

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report: November 5, 2007

Commission file number 1-10948

OFFICE DEPOT, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

2200 Old Germantown Road, Delray Beach, Florida
(Address of principal executive offices)

59-2663954

(I.R.S. Employer
Identification No.)

33445
(Zip Code)

(561) 438-4800

(Registrant's telephone number, including area code)

Former name or former address, if changed since last report: N/A

ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

On November 5, 2007, Office Depot, Inc., a Delaware corporation (the "Company"), entered into a Letter Waiver dated as of November 5, 2007 (the "Waiver"), with respect to that certain Five Year Credit Agreement dated as of May 25, 2007, by and among the Company and Citicorp USA, Inc. and BNP Paribas as syndication agents, Wachovia Bank, National Association as administrative agent, Citigroup Global Markets Inc. and Wachovia Capital Markets, LLC and BNP Paribas Securities Corp. as joint lead arrangers, and Citigroup Global Markets Inc. as the sole bookrunner (collectively, the "Lenders"), as amended (the "Credit Agreement").

As previously reported by the Company in its Current Report on Form 8-K filed on October 29, 2007, and in a corresponding press release of the same date, the Company has delayed reporting its third quarter financial results pending the completion of an independent review by the Audit Committee of the Board of Directors of the Company's vendor program funds. As reported in Item 4.02 below, the Company has decided to restate its financial statements for certain prior periods. This restatement will result in a delay in the Company's delivery of its financial statements pursuant to the Credit Agreement and a delay in certain of the Company's filings with the Securities and Exchange Commission. Pursuant to the Waiver, the Lenders have agreed to waive the impact of the matters described above, including, without limitation, the impact of the events described in the foregoing sentence, (i) to the extent that any restatements of the Company's financial statements for prior financial periods do not result in a net reduction in the aggregate reported earnings of the Company for all periods affected of more than \$40,000,000 in the aggregate, and (ii) with respect to the delay in delivery of the financial statements required to be delivered under the Credit Agreement, to the extent that such delay does not extend beyond December 15, 2007 (the "Waived Matters"). The provisions of the Waiver shall terminate on the earlier of (a) December 15, 2007 and (b) the date, if any, that holders of any Debt (as defined in the Credit Agreement) outstanding in a principal or notional amount of at least \$50,000,000 shall accelerate or give notice of acceleration of such Debt. The preliminary results of the review have fallen within the parameters of the waiver.

The summary of the provisions of the Waiver is qualified in its entirety by reference to Exhibit 10.1 to this Current Report on Form 8-K, which is incorporated herein by reference.

ITEM 4.02 NON-RELIANCE ON PREVIOUSLY ISSUED FINANCIAL STATEMENTS OR A RELATED AUDIT REPORT OR COMPLETED INTERIM REVIEW

On October 29, 2007, Office Depot announced that its Audit Committee initiated an independent review principally focused on the accounting for certain vendor program funds. The Audit Committee, with the assistance of independent legal counsel and forensic accountants, assessed the timing of recognition of certain vendor program arrangements. The investigation revealed errors in timing of vendor program recognition and included evidence that some individuals within the Company's merchandising organization failed to provide Office Depot's accounting staff with complete or accurate documentation of future purchase or performance conditions in certain vendor programs that would have otherwise required recognition of the related vendor funds to be deferred into future periods in accordance with the Company's established practices.

As a result of the Audit Committee's review and after discussion with the Company's independent accountants, Deloitte & Touche LLP, on November 8, 2007, the Board of Directors of the Company approved a restatement of the Company's 2006 financial statements including changes in amounts reported in the third and fourth quarters of the year and the first and second quarters of 2007 (collectively, the "Restated Periods"), and the Company will amend its Form 10-K for the fiscal year 2006 and its Form 10-Qs for the first and second quarters of 2007.

Based on the investigation described above, the Audit Committee concluded that the funds due or received from vendors previously recognized from the third quarter of 2006 through the second quarter of 2007 should be deferred into later periods. The impact of these errors is to reduce previously reported gross profit, operating profit, net earnings and earnings per share in prior quarters and recognize related amounts into future periods. The Company currently estimates a reduction in diluted earnings per share of \$0.02 in the quarter ended September 30, 2006, \$0.03 in the quarter ended December 30, 2006, \$0.01 in the quarter ended March 31, 2007, and \$0.02 in the quarter ended June 30, 2007. The diluted EPS impact of approximately \$0.07 per share will be recognized beginning in the second half of 2007 and in decreasing amounts in years from 2008 through 2010. As a result, the financial restatements are estimated to result in reductions of previously reported Company gross profit of approximately \$7 million in the quarter ended September 30, 2006, \$14 million in the quarter ended December 30, 2006, \$3 million in the quarter ended March 31, 2007, and \$6 million in the quarter ended June 30, 2007. Approximately \$4 million of vendor program funds in the quarter ended September 29, 2007 will also be deferred as a result of this review. The aggregate deferrals will be recognized in decreasing amounts through 2010, with approximately \$12 million expected to be recognized in the quarter ending December 29, 2007 and \$15 million in fiscal year 2008. The Company intends to file an amended Form 10-K/A for the fiscal year 2006 and amended Forms 10-Q/A for the first and second quarters of 2007 by the end of November. While the Company expects to report the estimated impacts described above, there can be no assurance that the final adjustments that are made as part of the restatement will not differ materially from these estimates.

In accordance with Section 404 of the Sarbanes-Oxley Act of 2002, our management has been assessing the effectiveness of our internal control over financial reporting that existed as of restated period ends. Based on both the quantitative and qualitative factors, management has concluded that the findings detected during the investigation of the accounting for certain vendor program funds has resulted in the identification of a material weakness in internal controls over financial reporting. Management is evaluating and implementing changes in internal control over financial reporting relating to the timing of the recognition of vendor program funds in order to address the identified areas of the material weakness.

The Company also is cooperating with the staff of the United States Securities and Exchange Commission ("SEC") in an informal inquiry that commenced in July 2007. The SEC's informal inquiry relates to the Company's contacts and communications with financial analysts as well as certain other matters, including inventory receipt, timing of vendor payments and certain intercompany loans. Prior to filing its quarterly report on Form 10-Q for the quarter ended June 30, 2007, the Company completed a review of the accounting matters related to inventory receipt, timing of vendor payments and certain intercompany loans, with the assistance of independent forensic accountants, and with review by its independent auditors. The SEC has recently expanded its inquiry into the timing of recognition of vendor program funds.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS: Except for historical information, the matters discussed in this Current Report on Form 8-K are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, as amended. Forward-looking statements, including statements regarding the review of the Company's Audit Committee, the Company's intent to restate its prior financial statements and the estimated amounts to be restated, involve risks and uncertainties which may cause actual results to differ materially from those discussed herein. The Company makes no commitment to revise or update any forward-looking statements in order to reflect events or circumstances after the date any such statement is made. Please refer to the risks and uncertainties detailed from time to time by Office Depot in its filings with the SEC made from time to time. You are strongly urged to review all such filings for a more detailed discussion of such risks and uncertainties. The Company's SEC filings are readily obtainable at no charge at www.sec.gov and at www.freeEDGAR.com, as well as on a number of other commercial web sites.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS

Exhibit 10.1 Letter Waiver dated as of November 5, 2007.

Exhibit 99.1 News release of Office Depot, Inc. issued on November 8, 2007, incorporated by reference to the Company's Report on Form 8-K dated November 8, 2007.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

OFFICE DEPOT, INC.

Date: November 9, 2007

By: /s/ *Elisa D. Garcia C.*

Elisa D. Garcia C.
Executive Vice President, General Counsel and Corporate Secretary

EXHIBIT INDEX

Exhibit 10.1 Letter Waiver dated as of November 5, 2007.

Exhibit 99.1 News release of Office Depot, Inc. issued on November 8, 2007, incorporated by reference to the Company's Report on Form 8-K dated November 8, 2007.

LETTER WAIVER

Dated as of November 5, 2007

To the banks, financial institutions
and other institutional lenders
(collectively, the "Lenders")
parties to the Credit Agreement
referred to below and to Wachovia Bank,
National Association, as agent (the "Agent") for the Lenders

Ladies and Gentlemen:

We refer to the Five Year Credit Agreement dated as of May 25, 2007 (the "Credit Agreement") among the undersigned and you. Capitalized terms not otherwise defined in this Letter Waiver have the same meanings as specified in the Credit Agreement.

As described in the Borrower's press release, dated October 29, 2007, the Borrower's Audit Committee has undertaken an independent review of the Borrower's vendor program funds. The review relates principally to the timing of the recognition of certain vendor program funds and may result in the need for the Borrower to delay delivery of its financial statements required to be delivered under the Credit Agreement, delay certain of its filings with the Securities and Exchange Commission and to restate its financial statements for prior periods, and that such a restatement, if necessary, may also result in certain other out-of-period entries made in prior periods, unrelated to the referenced events, be reclassified to the appropriate prior period. The Borrower has requested, and the Required Lenders have agreed, to waive the impact of the matters described above, including, without limitation, the impact of the events described in the foregoing sentence, (a) to the extent that any restatements of the Borrower's financial statements for prior financial periods do not result in a net reduction in the aggregate reported earnings of the Borrower for all periods affected of more than \$40,000,000 in the aggregate, and (b) with respect to the delay in delivery of the financial statements required to be delivered under the Credit Agreement, to the extent that such delay does not extend beyond December 15, 2007 (the "Waived Matters").

We hereby request that you evidence your agreement to waive, solely for the period commencing on the date first above written through the Waiver Termination Date (as defined below), solely with respect to Waived Matters, any breach of Section 5.01(i) of the Credit Agreement or resulting Event of Default under Section 6.01(c)(i) of the Credit Agreement by execution of this Letter Waiver.

On the Waiver Termination Date, without any further action by the Agent and the Lenders, all of the terms and provisions set forth in the Credit Agreement with respect to Defaults or Events of Default thereunder that are waived hereunder and not cured prior to the Waiver Termination Date shall have the same force and effect as if this Letter Waiver had not been entered into by the parties hereto, and the Agent and the Lenders shall have all of the rights and remedies afforded to them under the Credit Agreement with respect to any such Defaults or Events of Default as though no waiver had been granted by them hereunder. The "Waiver Termination Date" is the earlier of (a) December 15, 2007 and (b) the date, if any, that holders of any Debt outstanding in a principal or notional amount of at least \$50,000,000 shall accelerate or give notice of acceleration of such Debt.

This Letter Waiver shall become effective as of the date first above written when, and only when, the Agent shall have received counterparts of this Letter Waiver executed by us and the Required Lenders. The effectiveness of this Letter Waiver is conditioned upon the accuracy of the factual matters described herein in all material respects. The effectiveness of this Letter Waiver is subject to the provisions of Section 8.01 of the Credit Agreement.

The Credit Agreement and the Notes, except to the extent of the waiver specifically provided above, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed. The execution, delivery and effectiveness of this Letter Waiver shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Agent under the Credit Agreement, nor constitute a waiver of any provision of the Credit Agreement.

If you agree to the terms and provisions of this Letter Waiver, please evidence such agreement by executing and returning at least two counterparts of this Letter Waiver to Susan Hobart, Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022.

This Letter Waiver may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Letter Waiver by telecopier shall be effective as delivery of a manually executed counterpart of this Letter Waiver.

This Letter Waiver shall be governed by, and construed in accordance with, the laws of the State of New York.

Very truly yours,

OFFICE DEPOT, INC.

By Jerry Boese
Title: Vice President, Treasurer

Agreed as of the date first above written:

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Agent and as a Lender

By _____
Title:

CITICORP USA, INC.

By _____
Title:

Reviewed and approved as to form and legality
by: Office Depot Legal Department

Attorney/Paralegal [Signature]
Date: Nov 4, 2007

This Letter Waiver shall become effective as of the date first above written when, and only when, the Agent shall have received counterparts of this Letter Waiver executed by us and the Required Lenders. The effectiveness of this Letter Waiver is conditioned upon the accuracy of the factual matters described herein in all material respects. The effectiveness of this Letter Waiver is subject to the provisions of Section 8.01 of the Credit Agreement.

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This Letter Waiver shall be governed by, and construed in accordance with, the laws of the State of New York.


Very truly yours,

OFFICE DEPOT, INC.

By _____
Title:

Agreed as of the date first above written:

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Agent and as a Lender


Beth Rue
Vice President

CITICORP USA, INC.

By _____
Title:

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This Letter Waiver shall be governed by, and construed in accordance with, the laws of the State of New York.

Very truly yours,

OFFICE DEPOT, INC.


By _____
Title:

Agreed as of the date first above written:

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Agent and as a Lender

By _____
Title:

CITICORP USA, INC.

By 
Title:

JOHN McQUISTON
Vice President & Director

BNP PARIBAS

By *Paul Shapiro*
Title: *Managing Director*

By *Paul Elko*
Title: *Vice President*

BANK OF AMERICA, N.A.

By _____
Title:

JPMORGAN CHASE BANK, N.A.

By _____
Title:

FIFTH THIRD BANK

By _____
Title:

FORTIS CAPITAL CORP.

By _____
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By _____
Title:

THE ROYAL BANK OF SCOTLAND PLC

By _____
Title:

SUNTRUST BANK

By _____
Title:

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NOV 05 '07 15:32 FROM:BNP Paribas Houston

BNP PARIBAS

By _____
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By _____
Title:

BANK OF AMERICA, N.A.

By 
Title: VICE PRESIDENT

JPMORGAN CHASE BANK, N.A.

By _____
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FIFTH THIRD BANK

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FORTIS CAPITAL CORP.

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THE ROYAL BANK OF SCOTLAND PLC

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SUNTRUST BANK

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BNP PARIBAS

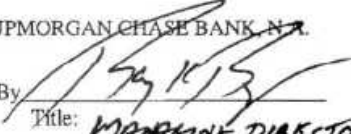
By _____
Title:

By _____
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BANK OF AMERICA, N.A.

By _____
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JPMORGAN CHASE BANK, N.A.

By  _____
Title: *MANAGING DIRECTOR*

FIFTH THIRD BANK

By _____
Title:

FORTIS CAPITAL CORP.

By _____
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THE ROYAL BANK OF SCOTLAND PLC

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SUNTRUST BANK

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BNP PARIBAS

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BANK OF AMERICA, N.A.

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JPMORGAN CHASE BANK, N.A.

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FIFTH THIRD BANK

By  _____
Title: *Vice President*

FORTIS CAPITAL CORP.

By _____
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THE ROYAL BANK OF SCOTLAND PLC

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SUNTRUST BANK

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JPMORGAN CHASE BANK, N.A.

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FIFTH THIRD BANK

By _____
Title:

FORTIS CAPITAL CORP.

Timothy Streb
Managing Director

By _____
Title:

Daniel M. Jaffe

By _____
Title:

Vice President

THE ROYAL BANK OF SCOTLAND PLC

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SUNTRUST BANK

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BNP PARIBAS

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FIFTH THIRD BANK

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FORTIS CAPITAL CORP.

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Title:

THE ROYAL BANK OF SCOTLAND PLC

By Belinda Tucker
Title: Senior Vice President

SUNTRUST BANK

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BNP PARIBAS

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BANK OF AMERICA, N.A.

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JPMORGAN CHASE BANK, N.A.

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FIFTH THIRD BANK

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FORTIS CAPITAL CORP.

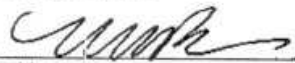
By _____
Title:

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THE ROYAL BANK OF SCOTLAND PLC

By _____
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SUNTRUST BANK

By 
Title: *Managing Director*

UBS LOAN FINANCE LLC

By _____
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THE BANK OF NOVA SCOTIA

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MORGAN STANLEY BANK

By _____
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WELLS FARGO BANK, NATIONAL ASSOCIATION

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By _____
Title:

WILLIAM STREET COMMITMENT CORPORATION

By _____
Title:

U.S. BANK, NATIONAL ASSOCIATION

By _____
Title:

SUMITOMO MITSUI BANKING CORPORATION

By _____
Title:

UNION BANK OF CALIFORNIA, N.A.

By _____
Title:

Morgan Stanley Bank
590 Lake Park Blvd.
West Valley City, UT 84120
tel: 801 962 6700
fax: 801 962 1087

Morgan Stanley

UBS LOAN FINANCE LLC

By _____
Title:

By _____
Title:

THE BANK OF NOVA SCOTIA

By _____
Title:

MORGAN STANLEY BANK

By *[Signature]*
Title *Authorized Signatory*

WELLS FARGO BANK, NATIONAL ASSOCIATION

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WILLIAM STREET COMMITMENT CORPORATION

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SUMITOMO MITSUI BANKING CORPORATION

By _____
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UNION BANK OF CALIFORNIA, N.A.

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Member Federal Deposit Insurance Corporation

UBS LOAN FINANCE LLC

By _____
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By _____
Title:

THE BANK OF NOVA SCOTIA

By _____
Title:

MORGAN STANLEY BANK

By _____
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By *Alfred...*
Title: Senior Vice President

WILLIAM STREET COMMITMENT CORPORATION

By _____
Title:

U.S. BANK, NATIONAL ASSOCIATION

By _____
Title:

SUMITOMO MITSUI BANKING CORPORATION

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UBS LOAN FINANCE LLC

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MORGAN STANLEY BANK

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WELLS FARGO BANK, NATIONAL ASSOCIATION

By _____
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By _____
Title:

WILLIAM STREET COMMITMENT CORPORATION

(Recourse only to the assets of William Street Commitment Corporation)

By 
Name: Mark Walton
Title: Assistant Vice-President

U.S. BANK, NATIONAL ASSOCIATION

By _____
Title:

SUMITOMO MITSUI BANKING CORPORATION

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UNION BANK OF CALIFORNIA, N.A.

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By _____
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WILLIAM STREET COMMITMENT CORPORATION

By _____
Title:

U.S. BANK, NATIONAL ASSOCIATION

By *Veronica Marisetta*
Title: Vice President

SUMITOMO MITSUI BANKING CORPORATION

By _____
Title:

UNION BANK OF CALIFORNIA, N.A.

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SUMITOMO MITSUI BANKING CORPORATION

By _____
Title:

UNION BANK OF CALIFORNIA, N.A.

By Ching Lim
Title: Ching Lim
Vice President

Post-it® Fax Note	7671	Date	# of pages
To	Suzanne Hobart	from	Ching Lim
Co./Dept.		Co.	
Phone #		Phone #	213 286 5791
Fax #	646 848 - 7847	Fax #	

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MIZUHO CORPORATE BANK, LTD.

By 
Title: Deputy General Manager

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