Intention to Buy-In will be removed from the system, as applicable.~~

~~(c) In the event that less than all the securities covered by the Notice of Intention to Buy-In are received by the originator prior to the time specified in the Procedures, the Corporation shall as promptly as possible, but not later than the settlement day after the Notice of Intention to Buy-In is filed with the Corporation, transmit to the Member or Members, determined in accordance with the priorities specified in the Procedures, CNS Retransmittal Notices specifying the originator and the total amount called for in the Notice of Intention to Buy-In which has not been received by the originator pursuant to paragraph (a) of this section (the "remaining securities") and demanding delivery from each such Member of a~~

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<sup>†</sup> ~~With respect to Buy-Ins of municipal securities, in lieu of receiving CNS priority, the filing of a Notice of Intention to Buy-In will be treated as an instruction to remove the Buy-In Position from the CNS System in accordance with the Procedures.~~

~~specified quantity of securities determined in accordance with the Procedures. CNS Retransmittal Notices shall include such information pertaining to the Buy-In as the Corporation may determine from time to time.~~

~~(d) Prior to the execution of a Buy-In, the originator must accept and pay for any portion or all the remaining securities delivered to the originator and, if the originator does not so receive all the remaining securities at the opening of business on the settlement day after which the Corporation transmits Retransmittal Notices pursuant to paragraph (b) of this Section, the originator may order the purchase of the portion remaining undelivered in the manner specified in the Procedures.~~

~~(e) In the event that a Notice of Intention to Buy-In is presented and sufficient securities are not delivered as provided in paragraph (c) of this Section and subsequently the originator does not order the purchase of the remaining securities, a charge may be levied against the originator in the amount of \$250.~~

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## PROCEDURE VII. CNS ACCOUNTING OPERATION

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### E. Controlling Receipts from CNS

After securities are received by the Corporation from Members with short positions, they are allocated to other Members which have long positions. The allocation of these securities is governed by an algorithm which changes daily so as not to benefit any one Member. Members may change their relative rank within this algorithm by submitting Priority Requests. The submission of a Buy-In **NoticeIntent** will also affect the priority of a Member's long position in that particular security.

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### 3. Buy-In **Intent** Notices

A Member which submits a Buy-In **NoticeIntent** in accordance with the provisions of subsection J of this Section is assigned to a higher relative rank in the allocation algorithm for the quantity of securities specified on the Buy-In **NoticeIntent** than those Members which have requested high priority through the use of a Standing Priority Request or Priority Override.

### 4. Allocation Algorithm

The algorithm which governs the allocation of long positions is based on priority groups in descending order, age of position within a priority group and random numbers within age groups.

Priority groups include the following:

- (a) long positions in a CNS Reorganization Sub-Account established pursuant to paragraph H.4. of this Section VII of these Procedures;
- (b) long positions against which Buy-In **NoticeIntent notices** are due to expire that day but which were not filled the previous day;
- (c) long positions against which Buy-In **NoticeIntent notices** are due to expire the following day;

\* \* \*

J. Recording of CNS Buy-Ins

1. Equity Securities and Corporate Debt Securities

Defined Terms

For the purpose of this Section J,

The day the Buy-In Intent is transmitted is referred to as N; and N+1 and N+2 refer to the succeeding business days. As noted in Section A of this Procedure VII, each day commences in the evening and includes an evening allocation of securities and a day allocation of securities.

An “originator” shall mean the Member with a Long Position who submits a Buy-In Intent to the Corporation pursuant to this Procedure.

“Buy-In Position” shall mean the quantity of securities the originator intends to buy-in as identified on its Buy-In Intent.

“Original Buy-In-Intent” shall mean a Buy-In Intent transmitted by a Member with a Long Position for which such Member is the original submitter.

“Buy-In Retransmittal Notice” shall mean a Buy-In Intent submitted by a Member with a Long Position with respect to a Buy-In Position for which the Member has a corresponding obligation as to which it has received a Buy-In Intent initiated outside of the CNS System.

Unless the context otherwise requires, where these Procedures refer to a “Buy-In Intent” without distinction, such reference refers to both an Original Buy-In Intent and a Buy-In Retransmittal Notice.

“Buy-In Liability” shall mean the quantity specified on each CNS Retransmittal Notice.

Buy-In Intent

Except with respect to securities subject to a voluntary corporate reorganization (as described in ~~paragraph~~Section H.4. of this Section Procedure VII), ~~and except as otherwise provided with respect to municipal securities as set forth in paragraph J.2. below,~~ a Member having a ~~long position~~Long Position at the end of any day may transmit, in such form and within such times as determined by the Corporation ~~from time to time~~, to the Corporation a ~~Notice of Intention to Buy-In Intent (Buy-In Notice)~~ specifying ~~a quantity of securities~~its Buy-In Position, which shall not exceed ~~such the~~ long positions which it intends to buy-in ~~(its Buy-In Position)~~.

With respect to securities subject to a voluntary corporate reorganization, a Member may not transmit a Buy-In ~~Notice~~Intent after the expiration date of the ~~tender offer~~reorganization event until the end of the protection period for the ~~tender~~

~~offer reorganization event~~; provided, however, that at no time may a Member submit a Buy-In ~~Notice~~Intent for a ~~long position~~Long Position in a CNS Reorganization Sub-Account. ~~For the purpose of this Section J, the day the Buy-In Notice is transmitted is referred to as N, and N+1 and N+2 refer to the succeeding days. Each day commences in the evening and includes an evening allocation of securities and a daytime allocation.~~

A Buy-In ~~Notice~~Intent may be ~~filed~~submitted to the Corporation by a Member on successive days, provided the succeeding Buy-In ~~Notice~~Intent does not specify a quantity of securities covered by the prior Buy-In ~~Notice~~Intent and the quantity of securities representing the sum of the Buy-In ~~Notices~~Intent notices does not exceed the Member's total ~~long position~~Long Position.

If, at any time after a Buy-In Intent is submitted and processed, until the completion of CNS allocation processing on the day the Buy-In expires, the originator has settling trades or miscellaneous activity that reduce their Long Position such that the originator becomes either short or flat in a security covered by the Buy-In Intent, or such that the originator's Long Position in CNS is less than its Buy-In Position, NSCC will consider that Buy-In Position (or portion thereof) satisfied, and will either reduce its Buy-In Position accordingly or the Buy-In Intent will be removed from the system, as applicable.

~~For the purpose of these Procedures, an "Original Buy-In Notice" shall mean a Buy-In Notice transmitted by a Member for which the Member is the original submitter, and a "Buy-In Retransmittal Notice" shall mean a Buy-In Notice submitted by a Member with respect to a Buy-In Position for which the Member has a corresponding obligation as to which it has received a buy-in notice initiated outside of the CNS System. (Unless the context otherwise requires, where these Procedures refer to a "Buy-In Notice" without distinction, such reference refers to both an Original Buy-In Notice and a Buy-In Retransmittal Notice.)~~

### CNS Allocation Priority and CNS Retransmittal Notices

Original Buy-In ~~Notice~~Intent (expiring on N+2):

A Buy-In Position on an Original Buy-In ~~Notice~~Intent is given high priority for CNS allocation from N+1 through the daytime allocation on N+2. If a Buy-in Position remains unfilled after the evening allocation on N+1, the Corporation issues CNS Retransmittal Notices on the morning of N+1 to a sufficient number of Members with ~~short positions~~Short Positions. Such CNS Retransmittal Notices shall specify the originator and the remaining portion of the Buy-In Position not yet received and demand delivery from each such Member of a specified quantity of securities. CNS Retransmittal Notices are issued in an aggregate quantity at least equal to the Buy-in Position. In no case will the Buy-in Liability of a Member exceed the Buy-in Position or the total ~~short position~~Short Position of the Member. If several Members have ~~s~~Short

Positions with the same age, all such Members are issued CNS Retransmittal Notices, even if the total of their Short Positions exceeds the Buy-in Position.

Buy-In Retransmittal Notice (expiring on N+1):

A Member that has a ~~long position~~ **Long Position** in CNS at the end of any day and that has received a ~~Buy-In Intent~~ **buy-in notice** initiated outside of the CNS System in that same CUSIP, may submit a Buy-In Retransmittal Notice to the Corporation for execution on N+1 as described below. The Buy-In Retransmittal Notice shall include such information as the Corporation may determine from time to time, including the identity of the entity that initiated the ~~buy-in~~ **Buy-In** against the Member. A Buy-In Position on a Buy-In Retransmittal Notice is given high priority for **CNS** allocation from N through the daytime allocation on N+1.

Upon receipt of the Buy-In ~~Notice~~ **Retransmittal Notice** on N, the Corporation issues CNS Retransmittal Notices to a sufficient number of Members with ~~short positions~~ **Short Positions**. **Such CNS Retransmittal Notices shall specify the originator and the remaining portion of the Buy-In Position not yet received and demand delivery from each such Member of a specified quantity of securities.** CNS Retransmittal Notices are issued in an aggregate quantity at least equal to the Buy-in Position. In no case will the Buy-In ~~Liability~~ of a Member exceed the Buy-in Position or the total ~~short position~~ **Short Position** of the Member. If several Members have ~~s~~ Short Positions with the same age, all such Members are issued CNS Retransmittal Notices, even if the total of their Short Positions exceeds the Buy-In Position.

~~The quantity specified on each Member's CNS Retransmittal Notice is its Buy-In Liability.~~

A Member's Buy-In Liability may be satisfied by the actual settlement of the ~~short position~~ **Short Position** up to the time on N+1 (for a Buy-In Retransmittal Notice), or N+2 (for an Original Buy-In ~~Notice~~ **Intent**) ~~as specified below~~. If a deposit of securities is required to satisfy the ~~short position~~ **Short Position**, that deposit should be made prior to the Designated Depository daytime deposit cut-off time on the expiration date of the Buy-In ~~Notice~~ **Intent** and prior to the time specified below. Going from a ~~short position~~ **Short Position** to a flat or ~~long position~~ **Long Position** due to settling trades, stock dividends, or other activity on N through N+2 does not free a Member from Buy-In Liability.

**Prior to the execution of a Buy-In, the originator must accept and pay for any portion or all the remaining securities delivered to the originator.**

### **Buy-In Execution**

If the Buy-In Position is not satisfied by ~~3:00 PM~~ **the completion of the CNS allocation process in the day cycle** on the expiration date of the Buy-In ~~Notice~~ **Intent**, ~~or due to market events such as earlier time as established by the Corporation upon five~~



~~Business Days' notice~~ the Buy-In may be executed, as provided for under . See Section Procedure X for execution procedures.

2. Municipal Securities

Notwithstanding the foregoing, a Member that has transmitted a Buy-In ~~Notice~~Intent to the Corporation with respect to a municipal security shall have its Buy-In Position removed from the CNS System prior to commencement of the CNS night cycle on N+1. The Corporation will remove corresponding ~~short position~~Short Position(s) representing the ~~short~~ Member(s) with the oldest Short Position(s) in an aggregate quantity at least equal to the Buy-in Position, and will produce special close-out receive and deliver orders, which may name Members or a participant of an interfacing clearing corporation as the contra side and which receive and deliver orders will be subject to the rules of the MSRB.

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PROCEDURE X. EXECUTION OF BUY-INS

~~A. CNS System 1. Equity Securities and Corporate Debt Securities~~

~~A Member who has transmitted a Buy-In NoticeIntent under ~~sub~~Section J of section Procedure VII (as defined in Section 7 of Rule 11 as “the originator”) and has not received either all or a portion of the Buy-In Position shown on its Buy-In NoticeIntent by the date and time specified in such section on the expiration date of the Buy-In, may ~~instruct the Corporation to buy-in the remaining position by transmitting~~ submit a Buy-In Order to the Corporation on the expiration date of the Buy-In Intent (N+2 for an Original Buy-In Intent, and N+1 on a Buy-In Retransmittal Notice), in such form and within-by such time as determined by the Corporation ~~from time to time~~.~~

An originator that does not submit a Buy-In Order by this time, may not submit a Buy-In Execution pursuant to this Procedure, and it will be necessary for the originator to recommence the buy-in process by submitting another Buy-In Intent to the Corporation, as described in Section J of Procedure VII.

~~Members who receive CNS Retransmittal Notices and do not satisfy them (Subject Members) assume liability for the loss, if any, which occurs as a result of the buy-in. Those Members with the oldest short positions after 3:00 PM on expiration date of the Buy-In will first be held liable for an executed buy-in.<sup>4</sup>~~

If an originator submits a Buy-In Order as provided for above, but does not submit a Buy-In Execution pursuant to this Procedure, such that the Buy-In Order is not executed on its expiration date, the Buy-In Order shall not be executed thereafter, and it will be necessary for the originator to recommence the Buy-In process by submitting another Buy-In Intent to the Corporation in order to have its Long Position bought-in.

An originator who has submitted a Buy-In Order as described above, and has still not been allocated its Buy-In Position by the completion of the CNS allocation process in the day cycle on that day, or has only been allocated a portion of such Buy-In Position by that time, may execute the buy-in, as described below.

The Buy-In Order is executed by the Corporationoriginator in such marketplace and through such agents as ~~it~~ the originator shall elect, and such execution shall be subject to the relevant rules of such marketplace. Upon completion of

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<sup>4</sup> ~~If pursuant to the preceding paragraph the originator transmits to the Corporation and does not timely rescind a Buy-In Order, notwithstanding any agreements that may have been entered into between such Subject Member(s) and the originator, such Subject Member(s) shall remain liable for the executed buy-in.~~

the buy-in execution, the originator shall submit to the Corporation a Buy-In Execution, which shall include the position and price of the buy-in execution in such form and within such time as determined by the Corporation from time to time. The quantity bought-in is pro-rated among the Subject Members.

The Corporation does not validate the terms of the buy-in execution provided to it by the originator. Any disputes between the originator and the Members with Buy-In Liability shall be addressed between such parties away from the Corporation.

Members with Short Positions who receive CNS Retransmittal Notices and do not satisfy them assume liability for the loss, if any, which occurs as a result of the buy-in execution.<sup>4</sup>

~~N.B. If the Buy-In Order is not executed on its expiration date, the Buy-In Order will not be executed thereafter, and it will be necessary for the originator to recommence the Buy-In Procedure order to have his long position bought-in.~~

~~When a Buy-In Order has been executed, the quantity bought-in will be removed from the long position of the originating Member and the contract money will be credited to his account by journal entry. The short positions of the Subject Members will be reduced by the portion of the quantity bought-in allocated to each, and the appropriate portion of the contract money will be debited to their accounts, by journal entry. These journal entries will be processed by the evening of the day the Buy-In execution is reported and will affect the CNS records on such day and be reported in the Miscellaneous Activity Report for such day. The execution of a buy-in is reported in the Miscellaneous Activity Report on the next business day following the day such execution is reported to the Corporation.~~

~~NOTE: At the same time the originator submits a Buy-In Order to the Corporation under the CNS System, the Buy-In Order should contain instructions for execution on a cash, next day or regular-way ex-CNS basis (Special Trade).~~

## **2. Municipal Securities**

~~As provided for in Rule 11 Section 7(a), the filing of a Notice of Intention to Buy-In will be treated as an instruction to remove the Buy-In Position from the CNS System, which shall be accomplished in accordance with the procedures in subsection J of Procedure VII.~~

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<sup>1</sup> If the originator transmits does not timely rescind a Buy-In Order, notwithstanding any agreements that may have been entered into with Member(s) with Short Positions away from the Corporation, such Member(s) with Short Positions shall remain liable for the executed buy-in.

## **B. Balance Order System**

~~A Member (the originator) holding a receive balance order in respect of which securities are not delivered by the time on the Settlement Date specified by the Corporation may cause such securities to be bought-in; provided, however, that the buy-in shall not be effected prior to the third business day following the Settlement Date and provided further, that a Buy-In Notice or Retransmittal Notice (as described below) shall not be submitted if it would cause the Member holding the deliver balance order (the "Subject Member") (after the buy-in) to be left with an odd-lot position which did not appear on the original balance order.~~

~~The originator submits to the Member holding the deliver balance order (the Subject Member) a Buy-In Notice in paper format or in automated format through the facilities of a self-regulatory organization which provides an automated communication system. If the Buy-In Notice is submitted in paper format the originator shall attach a copy of his receive balance order thereto or such other evidence as permitted by the Corporation from time to time ("qualifying evidence") and specify the proposed execution date and the quantity of securities, not exceeding the quantity specified in the receive balance order which he intends to buy-in (Buy-In Position). If the Buy-In Notice is submitted in automated format the originator shall submit the Balance Order Control Number and specify the proposed execution date and the Buy-In Position. The Buy-In Notice shall be delivered or initiated not later than the time specified by the Corporation at least two business days before the proposed execution of the buy-in. A Subject Member, upon receipt of a Buy-In Notice, may submit in paper format or automated format a Retransmittal Notice to another Member who holds a deliver balance order for all or a portion of the same securities that were contained in the Buy-In Notice. If the Retransmittal Notice is submitted in paper format it shall specify the originator, the date of the original buy-in and the quantity of securities not exceeding the quantity specified in the original Buy-In Notice and a copy of the Receive Balance Order or such other qualifying evidence shall be attached thereto. If a Retransmittal Notice is submitted in automated format, it shall specify the Balance Order Control Number, the date of the original buy-in and the quantity of securities not exceeding the quantity specified in the original Buy-In Notice. Retransmittal Notices shall be delivered or initiated not later than the time specified by the Corporation at least one business day before the proposed execution of the buy-in.~~

~~An originator who has not received the Buy-In Position shown on his Buy-In Notice by the time specified by the Corporation on the business day of the proposed execution of the buy-in may buy-in the Buy-In Position in such market as he shall elect. In the event the buy-in is not executed on the day proposed, the Buy-In Notice shall expire at the close of business on such day. The originator must be prepared to defend the price at which the buy-in is executed relative to the current market at the time of the buy-in. Upon the execution of a Buy-In Order, the Subject Member shall be liable for any damages which may accrue to the originator, provided, however, that in the event a Buy-in or Retransmittal Notice is~~

~~not acknowledged by the Subject Member, the originating Member proceeds at its own risk with regard to the execution of the buy-in. All claims for such damages shall be made promptly.~~

~~If the balance order is for warrants, rights, convertible securities or other securities which have been called for redemption or are due to expire or on which a call or expiration date is impending or which is subject to a tender or exchange offer or other event which will expire, and the last day on which the securities must be delivered or surrendered (the "expiration date") is the Settlement Date for the balance order or any day after the Settlement Date, the Member holding the receive balance order may deliver a notice to the contra party (a "Liability Notice"). If a Liability Notice is so delivered to the contra party, and the contra party fails to deliver the securities on expiration date, the contra party shall be liable for any damages which may accrue thereby. All claims for such damage shall be made promptly.~~

~~For the purposes of the preceding paragraph, the term "expiration date" shall be defined as the latest time and date on which securities must be delivered or surrendered, up to and including the last day of the protect period, if any.~~

~~Receive and deliver instructions issued upon the removal of eligible securities from the CNS System (see Section VII.H.1) shall be deemed to be balance orders for the purpose of this subsection B.~~

#### ~~1. Extensions of Time for Buy-Ins of OTC Securities~~

~~For the purposes of this Section of the Procedures, the term "listed security(ies)" shall be deemed to mean a security(ies) traded on the NYSE and/or NYSE Alternext, and the term "OTC security(ies)" shall be deemed to mean a security(ies) traded other than on the NYSE or NYSE Alternext. Extensions of time for execution will be granted by the Corporation under the following conditions:~~

~~Member Originated Buy-In - A short Member who has received a Buy-In Notice from a Member for a balance order issued by the Corporation may take a seven (7) calendar day extension due to transit or transfer consistent with the NASD's Uniform Practice Code (UPC). Upon request, certificate numbers will be furnished by the short Member requesting the extension.~~

~~If the securities are in transfer, and due to the transfer agent, transfer is delayed, the Corporation may grant an additional seven (7) calendar days. If the short Member cannot take the extension but retransmits a Member originated buy-in to a non-Member UPC broker, and the UPC broker takes a UPC transfer or transit delay, the short Member will advise the Corporation which will extend the execution date for the same period of time.~~

~~Extensions of the execution of a Buy-In of a "listed security" will not be granted by the Corporation.~~

## **~~2. Interpretation of the Board of Directors~~**

**~~Pursuant to Rule 33, the Board of Directors is authorized to prescribe Procedures and other regulations in respect of the business of the Corporation. The Board of Directors hereby adopts the following interpretation as a regulation of the Corporation:~~**

**~~Section X.B. of the Corporation's Procedures provides, in part, for a seven (7) calendar day extension of the execution of Buy-Ins in the Balance Order System for OTC securities if the certificate(s) needed to satisfy the Buy-In Notice is (are) in transfer or transit. This Procedure further provides that the Corporation may grant an additional seven (7) calendar day extension if the security has been sent to transfer and due to the transfer agent, the transfer has been delayed.~~**

**~~This procedure has been interpreted by the Board of Directors to include the granting of a seven (7) calendar day extension to afford a Member, who has physical possession of the proper security to satisfy a Buy-In Notice, a reasonable amount of time to obtain the certificate(s) in the proper denomination(s).~~**

**~~The Board of Directors believes that the granting of a seven (7) day extension to permit a Member to obtain the certificate(s) in the correct denomination(s) is within the intent of the Procedures in that it tends to eliminate losses incurred when a Member receives the proper security prior to the execution of a Buy-In, but is unable to satisfy its obligation because the certificate(s) is (are) in the wrong denomination(s). The seven (7) calendar days will provide a reasonable amount of time to have the certificate(s) transferred into certificate(s) of the proper denomination(s). The execution of a Buy-In, however, may not be extended beyond the fourteenth calendar day from which it was originally scheduled.~~**

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