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1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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3 In the Matter of:)
4) File No. OIG-509
5 OIG-509)

6

7 WITNESS: Witness No. 1
8 PAGES: 1 through 35
9 PLACE: Securities and Exchange Commission
10 100 F Street, N.E.
11 Washington, D.C. 20549

12

13 DATE: Thursday, July 23, 2009

14

15 (CD transcription)

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17 The above-entitled matter came on for hearing,
18 pursuant to notice, at 10:35 a.m.

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24 Diversified Reporting Services, Inc.
25 (202) 467-9200

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1 APPEARANCES:

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4 On behalf of the Securities and Exchange Commission:

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6 CHRISTOPHER WILSON, ESQ
7 HEIDI STEIBER, ESQ
8 Investigator
9 Securities and Exchange Commission
10 100 F Street, N.E.
11 Washington, D.C. 20549
12 (202) 551-6061

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15 On behalf of the witness:

16

17 BRIAN H. SNIVELY, Pro Se
18 Securities and Exchange Commission
19 100 F St NE
20 Washington D.C. 20549

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C O N T E N T S

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3 WITNESS:
4 Brian H. Snively

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EXAMINATION
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E X H I B I T S

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NUMBER	DESCRIPTION	IDENTIFIED
1	Notes dated 5/20/03	8

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P R O C E E D I N G S

MR. WILSON: We are on the record at 10:35 a.m. on July 23, 2009 at the United States Securities and Exchange Commission Office of the Inspector General.

Whereupon,

BRIAN H. SNIVELY

was called as a witness and was examined and testified as follows:

MR. WILSON: Please state and spell your full name for the record.

THE WITNESS: My full name is Brian Howard Snively, B-r-i-a-n, S-n-i-v-e-l-y.

MR. WILSON: My name is Christopher Wilson and I'm an attorney in the Office of the Inspector General, United States Securities and Exchange Commission. With me today is Heidi Steiber. This is an investigation by the Office of the Inspector General, case no. OIG-509 regarding Bernie L. Madoff Investment Securities, LLC and Bernard L. Madoff.

We are going to ask you certain questions and you are going to provide answers under oath. Please provide verbal answers to our questions. If you give a nod of the head or some other non-verbal response, we will not be able to pick it up on the tape recorder. Also, so the record can be clear, please let us finish our questions before you provide your response and we'll try to let you finish your

response before we ask our next questions. It is important if you don't understand the questions to let us know. If there is anything you don't know or aren't sure of, please let us know, otherwise, we will assume that you have heard and understood the question. Do you understand these instructions?

THE WITNESS: Yes.

MR. WILSON: This is an official U.S. government law enforcement investigation. The claims asserted in this case are serious ones and it is very important that you tell us everything you know about the matter at hand and that you are completely forthcoming and truthful with us. I am formally advising you today that your testimony today is subject to the laws of perjury. Providing false or misleading testimony under oath is a very serious offense. If the evidence shows that the testimony you provided is false, we may refer it as appropriate. Do you understand these instructions?

THE WITNESS: Yes.

EXAMINATION

BY MS. STEIBER:

22 Q What year did you begin working at the Commission?
23 A In 1999.
24 Q And what was your initial position?
25 A Securities compliance examiner.

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1 Q Was there a particular side of OCIE?
2 A Yes. I worked and continue to work on the
3 investment advisor/investment company oversight side of OCIE
4 conducting exams of registered advisors, registered mutual
5 funds and to the extent that these advisors manage hedge
6 funds or other activities. That is what my side of the
7 office does.

8 Q In 1999, who was your direct supervisor, if you
9 recall?

10 A My first initial supervisor was [Personal Privacy]
11 Q And was there anyone else in the chain of command?
12 A As far as [Personal Privacy] supervisor at the time, it may
13 have been, I believe, [OCIE Assistant Director] and then Gene Gohlke above
14 [OCIE Assistant] and then obviously our director.

15 BY MR. WILSON:

16 Q And can I just ask; can you spell [Personal Privacy] please?

17 A It's [Personal Privacy]

18 BY MS. STEIBER:

19 Q At some point did you change your direct
20 supervisor?

21 A Yes. [Personal Privacy] probably left six months or so after I
22 started and I believe Mavis Kelly became my supervisor at
23 that time.

24 Q And were you still in the same position when she
25 became your direct supervisor?

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1 A Yes.

2 Q Was that in about late 1999?

3 A Probably late 1999 or late 2000.

4 Q Did she remain your supervisor the whole time
5 you've been at the Commission?

6 A She has been my supervisor for quite some time.
7 She was promoted to -- She was a branch chief at the time,
8 she was promoted to assistant director Mavis at some point.
9 At which point I had another supervisor for a short period of
10 time. Then I was eventually appointed to branch chief and
11 Mavis is actually the assistant director over my position
12 now.

13 Q And what year did you get promoted?

14 A That was probably the 2004 or 2005 timeframe,
15 somewhere around there.

16 Q In 2003 who was your direct supervisor?

17 A I believe it was Mavis Kelly at the time.

18 Q And your current position is branch chief?

19 A Branch chief, yeah.

20 Q And you remain on the investment
21 management/investment advisor side?

22 A I remain on the investment advisor and investment
23 management side of the office. My group is actually a
24 relatively new group focused on surveillance and reporting
25 activities. So while I still may conduct exams and do

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1 examinations, my group is also sort of responsible for
2 monitoring of our investment advisor universe and investment
3 company universe and working with our risk assessment group
4 to try and figure out and prioritize what firms we are going
5 to visit.

6 Q Great. When did you first hear of Bernie Madoff or

14 tend to communicate via e-mail in most cases. So again I do
15 have a hard copy of it, so I assume that that probably could
16 have been the reason. And just hindsight may be 20/20 and in
17 reading my e-mail and my notes I think, yeah, Personal Privacy was
18 concerned about confidentially and the source of the
19 information coming to the Commission.

20 Q And did you read this e-mail at the time Mavis
21 provided it to you?

22 A I'm sure I read it at the time. I would think so.
23 If I have it my files, like I said, I don't really recall
24 when she may have handed it around to me. Since I don't have
25 an e-mail record, it's hard to say when exactly I received

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1 it. It was in my files so I'm sure that I read it at some
2 point.

3 Q And what about the attachment? Do you recall
4 reading the attachment?

5 A I would have reviewed the attachments as well, yes.

6 Q And do you recall having any reaction to reading
7 the e-mail and reading the attachments?

8 A Probably the initial reaction both to the phone
9 call and reading the e-mail and the attachments, as in any
10 case when we get a situation like this, would be to see if
11 Bernie Madoff -- In my cases, what my side of the office
12 would be most concerned with registered advisors, is to see
13 if he was a registered advisor and then to see what other
14 information we had on the firm.

15 Q Why would you do that? Why did you care if it's a
16 registered advisor?

17 A Well our office is responsible for conducting exams
18 and oversight of registered advisors. So if he was a
19 registered advisor, anytime we might get a tip or complaint
20 or something like that we would want to see, are they
21 registered with us? Have we examined them previously and try
22 to get as much information about the firm, the complaint or
23 whatever it is, as we can. So that would have been my first
24 reaction.

25 Q Do you recall looking to see if Bernard Madoff
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1 Securities was a registered advisor?

2 A I don't recall actually doing that at this time.
3 I'm sure that's something, typically that's something that we
4 do so I'm sure that's something that we would have done at
5 that time. But as far as me specifically going and looking
6 up to see if he was registered, I don't actually recall that
7 but I'm sure it's something that we would have done.

8 Q And do you recall how this whole thing was handled?
9 I mean do know how it was handled after receiving it?

10 A Yeah, it would be purely -- I don't know exactly
11 what happened with this complaint. Well I do know. I
12 believe that it was eventually sent along to other staff in
13 OCIE. My conversation with Mavis, I'm sure at that point in
14 time, she was the one that was going to be responsible for
15 handling it and so I believe eventually it was forwarded on
16 to, because obviously Bernie Madoff was registered as a
17 broker-dealer, I believe it was forwarded to other staff in
18 OCIE to see if they felt like it was necessary to follow up
19 on the complaint at that point in time.

20 It also, I'm sure it looks like some of the
21 investors with Bernie Madoff may have been registered
22 entities. So we may have taken some of this information and
23 possibly, if we conducted an exam, I think it's possible that
24 we may have conducted an exam of, Tremont looks familiar, a

25 fund-to-fund exam of Tremont. So maybe during that exam we
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1 wanted to look at their dealings with Madoff. That could
2 have been possible.

3 The typical thing is to see if they are registered
4 with us and if they aren't registered, see if they have an
5 affiliate that is registered with us either as an advisor or
6 a broker-dealer or some other capacity and then give that
7 information to whoever might be the most relevant person to
8 follow up. And if they are not registered in any capacity,
9 then I would assume that we would just send it along straight
10 to enforcement. Of if a complaint was serious enough, or
11 warranted maybe going to enforcement right away, that could
12 also be an option as well.

13 Q Do you recall if anyone else was involved in the
14 conversation besides you and Mavis?

15 A The conversation, if you're referring to the
16 conversation with Personal Privacy

17 Q Or subsequent conversations you may have had.

18 A I think my only involvement was actually on this
19 phone call, or at least as far as I can recall. And I
20 believe that was just Mavis and I.

21 Q You discussed earlier, as I refer back to your
22 notes, Exhibit No. 1, that one of the issues was that Personal Privacy
23 said he couldn't understand the returns. Is that something
24 that investment advisor/investment management examiners are
25 capable of doing, analyzing returns of hedge funds?

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1 A Analyzing returns of hedge funds is something we
2 certainly try to understand, you know, what the firm is
3 doing, what strategy they are employing and do the returns
4 make sense? I think it's something, you know, obviously
5 depending on the sophistication and the strategy being
6 employed, there are some strategies that are, maybe not in
7 this case, but if a firm employs some sort of algorithmic
8 trading activity where they have thousands or even millions
9 of trades a day, that gets a little bit more difficult for
10 examiners to really look at the trading activity and make
11 sure it's in line with the strategy.

12 But a key focus on any exam is to try to understand
13 the portfolio management's style and strategy and make sure
14 that what a firm is investing in is consistent with
15 disclosures that are made to clients and the program. The
16 advisors act rules are built on disclosures to clients so a
17 key focus is looking at contracts and agreements between
18 firms and their clients and understanding that what they are
19 doing for clients is actually what they are saying they are
20 doing.

21 Q Do you also look at company asset issues when you
22 do an examination?

23 A Yes. Yes, we definitely -- Typically we would get
24 custodian statements and try to reconcile those to any
25 advisor statements and make sure they are consistent.

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1 Obviously, given this situation, I think there has been a
2 little bit more focus in the exam program on these issues
3 more recently and it's highlighted. I think the whole
4 situation with Bernie Madoff has highlighted the somewhat,
5 you know, could be troubling situation we have with both the
6 advisor and the affiliated entity serving as custodian.

7 Q Did you ever have any other conversations with
8 Personal Privacy after that initial conversation on the
9 20th?

10 A Not to my recollection, no.
11 Q And you don't recall if Mavis Kelly asked you to do
12 anything after the conversation or the receipt of the
13 complaint?

14 A No, not to my recollection. Yeah, if I were to
15 guess at anything it would have been to look to see if Bernie
16 Madoff was actually registered with us as an advisor. So
17 just quick initial research and that was it.

18 Q Look at Exhibit No. 1, the conversation on the 20th
19 and then the e-mail is on May 21, 2003, the day after the
20 conversation. And you said that eventually it got referred
21 to, was it the broker-dealer side of OCIE?

22 A Actually I'm not certain. I believe it was
23 referred to other staff in OCIE that would have been -- It
24 sounds like some of the activities that Personal Privacy was talking
25 about were kind of advisory activities. BUT Bernie Madoff,

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1 as we know now, has an affiliated broker-dealer that was
2 registered with the Commission. So yeah, I believe it was
3 referred eventually to another side of the office and some of
4 that may be just my knowledge of the situation at this point.

5 Q Typically how long does it take, if you received a
6 complaint on May 21, 2003, how long would it take your group
7 typically to refer a complaint either to the broker-dealer
8 side or to enforcement?

9 A I think it's usually done pretty quickly.

10 Q What's pretty quickly?

11 A Probably within a matter of a day or so. I guess
12 it depends on the facts and circumstances and the complaint
13 and that sort of thing. Every situation can probably be
14 different but normally we would get a complaint in and we
15 would probably research it right away to see if it was
16 something that impacted our program or somebody else here at
17 the Commission. And I think the typical situation would be
18 to send it along within a matter of days at the most.

19 Q After it was referred, when was the next time you
20 heard of Personal Privacy or Bernard Madoff?

21 A Heard of them, had any -- Probably until recent
22 events actually. After this conversation -- Well actually I
23 take that back because I may have received an e-mail. I
24 think I was cc'd on one e-mail several months later from
25 Mavis, I believe, to another individual in our office.

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1 Actually did does, yeah, and maybe that's how I know about
2 the referral possibly. But another e-mail to another
3 individual in OCIE saying hey, whatever happened with this?

4 Q Was that other individual Eric Swanson?

5 A I have to look in my e-mail records. It may have
6 been Eric. It's possible. I think Bernie Madoff was
7 actually speaking at the Commission so there was an e-mail
8 that I was cc'd on or sent after the fact from Mavis to that
9 person saying hey, what ever happened with this issue?

10 Q At that point do you recall discussing the e-mail
11 or the situation with Mavis Kelly or anyone else?

12 A I don't recall having those discussions, no. I
13 mean it's quite possible and likely that I may have mentioned
14 it to her probably in passing, hey what happened? There is
15 no follow up but I don't have any recollection of those
16 conversations, no.

17 Q And after that, when was the next time that you may
18 have heard of Personal Privacy or Bernard Madoff Securities?

19 A Bernard Madoff obviously probably more recently
20 when things started to unfold. Personal Privacy, I really didn't have

21 any. [Personal Privacy] name didn't come up until I was going through
22 my files and actually found the file folder with [Personal Privacy]
23 name in it.

24 Q So obviously you never had any contact with [Personal Privacy]

25 [Personal Privacy]

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1 A No.

2 BY MR. WILSON:

3 Q When you heard the news that Bernie Madoff had
4 confessed to -- well actually let me go back for a second.
5 Do you recall if when you got [Personal Privacy] allegations in the
6 first conversation that you had, do you recall anybody
7 discussing anything about a Ponzi scheme or anything like
8 that?

9 A No, I have no recollection of that, no.

10 Q After the news broke that Bernie Madoff had
11 confessed to running a Ponzi scheme, what was your reaction?

12 A The reaction I guess probably more than anything
13 else is probably just sad that something like this, somebody
14 would do something like this. And then, you know, obviously
15 I guess then you have to think about in the scheme of, now
16 that we know Bernie Madoff and more recently he is registered
17 as an advisor and he was registered as a broker-dealer, I
18 think from a professional perspective it has turned to
19 figuring out how can we find these sorts of activities in the
20 future or detect them so that this sort of thing doesn't
21 happen again.

22 BY MS. STEIBER:

23 Q Do you have any awareness of whether or not after
24 he registered as an advisor, that OCIE examined him or not?

25 A No, he was not examined as an advisor. His

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1 broker-dealer business may have been examined. I don't know.
2 But I'm fairly certain that he has not, he was not. I know
3 he was not examined.

4 Q Do you have any idea of why not?

5 A You know, the reason -- We have over 11,000
6 registered advisors and about 400 or so staff dedicated to
7 exams of investment advisors. So we employ a risk based
8 approach to conducting exams. We try to look at past
9 examinations, filing information that is made with the SEC
10 and other information that's available to us to profile or
11 put firms into risk categories.

12 Our high-risk group of advisors are people that we
13 try to visit more frequently. We put those firms on a
14 three-year cycle. Other advisors, unfortunately because of
15 staffing limitations, are put into a group that we examine
16 periodically, randomly through maybe cause exams or sweep
17 exams or we have some other efforts that we may examine them
18 as well. But I think primarily it's a resource issue.

19 Q Do you recall what Bernard Madoff as an advisor was
20 classified as? Medium risk?

21 A I believe he was classified as a medium risk, which
22 means he wouldn't have been on any sort of cycle or up for a
23 routine examination per se.

24 BY MR. WILSON:

25 Q We had talked briefly about the different risks and

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1 assigning to, I guess, particular advisors and determining
2 who you are going to do an examination on. Were there
3 guidelines in 2004/2005/2006 or any time that you are aware
4 of that it would have given you some type of guidance as to
5 what level of risk you should assign to a particular

17 but when for some reason or another you're looking at that
18 entity and you find that they've gone over the threshold for
19 fifteen clients, have you ever dealt with something like that
20 and if so, how was that dealt with and is there any type of
21 standard practice?

22 A So just to clarify what I think your question is,
23 if we are doing an exam of a registered entity and there is
24 another part of that business or activities there that, in
25 theory is unregistered with us but maybe should be

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1 registered, how do we handle that situation or scenario?

2 Q Right.

3 A I mean if for instance, we went to an advisor, and
4 this is less likely to occur than the opposite, but if we
5 went to an advisor and we thought they were acting as a
6 broker-dealer, then we would certainly probably immediately
7 refer that to the broker-dealer staff and either have them
8 come out on site while we're there if they have staff
9 available to do that, or shortly thereafter say, based on
10 these activities we think they are acting as a broker-dealer.
11 I may not have enough knowledge to say definitely one way or
12 the other. But I would say we think we ought to refer it to
13 the broker-dealer staff and let them follow up.

14 BY MS. STEIBER:

15 Q How many joint exams have you participated on where
16 you went out with the broker/dealer staff?

17 A It's myself, rare. I don't think -- I can't recall
18 actually any exams off the top of my head that I've actually
19 done. That being said, I may not have done, I probably
20 haven't done that many examinations of firms that are either
21 dually registered or have an affiliate who is registered as a
22 broker-dealer, that's some subset of our 11,000 advisors.
23 But I don't recall doing any off the top of my head, no.

24 BY MR. WILSON:

25 Q Was there anything else that you wanted to add?

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1 A Yeah, so I think if we ran into an unregistered
2 entity, I guess -- You know there are definitely strict
3 prohibitions I guess on us asking or requesting for
4 information from unregistered firms. So if we went to an
5 advisor and it looks like they had another aspect, another
6 advisory aspect of the business somewhere else that was of
7 interest to us, at this point in time I think we would
8 probably have to work with enforcement or some other means to
9 get information from unregistered advisors.

10 In the past we may have asked for that information
11 whether we should have or not and maybe this isn't every
12 exam. But we may have tried. To the extent that information
13 may have impacted the exam that we were conducting, we would
14 probably want to at least try to understand what they're
15 doing, what conflicts of interest are there, are there any
16 between that type of business and the other?

17 And if we felt like we needed to review those
18 records in order to ensure that firms were doing what they
19 were supposed to be doing, so to speak, we would probably go
20 to any measure we needed to get those records, even if that
21 meant contacting enforcement to get help or assistance in
22 getting those records. I mean in my experience most firms
23 are pretty open about what they are doing and willing to
24 share records or at least talk about other aspects of the
25 business. But certainly if we had serious concerns that it

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1 was unregistered and should be registered, we would make

6 investment advisor?

7 A Yes. For several years now, and I believe
8 encompassing that timeframe, we've had a general process for
9 determining risk levels for firms. So in much of this
10 material that we have and make available to our staff on our
11 internal website, we develop materials yearly. There's a
12 variety of things that are developed but there are definitely
13 materials developed talking about risk levels and how we
14 determine risk levels.

15 That being said, for instance for a firm that has
16 never been examined, we look at their form ADV, which is a
17 registration form for advisors. Based on how they answer
18 certain questions on that form, we come up with a risk score
19 for every registered advisor and then bucket them into
20 groups. Deliberative Process

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 so that's been going on, you know, we do that
25 periodically and that information is available to people. So

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1 that's been done and that's been done for several years and
2 we have materials related to that. I would be glad to, it
3 probably would be easier to sit down and go through what they
4 all are and how we come up with that. But that being said,
5 if a firm that's never been examined, I think what I was
6 going to add, is even if they come up as a medium or low
7 through that form ADV risk assessment, if staff becomes aware
8 of other information that would necessitate moving them to
9 higher risk firm, they can do that.

10 So it's just a matter of if that information is
11 available and reviewed and staff feels that a firm is
12 inappropriately categorized then they can do that. So
13 there's general guidance on how things are developed but then
14 there are some --

15 BY MS. STEIBER:

16 Q So you're saying if enforcement or if the
17 broker-dealer exam staff said this person has lied about the
18 amount of assets under management that could bump them into a
19 higher risk?

20 A Yes. So that could do one or two things. In that
21 situation where somebody, that we're pretty certain that they
22 are lying about something, that my lead to probably a cause
23 exam, something that would happen right away. But also, in
24 essence, elevating that firm to high risk.

25 If it was other material, maybe we read some news
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1 articles or something like that that seemed a little bit odd
2 or unusual, then we may elevate a firm to high risk, [REDACTED]

3 Deliberative Process

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 Q Is there anything else that you know about this
9 matter that we haven't covered today?

10 A No, and especially, specifically, as it relates to
11 my conversation with Personal Privacy and Personal Privacy no. My recollection is
12 really limited to what's in my notes.

13 BY MR. WILSON:

14 Q Do you have a general feel as to what would happen
15 in terms of assigning risk to either a hedge fund or
16 investment advisor or broker-dealer that's not registered,

17 but when for some reason or another you're looking at that
18 entity and you find that they've gone over the threshold for
19 fifteen clients, have you ever dealt with something like that
20 and if so, how was that dealt with and is there any type of
21 standard practice?

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