CFP BOARD

NOTICE TO CFP® PROFESSIONALS REGARDING FINANCIAL ADVICE ABOUT CRYPTOCURRENCY-RELATED ASSETS

NOTICE TO CFP® PROFESSIONALS REGARDING FINANCIAL ADVICE ABOUT CRYPTOCURRENCY-RELATED ASSETS

CFP Board is issuing this Notice to CFP® professionals in response to questions about the application of the *Code of Ethics and Standards of Conduct* ("*Code and Standards*") to Financial Advice about cryptocurrencies and other Financial Assets whose value is tied to cryptocurrencies (collectively "cryptocurrency-related assets").

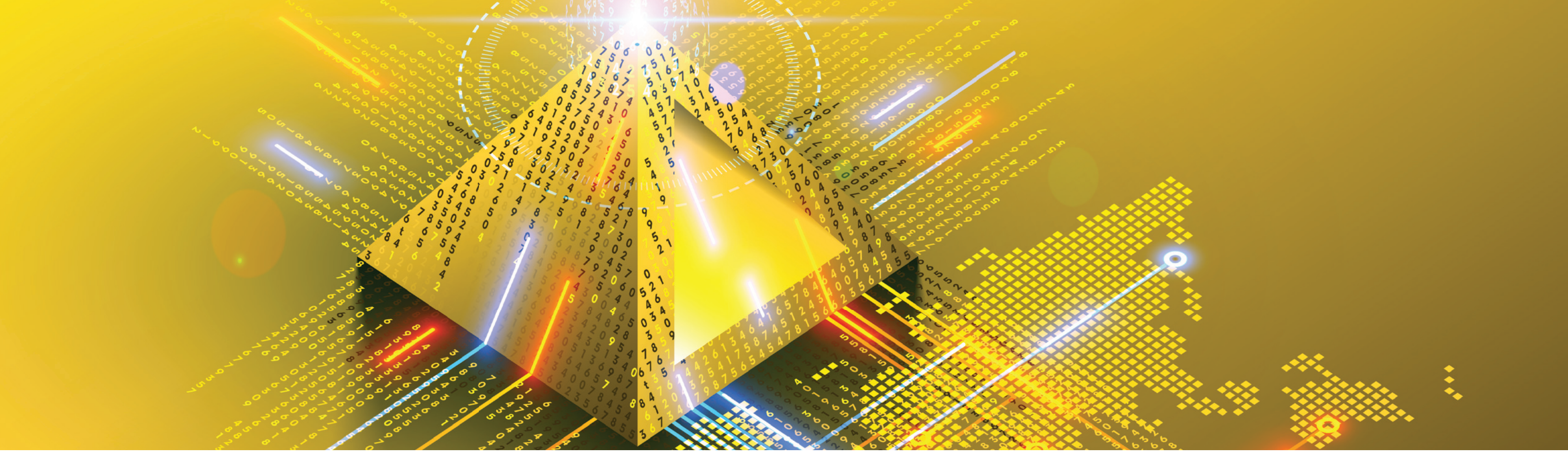
The *Code and Standards* applies to cryptocurrency-related assets in the same way that it applies to all Financial Assets. However, as regulators and consumer advocates have noted, cryptocurrency-related assets have particular attributes and present significant risks and uncertainties that warrant careful analysis. This includes whether a particular cryptocurrency-related asset is now or in the future may be regulated as a security or a commodity or another type of asset.

The *Code and Standards* does not require a CFP® professional to provide, and does not prohibit a CFP® professional from providing, Financial Advice about cryptocurrency-related assets. When providing Financial Advice about cryptocurrency-related assets, however, a CFP® professional should do so with caution. A CFP® professional must be competent to provide that Financial Advice and must consider the particular attributes, risks, and uncertainties that cryptocurrency-related assets present when providing that Financial Advice.

This Notice identifies relevant *Code and Standards* provisions and discusses how they apply to cryptocurrency-related assets.

The *Code and Standards* Applies to Financial Advice About Cryptocurrency-Related Assets

A CFP® professional makes a commitment to CFP Board to satisfy the duties set forth in the *Code and Standards*, including the Duty of Competence and the Fiduciary Duty, when providing Financial Advice. Financial Advice includes "communications that, based on their content, context, and presentation, would reasonably be viewed as a recommendation to take or refrain from taking a particular course of action with respect to the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets." "Financial Assets" include "securities, insurance products, real estate, bank instruments, commodities contracts, derivative contracts, collectibles, or other financial products." Cryptocurrency-related assets are financial products that fall within CFP Board's definition of Financial Assets. Cryptocurrency-related assets may include, but are not limited to, cryptocurrency, cryptocurrency exchange-traded funds or mutual funds, cryptocurrency derivatives, and other assets, such as interests in business entities that primarily are focused on the provision of services related to cryptocurrency. Consequently, a CFP® professional's recommendation that a Client invest in, purchase, hold, gift, or sell cryptocurrency-related assets is Financial Advice that is subject to the Fiduciary Duty set forth in CFP Board's *Code and Standards*, including the Duty of Care. Similarly, Financial Advice about cryptocurrency-related assets is included within the definition of "Professional Services," which must be provided in accordance with the Duty of Competence set forth in CFP Board's *Code and Standards*. A CFP® professional must be competent to provide Financial Advice about cryptocurrency-related assets and must consider the particular attributes and heightened risks that these assets present when providing Financial Advice about cryptocurrency-related assets.



Regulators Have Cautioned that Investments in Cryptocurrency-Related Assets Present Significant Risks and Uncertainties that Warrant Careful Analysis

CFP Board's guidance for a CFP® professional to act with caution when providing Financial Advice about cryptocurrency-related assets rests upon the guidance that regulators have issued concerning these assets. Various federal and state regulators,[1] self-regulatory organizations like the Financial Industry Regulatory Authority, Inc. ("FINRA"),[2] and consumer protection organizations representing or advocating for investors, workers, and retirees[3] have cautioned that investments in cryptocurrency-related assets present significant risks that warrant careful evaluation.

A leading example is the United States Department of Labor Employee Benefits Security Administration ("DOL"), which stated in a March 2022 Compliance Assistance Release that the DOL "has serious concerns about the prudence of a fiduciary's decision to expose a 401(k) plan's participants to direct investments in cryptocurrencies, or other products whose value is tied to cryptocurrencies"[4] and cautioned plan fiduciaries to "exercise extreme care before they consider adding a cryptocurrency option to a 401(k) plan's investment menu for plan participants."[5]

The DOL and other financial regulators have voiced concern about the particular attributes and heightened risks of investments in cryptocurrency-related assets present.

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1. *See, e.g.*, Compliance Assistance Release No. 2022-01, U.S. Dep't of Labor, Emp. Benefits Sec. Admin., 401(k) Plan Investments in "Cryptocurrencies" (Mar. 10, 2022); Gary Gensler, Chairman, U.S. Sec. & Exch. Comm'n ("SEC"), Crypto Markets Penn Law Capital Markets Association Annual Conference (Apr. 4, 2022); Press Release, SEC Div. of Examinations, Risk Alert: The Div. of Examinations' Continued Focus on Digital Asset Sec. (Feb. 26, 2021); Jay Clayton, Chairman, U.S. Sec. & Exch. Comm'n, Statement on Cryptocurrencies and Initial Coin Offerings (Dec. 11, 2017); Press Release, Letitia James, N.Y. Att'y Gen., INVESTOR ALERT: Attorney General James Warns New Yorkers About Cryptocurrency Investment Risks (June 2, 2022), https://ag.ny.gov/press-release/2022/investor-alert-attorney-general-james-warns-new-yorkers-about-cryptocurrency; Press Release, Tex. State Sec. Bd. ("TSSB"), Tex. State Sec. Bd. Announces Top Inv'r Threats for 2022 (Jan. 10, 2022), https://www.ssb.texas.gov/news-publications/texas-state-securities-board-announces-top-investor-threats-2022 ("TSSB revealed that investments related to cryptocurrencies and digital assets are our top investor threat."); Press Release, N. Am. Sec. Adm'rs Ass'n, NASAA Reminds Investors to Approach Cryptocurrencies, Initial Coin Offerings and Other Cryptocurrency-Related Investment Products With Caution (Jan. 4, 2018), https://www.nasaa.org/44073/nasaa-reminds-investors-approach-cryptocurrencies-initial-coin-offerings-cryptocurrency-related-investment-products-caution/.
2. Financial Industry Regulatory Authority, Inc., Investor Alert, Bitcoin: More than a Bit Risky (May 7, 2014), https://www.finra.org/investors/alerts/bitcoin-more-bit-risky.
3. Consumer Federation of America, *Groups Support DOL Guidance Regarding Crypto Assets in Retirement Plans* (Apr. 26, 2022), *https://consumerfed.org/testimonial/groups-support-dol-guidance-regarding-crypto-assets-in-retirement-plans/*.
4. *See* DOL March 2022 Compliance Assistance Release, *supra* note 1, at 1.
5. *Id.*

Cryptocurrency-related assets:

- **Can be speculative and volatile investments,** and this volatility can have a particularly negative effect on investors;
- **Are difficult to analyze** and present challenges to CFP® professionals seeking to make informed investment decisions (with even knowledgeable investors experiencing difficulty evaluating these assets and separating "facts from the hype");
- **May present unique custodial risks** that expose investors to heightened risk of theft or loss;
- **Raise valuation issues** because they may not be subject to commonly-accepted valuation methodologies and may not be subject to consistent accounting treatment or traditional reporting requirements;
- **May be unregistered** or otherwise offered by or through providers who are operating outside of or not complying with existing regulatory frameworks; and
- **May be subject to additional regulation**, which may evolve in unpredictable ways.

A CFP® professional must consider each of these and other attributes and risks when providing Financial Advice about cryptocurrency-related assets.

A CFP® Professional Is Not Required to Provide, and a CFP® Professional is Not Prohibited from Providing, Financial Advice About Cryptocurrency-Related Assets

CFP Board's *Code and Standards* does not require a CFP® professional to offer Financial Advice to a Client on every Financial Asset that is available in the marketplace. A CFP® professional does not violate the *Code and Standards* when the CFP® professional does not provide Financial Advice about cryptocurrency-related assets. Moreover, the *Code and Standards* does not prohibit a CFP® professional from providing Financial Advice about cryptocurrency-related assets. However, a CFP® professional must comply with the Duties set forth in the *Code and Standards* when providing that Financial Advice. This Notice focuses on some of the duties that warrant special consideration.

A CFP® Professional Must Comply with the Duty of Competence When Providing Financial Advice About Cryptocurrency-Related Assets

A CFP® professional must satisfy the Duty of Competence set forth in the *Code and Standards* when providing Financial Advice about cryptocurrency-related assets. The Duty of Competence requires a CFP® professional to provide Financial Advice about cryptocurrency-related assets with the relevant knowledge of those assets, and with the skill to apply that knowledge to a Client's circumstances. Cryptocurrency-related assets have particular attributes and features that require specialized knowledge or expertise to deliver Financial Advice about investing in them. Given the variety of cryptocurrency-related assets available, the competence required under the Duty of Competence may depend upon the Financial Assets that the Financial Advice concerns and how the Financial Assets meet the Client's goals and objectives. However, developing competence in this area to fulfill the Duty of Competence is no small undertaking.

The lack of information about cryptocurrency-related assets also presents concerns. The information that a CFP® professional needs to provide Financial Advice may not be available. Furthermore, the information that is available may be limited. In some circumstances, a CFP® professional's inability to obtain material information will prevent the CFP® professional from providing the Financial Advice. Where a CFP® professional is able to provide Financial Advice about a cryptocurrency-related asset notwithstanding the existence of limited information, the CFP® professional may need to inform the Client, prior to providing the Financial Advice that important facts that may affect the asset's performance are not readily available or may change over time. This may include, for example, some of the costs and fees that the Client may incur when investing in a cryptocurrency-related asset.

Under the Duty of Competence, a CFP® professional who lacks competence to provide Financial Advice concerning cryptocurrency-related assets must either gain competence, obtain the assistance of a professional whom the CFP® professional has a reasonable basis to believe is competent, limit or terminate the Engagement, and/or refer the Client to another professional whom the CFP® professional has a reasonable basis to believe is competent. A CFP® professional interested in becoming more competent about cryptocurrency-related assets should consider further education about the topic through continuing education courses.

A CFP® Professional Must Comply with the Fiduciary Duty, Including the Duty of Care, When Providing All Financial Advice, Including Concerning Cryptocurrency-Related Assets

A CFP® professional must satisfy the Fiduciary Duty, which provides that a CFP® professional must act as a fiduciary, and therefore, act in the best interests of the Client, at all times when providing Financial Advice to a Client. As set forth in CFP Board's **Guide to Satisfying the Duty of Care**, the Duty of Care requires a CFP® professional to act with the care, skill, prudence, and diligence that a prudent professional would exercise in light of the Client's goals, risk tolerance, objectives, and financial and personal circumstances. This duty applies to Financial Advice about all Financial Assets. To satisfy the Duty of Care, a CFP® professional must:

- Consider the Client's goals, risk tolerance, objectives, and financial and personal circumstances;
- Implement a process for analyzing the Financial Asset that enables the CFP® professional to act in the best interests of the Client when providing the Financial Advice;
- Obtain information about the Financial Asset under consideration, including, for example, the Financial Asset's features, costs (including fees), risks/return characteristics, liquidity, payout events, and track record (or longevity);
- Assess whether the CFP® professional has information sufficient to make a recommendation about the Financial Asset;
- Analyze how the Financial Asset fits the Client's circumstances, consistent with the Scope of the Engagement;
- Examine the potential role and scope of the Financial Asset in the Client's portfolio or financial plan;
- Evaluate the assumptions and estimates used to recommend a Financial Asset and how the recommendation is designed to maximize the Client's potential for meeting the goals of the Financial Advice;
- Analyze the material advantages and disadvantages of reasonably available alternative courses of action as they relate to the Client's needs and circumstances;
- Not cause the Client to incur excessive cost or be exposed to excessive risk relative to comparable, reasonably available alternatives;
- Establish how to measure the outcome and success of the Financial Asset;
- Determine whether the CFP® professional anticipates assisting the Client with implementation or monitoring, and, if so, the competence level of the CFP® professional to adequately do so, and, if not, the extent to which the Client is able to implement or monitor the Financial Advice without assistance from the CFP® professional or another competent professional; and
- If the CFP® professional has a duty to monitor and update regarding the Financial Asset, then the CFP® professional must determine how and when the CFP® professional will monitor the Financial Asset and the Client's progress towards achieving the Client's goals.

A CFP® professional who does not satisfy the Duty of Care when recommending that a Client purchase a Financial Asset violates CFP Board's Fiduciary Duty.

Cryptocurrency-Related Assets Have Particular Attributes and Present Heightened Risks that a CFP® Professional Must Consider in Satisfying the Duty of Care

A prudent professional must exercise particular care, skill, prudence, and diligence to satisfy the Duty of Care when providing Financial Advice about investments that have particular attributes and present heightened risks, like cryptocurrency-related assets. Some of these attributes and risks are identified above and discussed in more detail below.

Risk Tolerance and Capacity for Risk

A CFP® professional who recommends investments in cryptocurrency-related assets must do so in a manner that is consistent with the Client's risk tolerance and capacity for risk. This includes determining an appropriate exposure limit for a Client's investment in cryptocurrency-related assets. While each cryptocurrency-related asset presents its own risks, cryptocurrency-related assets, in general, can be speculative and have experienced extreme volatility with significant upward or downward fluctuations in value over short periods of time. A CFP® professional may seek to make assumptions about future volatility, but, because cryptocurrency-related assets lack an historical "track record," this may be difficult. Furthermore, there is uncertainty about how a particular cryptocurrency-related asset is now or in the future may be regulated as a security or a commodity or another type of asset. In some circumstances, a CFP® professional's inability to obtain material information will prevent the CFP® professional from providing the Financial Advice.

In assessing a Client's goals, risk tolerance, objectives, and financial and personal circumstances, a CFP® professional must assess a Client's tolerance and capacity for significant or total losses on cryptocurrency-related assets and still achieve the Client's goals. While prospects of high rates of returns may be appealing, a Client may not have the tolerance or capacity for the risk that this volatility presents.

Valuation

A CFP® professional who recommends cryptocurrency-related assets must advise the Client that the asset is difficult to value, if that is the case. There is no commonly-accepted valuation methodology for many cryptocurrency-related assets. Therefore, any value attributed to a Client's cryptocurrency-related asset holdings may not be reliable or accurate.

Monitoring Frequency and Limitations of Monitoring Services

If a CFP® professional has a duty to monitor and update, then the CFP® professional must determine an appropriate frequency for monitoring. A CFP® professional may need to increase the monitoring frequency because cryptocurrency-related assets can be volatile, difficult to value, and subject to other changing circumstances. In addition, the challenges of receiving reliable data may make monitoring more difficult. For example, a CFP® professional may experience difficulty complying with a Client's directions (such as maintaining a specific account allocation or buying or selling a cryptocurrency-related asset when the asset reaches a specified value) because valuation and other information may be difficult to obtain. A CFP® professional must explain to the Client the limitations of monitoring services that the CFP® professional may provide because of the limited information that is available, and that these challenges may limit the CFP® professional's ability to comply with the Duty to Follow Client Instructions.

Tax-Related Issues

A CFP® professional must consider the federal and state tax consequences of cryptocurrency-related asset transactions. There also are recordkeeping and reporting considerations. For example, a Client who is subject to taxation on cryptocurrency-related assets may not receive tax documentation. If so, a CFP® professional providing Financial Advice concerning cryptocurrency-related assets must advise the Client of this potentiality.

Evolving Regulatory Requirements

As with all investments, a CFP® professional must consider which regulatory requirements may apply to investments in cryptocurrency-related assets and how those requirements might affect cryptocurrency-related investments in particular types of accounts. The SEC, the Commodities Futures Trading Commission, the Internal Revenue Service, and various state and foreign governments have imposed regulatory requirements on cryptocurrency-related assets. Understanding the existing regulatory oversight, however, is just the beginning. A CFP® professional who recommends cryptocurrency-related assets must advise the Client that practices that the SEC may require or prohibit for securities may not be required or prohibited for some cryptocurrency-related assets. A CFP® professional also must advise the Client that the regulatory landscape is evolving and uncertain and that subsequent regulatory or legal developments may affect the Client's investment in cryptocurrency-related assets (for example, by limiting a Client's ability to use or trade the asset or affecting the taxes a Client must pay).

Custody and Storage and Risk of Theft or Loss

The custody of cryptocurrency presents particular and significant concerns. Evidence of cryptocurrency ownership may be held with a private key, which is a secure code (similar to a password) that is presented in a long alphanumeric string. If held with a private key, the cryptocurrency owner must store the private key securely, because if the private key is lost or stolen (including in circumstances where the owner forgets the private key), then the owner will not be able to access the cryptocurrency. In addition, a transfer of a cryptocurrency is typically irreversible, including in circumstances where the asset was transferred to the wrong address. Consequently, the potential for lost, stolen, or improperly transferred cryptocurrency presents a serious risk of loss which the Client likely would have to bear personally. The Federal Deposit Insurance Corporation, the National Credit Unit Insurance Fund, and the Securities Investor Protection Corporation currently do not protect virtual currency accounts. Private insurance currently is not widely available.

In light of the security risks, a variety of third-party service providers are available to store and manage private keys on behalf of the owner. An owner may store information about cryptocurrency—including the private key—in "digital wallets," which vary in features, security, and complexity. A CFP® professional providing Financial Advice about a private key storage and management solution must have a reasonable basis for doing so, including with respect to the features and controls in place to safeguard the cryptocurrency. If a CFP® professional or the CFP® Professional's Firm directly or indirectly holds cryptocurrency-related assets (or has the authority to obtain possession of a Client's cryptocurrency-related asset), then the CFP® professional also should be mindful of applicable regulatory requirements, including the requirement that the CFP® professional use a "qualified custodian" to hold Client assets.

Custody and storage are important issues for every Client. Therefore, a CFP® professional providing Financial Advice about cryptocurrency must advise the Client of the risks related to the security of the exchange, the security of a wallet or other custody solution, and the transfer of cryptocurrency. There also is risk that the exchange may experience liquidity issues or become insolvent, which could lead to bankruptcy.

Depending on the circumstance, a CFP® professional may need to provide similar information about other cryptocurrency-related assets.

A CFP® Professional Must Consider A Variety of Other Duties When Providing Financial Advice Concerning Cryptocurrency-Related Assets

There are other Duties that warrant special consideration when providing Financial Advice concerning cryptocurrency-related assets.

Information Provided to the Client About Costs

The Duty to Provide Information to a Client requires a CFP® professional to inform a Client how the Client pays for the products and services, what additional types of costs the Client may incur, and how the CFP® professional, the CFP® Professional's Firm, and any Related Party are compensated for providing the products and services. A CFP® professional must inform the Client about any costs that the Client may incur when investing in cryptocurrency-related assets, including for transactions and custody. These costs may be different if the CFP® professional is managing or holding the cryptocurrency-related assets directly or indirectly. As noted above, information about costs and fees with respect to cryptocurrency-related assets may not be readily available or may change over time.

Duty to Comply with the Law

A CFP® professional may engage in transactions concerning cryptocurrency-related assets on trading platforms that do not generate records like those that are produced when the asset is regulated as a security. A CFP® professional should be aware that creating records to integrate the performance of cryptocurrency-related assets into a Client's investment portfolio may implicate regulatory requirements that otherwise may not apply.

Duties When Selecting, Recommending, and Using Technology

A CFP® professional has Duties When Selecting, Using, and Recommending Technology that apply when providing Financial Advice concerning cryptocurrency-related assets. For example, if a CFP® professional recommends technology to a Client for the custodial or non-custodial storage or management of cryptocurrency, then the CFP® professional must exercise reasonable care when doing so.

Additional Financial Planning Considerations

There is a myriad of considerations that arise under the *Financial Planning Practice Standards* when providing Financial Advice about investments in cryptocurrency-related assets. A Client's investment in cryptocurrency-related assets is a "financial circumstance" that affects, among other things, the Client's goals, liquidity, cash flow, taxes, and estate plans, all of which a CFP® professional must consider in developing Financial Planning recommendations. A CFP® professional should know about and consider a Client's investments in cryptocurrency-related assets that are held away from the CFP® professional, as they also may have a significant effect on the Financial Planning recommendations. In addition, and as noted above, a CFP® professional must consider the frequency of monitoring. A CFP® professional also must consider how cryptocurrency-related assets may require special considerations with respect to estate planning, such as a plan for the transfer of a private key if the Client passes away. These are only some of the ways that an investment in cryptocurrency-related assets may affect the Financial Planning recommendations.

A CFP® Professional Also Must Satisfy the Duty to Follow Client Instructions

CFP Board's Fiduciary Duty also requires a CFP® professional to fulfill the Duty to Follow Client Instructions. A CFP® professional must comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.

A Client may request that a CFP® professional purchase cryptocurrency-related assets for the Client. If a CFP® professional concludes that the Client's suggested course of action, in the CFP® professional's judgment, is not in the Client's best interests, then the CFP®

professional must fulfill the Duty of Care and the Duty to Follow Client Instructions by reviewing this conclusion with the Client, explaining the reasons why the CFP® professional would not recommend cryptocurrency-related assets in this circumstance (and the possible consequences of taking the course of action), and asking the Client whether the Client would prefer to invest in the cryptocurrency-related assets or consider other investments.

If the Client nevertheless specifically directs the CFP® professional to purchase cryptocurrency-related assets, then the CFP® professional should review the CFP® Professional's Firm's policies and procedures concerning cryptocurrency-related assets and ensure compliance with those policies and procedures. If there are no firm policies that prevent the transaction, then the CFP® professional should document the Client's directions and follow the Client's reasonable and lawful instructions. In so doing, the CFP® professional must satisfy the Duty of Competence. If the CFP® professional does not have the requisite competence to satisfy the Duty of Competence or the ability to implement the Client's direction, then the CFP® professional should either gain competence, obtain the assistance of a competent professional, limit or terminate the Engagement, and/or refer the Client to a competent professional.

Conclusion

The same standards apply to cryptocurrency-related assets that apply to all Financial Assets. However, cryptocurrency-related assets have particular attributes and present heightened risks. To comply with CFP Board's *Code and Standards*, including the Fiduciary Duty and the Duty of Competence, a CFP® professional must be competent to provide Financial Advice about cryptocurrency-related assets and consider these particular attributes and risks when providing that Financial Advice.

CFP BOARD

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