

**IN THE SUPREME COURT OF BERMUDA
COMMERCIAL COURT
COMPANIES (WINDING-UP)
2020: No 304**

**IN THE MATTER OF NORTHSTAR FINANCIAL SERVICES (BERMUDA) LTD (IN LIQUIDATION)
AND IN THE MATTER OF THE COMPANIES ACT 1981
AND IN THE MATTER OF THE INSURANCE ACT 1978
AND IN MATTER OF INVESTMENT BUSINESS ACT 2003
AND IN THE MATTER OF THE SEGREGATED ACCOUNTS COMPANIES ACT 2000**

CIRCULAR

produced pursuant to paragraph 12 of the Order of the Honourable
Justice Subair Williams dated 19 January 2024

**THIS CIRCULAR SETS OUT IMPORTANT INFORMATION WHICH YOU SHOULD
CONSIDER CAREFULLY. IF YOU WISH TO SUBMIT A RESPONSE, YOUR ATTENTION
IS DRAWN TO THE DEADLINE SET OUT AT PARAGRAPH 37 BELOW.**

A. Introduction

1. This circular ("**Circular**") is produced pursuant to paragraph 12 of the Order of the Honourable Justice Subair Williams dated 19 January 2024 ("**Procedural Order**") in respect of Northstar Financial Services (Bermuda) Limited (in liquidation) ("**Northstar**" or the "**Company**").
2. This Circular is sent on behalf of John Johnston and Edward Willmott as joint provisional liquidators of the Company ("**JPLs**"). A similar circular has been produced in respect of Omnia Ltd (in liquidation) ("**Omnia**", and together with Northstar the "**Companies**").
3. The JPLs are currently engaged in a process designed to identify the nature, basis and value of claims which might be asserted by individuals or entities as creditors against Northstar's general account ("**General Account Creditors**" and "**General Account Claims**"). Northstar's general account consists of those assets of Northstar which are not linked to any of its segregated accounts.
4. The JPLs seek to identify the General Account Claims so that they can obtain directions from the Court for holding a first meeting of Northstar's creditors at a future date ("**First Creditors' Meeting**"). To hold an effective First Creditors' Meeting, the JPLs must be able to identify (at this stage, for voting purposes only) what General Account Claims exist and the value of those claims.

5. While the JPLs will be able to identify some of these General Account Claims from Northstar's books and records (including claims by trade creditors and life policy holders under the Metlife block of business carried on by Northstar) there may be other claims which the JPLs cannot readily identify from those books and records (for example, legal claims which a party may wish to assert against Northstar).
6. In particular, the JPLs seek to identify any claims which individuals beneficially entitled under the investment contracts or policies issued by Northstar ("**Policies**" and "**Policyholders**") might wish to assert against Northstar's general account. If you consider that this might be applicable to you, your attention is drawn to the discussion of these points at paragraphs 20 to 22 below.
7. If you wish to notify the JPLs of any General Account Claims:
 - 7.1. You should consider the terms of this Circular carefully.
 - 7.2. You are invited to provide the information set out in Section D below on or before 15 April 2024.
8. It is likely that the JPLs will seek further directions from the Court at a future date as to who can attend the First Creditors' Meeting and for what value General Account Creditors may vote at that meeting. If you do not notify the JPLs of any General Account Claims, you may still be entitled to attend and vote at the First Creditors' Meeting. However, notifying the JPLs of your General Account Claim will ensure that it can be taken into account in seeking those directions (to the extent it is not already known to the JPLs from the Companies' books and records).

B. Background

B1. Northstar

9. Northstar was placed into provisional liquidation by an order of the Supreme Court of Bermuda ("**Court**") dated 25 September 2020. On 26 March 2021, the Court made an Order that Northstar should be wound up and that the JPLs (then, John Johnston and Rachelle Frisby) should continue in office as Northstar's joint and several provisional liquidators.

B2. Segregation Summons and Representation Orders

10. During the JPLs' investigations into the Companies' affairs, an issue arose as to the segregation status of certain accounts established by the Companies and the consequences of that segregation.

11. By an *ex parte* summons dated 1 June 2021, as amended on 26 July 2021 (the “**Segregation Summons**”, the JPLs sought directions from the Court in relation to the following issues (the “**Segregation Issues**”):
 - 11.1. To what extent, if any, did the Companies establish segregated or separate accounts in respect of investments made in them or policies issued by them?
 - 11.2. To what extent, if any, are the assets of the Companies to be held exclusively for the benefit of any such segregated accounts?
 - 11.3. To what extent, if any, do claimants in respect of the segregated accounts have claims against the general assets of the Companies?
12. To facilitate the determination of the Segregation Issues, and following an application by the JPLs, the former Chief Justice made certain representation orders on 26 August 2021 (the “**Representation Orders**”) appointing individuals to represent certain classes of creditors (the “**Class Representatives**”) as follows:
 - 12.1. an investor or Policyholder in one of the Companies holding only variable investments would represent the interests of investors or Policyholders holding variable investments (the “**Variable Class**”);
 - 12.2. an investor or Policyholder in one of the Companies holding only fixed or indexed investments would represent the interests of investors or Policyholders holding fixed and indexed investments (the “**Fixed Class**”); and
 - 12.3. a creditor of one of the Companies not holding any such investments or Policies would represent the interests of creditors not holding fixed, indexed or variable investments (the “**General Class**”).
13. The Court’s reasoning for making the Representation Orders is contained in a reported judgment: *Re Northstar Financial Services (Bermuda) Ltd* [2021] Bda LR 78. The Court decided to make the Representation Orders after hearing adversarial argument.
14. No suitable representative for the General Class having been identified, on 13 December 2021, the Court made orders appointing John Blackwood of Chancery Legal as legal representative of the General Class.
15. The Segregation Issues arising on the Segregation Summonses were heard at a hearing lasting 5 days in April 2023. The Court received full argument from the Class Representatives and the JPLs at this hearing on the Segregation Issues.

B3. The Judgment

16. The judgment of Hargun CJ on the Segregation Summons was handed down on 28 July 2023 (the “**Judgment**”). The Judgment is reported at *Re Northstar Financial Services (Bermuda) Ltd* [2023] SC (Bda) 57 Civ (28 July 2023).
17. The Judgment provides a detailed discussion of each of the Segregation Issues and runs to 259 paragraphs over 92 pages.
18. In summary, and in broad outline, former Chief Justice Hargun's key findings upon the Segregation Summons were as follows:
 - 18.1. On the facts, Northstar did establish segregated accounts in respect of all those policies in which it represented it would create segregated accounts.
 - 18.2. The availability of a record connecting assets to a particular account (known as "linkage") is a practical necessity for effective segregation.
 - 18.3. The Court found on the facts, in respect of Northstar, that:
 - 18.3.1. The variable assets (i.e. the investments acquired in mutual fund houses) form part of, and are linked to, the segregated accounts: Judgment at paragraphs 171, 176, 178, 182.
 - 18.3.2. Due to the absence of records connecting assets to any policies, it is not possible for there to have been effective segregation of assets for the benefit of members of the Fixed Class: Judgment at paragraph 173.
19. The Court found that the holders of segregated accounts are not generally entitled to prove against the Companies' general accounts for any shortfall arising: Judgment at paragraphs 215 and 234.
20. However, the Court also observed that this did not preclude Policyholders from asserting some other claim against the Companies' general accounts under the general law.
21. In particular, at paragraph 224 of the Judgment, the Court said:

*'In evaluating this argument, it is relevant to keep in mind that the issue is whether the Policyholders who entered into Fixed or Variable investments on terms that provided for segregated accounts are entitled, as of right to claim against the general assets. **If this argument is rejected it does not necessarily mean that the Policyholders with Fixed investments may not pursue a claim against the general account by other means. They may, for example, have a cause of action against the Company for breach of***

duty to implement the effective structure. They may also be able to pursue “the remedy of tracing in law and in equity the assets or the proceeds of the assets of any segregated account where such assets or proceeds have been commingled with the assets of any other segregated account or the general account” as provided for under section 18(16)(a) of the SAC Act.” (emphasis added)

22. At paragraph 258 of the Judgment, the Court further said:

*“The Court agrees with the submission of Mr Davies KC that, on proper construction of the Omnia Policies the position is the same as the application of section 17(5) of the SAC Act. It follows that the Policyholders of the Omnia Policies have no direct access to the general account of the Company in the event of deficiency in the segregated account. **This is of course without prejudice to any other cause of action those Policyholders may have as discussed earlier.**”* (emphasis added)

B4. The Procedural Order

23. Following the Judgment, the JPLs have been advancing different workstreams in Northstar’s liquidation.

24. Consistent with that, the JPLs sought directions from the Court by way of an *ex parte* summons dated 13 October 2023. The first *ex parte* hearing of that summons was held before the Honourable Justice Subair Williams on 19 January 2024.

25. At the hearing on 19 January 2024, and as recorded in the recitals to the Procedural Order, the Court heard from counsel for the JPLs as well as counsel for the United National Federal Credit Union (together with its affiliate UNFCU Advisors LLC), a member of Northstar’s Ad Hoc Committee of Inspection.

26. Having heard from the JPLs, the Court made the Procedural Order. A copy of the Procedural Order is appended to this Circular.

27. In the Procedural Order, the Court put in place a procedural framework by which General Account Creditors could notify the JPLs of their General Account Claims, as follows:

27.1. On or before 15 February 2024, the JPLs would produce this Circular and file it with the Court, as well as take certain specified steps to provide notice to General Account Creditors.

27.2. On or before the 15 April 2024, any General Account Creditors who wish to notify the JPLs of their General Account Claims shall do so in writing.

27.3. The JPLs shall thereafter have liberty to apply to the Court, on notice to any creditors who notify the JPLs of their claims, for further directions including, if appropriate:

27.3.1. Directions necessary for convening the First Creditors' Meeting; and

27.3.2. The value to be attributed to claims for voting purposes at the First Creditors' Meeting.

C. Reasons for calling for identification of the General Account Claims

28. In order to have an effective First Creditors' Meeting, the JPLs need to be able to identify the nature, bases, and value of the General Account Claims.

29. The JPLs already have the information required to identify some of the General Account Claims. For example:

29.1. The JPLs will be able to identify sums owing to trade creditors from the Companies' books and records (where those books and records record that such a liability is owed).

29.2. Where a Policy never purported to create segregated accounts (as was the case for certain Policies under the Metlife block of business), the JPLs anticipate that they will also be able to identify that General Account Claim (either in whole or in part).

30. In such cases, the JPLs will be able to consider those General Account Claims for the purposes of voting at the First Creditors' Meeting even if they are not formally notified to them pursuant to the Procedural Order. However, notification of these Claims will ensure that they are taken into account for the purposes of the First Creditors' Meeting.

31. There are certain potential General Account Claims which the JPLs will not be able to identify from the Companies' books and records. These include:

31.1. Claims which any member of the Fixed Class (or any other Policyholder) may wish to assert against the Companies' general accounts (in accordance with the passages of the Judgment quoted at paragraphs 21 and 22 above, or otherwise under the general law).

31.2. Other claims which creditors who are not Policyholders may wish to assert against the Companies.

32. To that end, the JPLs have received a letter from a creditor dated 21 December 2023 asserting claims which members of the Fixed Class may have against Northstar's

general account. That letter requests that the JPLs also consider whether such claims would apply to Policyholders of Omnia. The JPLs responded to that letter seeking further information on 6 February 2024 and continue to consider the claims put forward within it.

33. The JPLs are conscious that other Policyholders or General Account Creditors may wish to put forward additional or different claims based on their particular factual circumstances. The process put in place by the Procedural Order therefore gives interested parties the opportunities to put forward such claims as they see fit. It does not, however, require Policyholders or General Account Creditors to do so.
34. Following this claims notification process, the JPLs will consider whether any General Account Claims notified might apply to other Policyholders or General Account Creditors and what directions (if any) are required from the Court to enable the First Creditors' Meeting to be held. They will do so in view of **(i)** claims of which they are already aware from the Companies' books and records, and **(ii)** claims notified to them pursuant to the Procedural Order.
35. For the avoidance of doubt, this process is not intended to identify General Account Claims for the purposes of allowing distributions to be made. Instead, it invites General Account Creditors to identify their claims for voting purposes only so that the JPLs can obtain suitable directions for the holding of the First Creditors' Meeting.

D. Notification of General Account Claims

36. In the circumstances set out above, the JPLs invite you (if you so wish) to notify the JPLs of:
 - 36.1. Your identity (i.e. your full name, date of birth, and any other identifying information you wish to provide);
 - 36.2. The legal and factual basis or bases for each and every claim which you alleged against the Companies (arising otherwise than against a Segregated Account);
 - 36.3. The alleged value of any claims asserted; and
 - 36.4. Any evidence you wish the JPLs to consider in assessing that asserted claim.
37. This notification should be provided to the JPLs in writing in any practicable form on or before **15 April 2024** and should contain the information set out at paragraphs 36.1 to 36.4 above. That notification may be sent to: cbcbmnfs@deloitte.com.
38. Pursuant to paragraph 18 of the Procedural Order, you may notify the JPLs of your General Account Claim in any practicable written form. However, for convenience, the

JPLs have produced a form which is available from the Company's website, or available in hard copy on request from cbcbmnfs@deloitte.com. You do not have to use this form to notify the JPLs of your claim, but you may wish to do so if appropriate in your individual circumstances. Submission in this form is likely to assist the JPLs in considering your General Account Claim.

APPENDIX 1
THE PROCEDURAL ORDER

**IN THE SUPREME COURT OF BERMUDA
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AND IN THE MATTER OF THE COMPANIES ACT 1981
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AND IN MATTER OF INVESTMENT BUSINESS ACT 2003
AND IN THE MATTER OF THE SEGREGATED ACCOUNTS COMPANIES ACT 2000**

ORDER

UPON the application of Edward Willmott and John Johnston as Joint Provisional Liquidators (“**JPLs**”) of Northstar Financial Services (Bermuda) Ltd (in liquidation) (“**Northstar**” or “**Company**”) made by *ex parte* summons dated 13 October 2023 (the “**Application**”)

AND UPON the similar application made in respect of Omnia Ltd (in liquidation) by the same *ex parte* summons dated 13 October 2023 (“**Omnia Application**”)

AND UPON the judgment of Hargun CJ dated 28 July 2023 by which the Court provided directions as to the extent to which Northstar established segregated or separate accounts (the “**Segregated Accounts**”) in respect of investment contracts or policies issued by it (“**Policies**”) for the benefit of persons designated as beneficially entitled under the terms of the governing instrument(s) by which the Policies were issued (“**Policyholder**”)

AND UPON reading the First Affidavit of Edward Willmott dated 17 January 2024 along with exhibit “EW-1” (the “**Evidence**”)

AND UPON the Court considering the JPLs’ proposals in relation to those Policyholders of Northstar on behalf of whom Segregated Accounts were successfully established (“**Variable Segregated Policyholders**”)

AND UPON considering the JPLs’ proposed steps in relation to the admission, valuation, and payment of the claims which Variable Segregated Policyholders may have against their segregated account(s) (the “**Variable Segregated Claims**”)

AND UPON the Court considering the JPLs’ proposals to identify the nature and basis of claims which may be asserted by individuals or entities *qua* creditor against Northstar otherwise than against any Segregated Account (“**General Account Creditors**” and “**General**

Account Claims") for the purposes of holding a first meeting of Northstar's creditors ("First Creditors' Meeting")

AND UPON HEARING Counsel for the JPLs and Counsel for the United Nations Federal Credit Union (together with its affiliate UNFCU Advisors LLC) ("**UNFCU**"), a member of Northstar's Ad Hoc Committee of Inspection;

AND WHEREAS Counsel for the JPLs, Counsel for UNFCU and the Court agreed that where the JPLs are served with documents by a Participating Party pursuant to paragraph 8 of this Order, the JPLs shall provide any other Participating Party (whether a Participating Party under this Application or the Omnia Application) with copies of such documents;

IT IS HEREBY ORDERED AND DIRECTED THAT:

Variable Segregated Claims

1. On or before 4pm on 1 February 2024, the JPLs shall file with the Court:
 - 1.1. Evidence which explains the steps which the JPLs propose to take in relation to the admission, valuation and payment of the Variable Segregated Claims;
 - 1.2. Such supporting legal submissions as they see fit; and
 - 1.3. A draft order setting out such directions or other relief that the JPLs seek from the Court.
2. On or before 15 February 2024, the JPLs shall notify Policyholders of the directions which they intend to seek in relation to the admission, valuation and payment of the Variable Segregated Claims.
3. The notification referred to at paragraph 2 shall be provided by the JPLs, on or before the 15 February 2024, taking the following steps:
 - 3.1. Arranging for a summary of the directions sought to be posted on Northstar's website.
 - 3.2. Where Policyholders maintain an account on Northstar's electronic policy management system, by requesting that the administrators of that system upload a summary of the directions sought to each Policyholder's account.
 - 3.3. Where Policyholders do not maintain an account on Northstar's electronic policy management system, by arranging for a physical letter to be sent to the last physical address on file for the Policyholder:

- 3.3.1. Stating that the JPLs are seeking directions in relation to the Variable Segregated Claims;
 - 3.3.2. Informing them that information in relation to those directions has been posted on the Company's website; and
 - 3.3.3. Explaining that hard copy of the notification contained on the Company's website will be provided to Policyholders upon request.
 - 3.4. Taking such further or additional steps as they may consider necessary and proportionate to notify creditors.
4. At any date on or before 7 March 2024, any Policyholder of Northstar may request an electronic copy of the documents filed with the Court pursuant to paragraph 1, and the JPLs shall thereafter provide those documents in electronic form as soon as reasonably practicable.
5. On or before 21 March 2024, any person who opposes or supports the directions sought by the JPLs in respect of the Variable Segregated Claims (and who wishes to be heard upon the JPLs' summons in respect of the Variable Segregated Claims) must notify the JPLs in writing of that fact (each such person being a "**Participating Party**").
6. If no Participating Party is identified pursuant to paragraph 5 above:
 - 6.1. On or before 4pm on 4 April 2024, the JPLs shall file with the Court any further evidence or legal submissions upon which they seek to rely; and
 - 6.2. There shall be a hearing at the first convenient date after 11 April 2024 for adjudication upon the application for directions sought by the JPLs in relation to Variable Segregated Claims.
 - 6.3. No person other than the JPLs may address the Court at the hearing listed pursuant to paragraph 6.2 above without the permission of the Court and, before seeking permission of the Court, any such person shall notify the JPLs of their intention to do so, and of the substance of the submissions that they wish to make, at least 5 days before that hearing.
7. If any Participating Parties are identified pursuant to paragraph 5 above:
 - 7.1. Paragraphs 6.1, 6.2 and 6.3 of this Order will be of no effect; and
 - 7.2. Paragraphs 8 to 11 of this Order shall come into effect.

8. On or before 4pm on 18 April 2024, any Participating Party must file with the Court and serve upon the JPLs:
 - 8.1. Any evidence upon which they seek to rely; and
 - 8.2. Any legal submissions or argument upon which they seek to rely.
9. On or before 4pm on 16 May 2024, the JPLs shall file with the Court and serve upon any Participating Party:
 - 9.1. Any reply evidence upon which they wish to rely;
 - 9.2. Any further legal submissions upon which they intend to rely; and
 - 9.3. If so advised, any revised or amended draft order setting out such directions or other relief that the JPLs seek from the Court.
10. A hearing shall be listed (on notice to the Participating Parties) at the first convenient date after 30 May 2024 for adjudication of the directions sought by the JPLs.
11. No person other than the JPLs or any Participating Party may address the Court at the hearing listed pursuant to paragraph 10 without the permission of the Court and, before seeking permission of the Court, any such person shall notify the JPLs of their intention to do so, and of the substance of the submissions that they wish to make, at least 5 days before that hearing.

General Account Claims

12. On or before 4pm on 15 February 2024, the JPLs shall produce and lodge with the Court a circular in substantially the form which they intend to provide to the General Account Creditors (the “Circular”) which circular shall invite General Account Creditors to notify the JPLs of:
 - 12.1. Their identity;
 - 12.2. The legal and factual basis or bases for each and every claim which they allege against Northstar (arising otherwise than against a Segregated Account);
 - 12.3. The alleged value of any claims asserted; and
 - 12.4. Any evidence they wish the JPLs to consider in assessing their asserted claim.

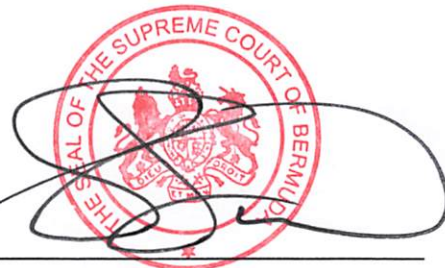
13. On or before 15 February 2024, the JPLs shall provide notice to General Account Creditors to notify the JPLs of their General Account Claims by taking the following steps:
 - 13.1. By placing a copy of the Circular on Northstar's website;
 - 13.2. Where Policyholders maintain an account on Northstar's electronic policy management system, by placing a request with that system's administrators to upload a copy of the Circular to each Policyholder's account.
 - 13.3. Where Policyholders do not maintain an account on Northstar's electronic policy management system, by arranging for a physical letter to be sent to the last physical address on file for the Policyholder:
 - 13.3.1. Stating that a copy of the Circular is available on the Company's website;
and
 - 13.3.2. Explaining that a hard copy of that Circular will be provided to Policyholders upon request.
 - 13.4. Where General Account Creditors (who are not also Policyholders) have previously communicated with the JPLs by electronic means, by sending an email of the Circular to the email address contained on the JPLs' file.
 - 13.5. Where General Account Creditors (who are not also Policyholders) have not contacted the JPLs since the JPLs' appointment, by arranging for a physical letter to be sent to the last known physical address in the books and records of the Company:
 - 13.5.1. Stating that a copy of the Circular is available on the Company's website;
and
 - 13.5.2. Explaining that a hard copy of that Circular will be provided upon request.
 - 13.6. By causing an advertisement to be placed in the Royal Gazette of Bermuda; and
 - 13.7. By taking such further or additional steps as they may consider necessary and proportionate to notify General Account Creditors.
14. On or before 15 April 2024, General Account Creditors who wish to notify the JPLs of their General Account Claims shall notify the JPLs in writing of their position, such notification to include the information requested at paragraphs 12.1 to 12.4 above (each a "Notifying Creditor").

15. The JPLs shall thereafter have liberty to apply to the Court, on notice to any Notifying Creditors, for such further or other directions as they see fit, including, if appropriate, as to:
 - 15.1. Directions necessary for convening the First Creditors' Meeting; and
 - 15.2. The value to be attributed to claims for voting purposes at the First Creditors' Meeting.
16. No person other than the JPLs or Notifying Creditors may address the Court at the hearing listed pursuant to paragraph 15 without the permission of the Court and, before seeking permission of the Court, any such person shall notify the JPLs of their intention to do so, and of the substance of the submissions that they wish to make, at least 5 days before that hearing.

General Provisions

17. Where applicable, any notification required to be given by the JPLs under this Order may take place in a manner previously identified to Northstar or the JPLs as a Policyholder or General Account Creditor's preferred means of communication.
18. The notification to be given by General Account Creditors pursuant to paragraph 14 above may take any practicable written form, and need not be by way of sworn affidavit.
19. Any interested party shall have liberty to apply, on notice to the JPLs, to extend the time periods set out in this Order.
20. The costs of the JPLs shall be costs of Northstar's liquidation and shall be paid on an indemnity basis. The costs of any other party shall be borne by that party unless the Court directs otherwise.
21. The period of time for holding the First Creditors' Meeting and the first meeting of contributories of the Company under section 171 of the Companies Act 1981 shall be extended for a further period of six (6) months from 26 March 2024 to 26 September 2024.

DATED this 19 day of JANUARY 2024.



HON. JUSTICE SUBAIR WILLIAMS

IN THE SUPREME COURT OF BERMUDA
COMMERCIAL COURT
COMPANIES (WINDING-UP)
2020: No 304

IN THE MATTER OF NORTHSTAR
FINANCIAL SERVICES (BERMUDA) LTD

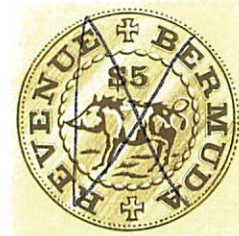
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SEGREGATED ACCOUNTS COMPANIES
ACT 2000

ORDER



SUPREME COURT BERMUDA

2024 JAN 19 PM 3:14

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Liquidators**

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