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Recent Advances in Corporate Governance: A Global View

J. Kiranmai and R.K. Mishra

Abstract

Corporate governance is a system of legal approach by which corporates are directed and controlled. The basic focus is on structures of corporate entities, monitoring and directing them for mitigating risks that have been raised due to misdeeds of various factors. The corporate failures such as those of Enron, Xerox, WorldCom, Satyam, and the ones that followed suit, among other things, highlight shortcomings about internal controls, the institution of boards, functioning of board committees disclosures, transparency, reporting standards, and enhancing stakeholder's confidence. Since 2001, emphasis has been laid down on the governance mechanism to be reinforced to retrieve accuracy and reliability. Over the years, several initiatives have been undertaken by the policymakers, governments, regulators, and the private sector to reform corporate governance. The global business model of geopolitical affairs, social and regulatory compliance, and cyber security are some of the key elements that have radically transformed corporate governance's thrust in the present-day corporate context. This paper aims to study the advances in corporate governance practices in terms of its nuances related to board diversity and its evaluation; shareholder activism; environment, social and governance (ESG), and enterprise risk management (ERM).

Keywords: board quality, composition, evaluation, corporate social responsibility, risk management

1. Introduction

Global Financial Crisis (GFC) has amplified corporate governance (CG) issues across the globe. GFC led to the emergence of new corporate governance. Further, the innovations towards new governance system were strengthened by the dot.com bubble in 2000, which was due to the failure of global giants such as Enron, Tycone, Worldcom followed by the downfall of Satyam Computers Ltd., leading to conflict between micro and macro market structure, stakeholders, regulators, and markets. Since then, many countries started working on governance, managing and controlling ethics in business, and benchmarking the best practices of good corporate governance to protect stakeholders' interests [1]. The four important dimensions of good corporate governance are ownership structure, board level governance and accountability and transparency.

Many global institutions such as OECD, WB, Harvard University, ., also actively contributed to strengthening the new corporate governance framework for the third-millennium corporates by releasing guidelines/principles from time to time, enabling corporates to become stable, follow due diligence mechanisms. Sarbanes

Oxley Act, 2002 [2] was an initiative towards new corporate governance regulation by the United States of America. The act emphasized how boards are built, legal framework to raise standards, ethical code, etc.

It is evident that corporate governance strives to strike a balance between the social and economic goals of the corporate entity. The governance framework encourages the effective use of internal and external resources, creates a transparent mechanism, makes stakeholders accountable. The aim of corporate governance is to align the interest of individuals with that of the corporate and the society.

2. Meaning and Definition

Corporate governance is classified as a discipline that is legal in nature. The word is derived from the word “gubernare” which in Latin means to steer, which means corporate governance supports steering the Company. The governance function is to oversee the performance of the board in delivering the corporate objectives. The OECD provides a functional definition of CG as a system by which corporations are directed and controlled. CG is defined as “a system of law by which corporations are directed and controlled focusing on the structures to monitor the actions of management and directors thereby mitigating risks [3, 4].

CG tries to strike a balance between economic and social goals among individuals as well as the community. The effective use of resources ensures accountability for all resources responsible for corporates, stakeholders, and society [5]. CG tries to manage the conflicting and diverse interests of all stakeholders. It deals with conducting the affairs of the company with fairness to benefit all its stakeholders. CG is a key element to improve the economic efficiency of a firm. According to Lim, corporate governance reforms are an ongoing process as long as corporations depend on markets and markets are following the rules and compliances governance reforms are continuous.

Corporate governance has become a dynamic aspect of a business. Corporate governance involves the functions of direction and controls. The recent massive corporate failures resulted due to weak corporate governance systems. Corporate failures such as Enron, Xerox, Worldcom, etc., have highlighted the various issues about reporting standards, enhancing stakeholders’ confidence, etc. Since 2001 emphasis was laid down on the governance mechanism to be reinforced to retrieve accuracy and reliability. Over the last two decades, there has been a transformational shift in the various initiatives of governance systems worldwide. CG has become one of the strongest regulatory mechanisms by the governments to enhance transparency and accountability to its stakeholders. The roles and responsibilities of the directors have been well defined to ensure that they are bonded with the legal requirements.

CG is an umbrella term covering the concept and theory. The governance establishes the relationship between boards, regulators, stockholders, auditors including creditors, suppliers, and other interested groups [6]. CG tries to safeguard the interest of investors by making the Board of directors accountable. Good governance is the broader view focusing on the relationship between a company and a range of stakeholders.

Reforming a governance system is a continuous process. These reforms are important and are worth pursuing by the policymakers, corporates, and stakeholders. The new initiations of separating the role of chairman and CEO, introducing non-executive directors, improved corporate disclosures mechanisms, bringing transparency in remuneration, and selection of directors have been highly appreciated by the investors. (Table 1) [7].

S.No	Theory	Summary
1	Agency Theory	Principal delegates work to the agent
2	Transaction Cost Economies	Aligning the interest of directors and shareholders
3	Stakeholder Theory	Priority is given to stakeholders rather than shareholders
4	Stewardship Theory	The directors are treated as stewards and are expected to deliver their best to the corporate and its stakeholders
5	Class Hegemony Theory	The directors are empowered to make all the decisions
6	Managerial Hegemony Theory	Knowledge of day-to-day operations

(Source: Mallin, A Christine, *Corporate Governance*, New York: Oxford University Press, 2007, p. 12).

Table 1.
Summary of theories affecting corporate governance development.

The new-age business has wiped off the trade barriers across the global markets. Corporates need to adopt result-oriented approaches to keep their organizations in line with the global competition meeting to access capital pool, attract and retain the best talent. Corporations should accept and understand that their growth requires the cooperation of all the stakeholders. Hence, stakeholders enhance the best corporate governance practices. Corporates need to demonstrate ethical codes in business with strong value systems and principles, accounting and transparency, disclosure and compliance, etc. The only tool that would discuss all these aspects is corporate governance. It not only regulates the market but also tries to improve the economic efficiency of the firm. As this process of improving corporate governance is continuous, policymakers and regulators are always updating the framework to develop new governance trends. Evidence indicates that the institutional investments [8] by the company welcome regular governance reforms. The studies reveal that the investor views this continuous reform process as a help rather than a hindrance [9].

3. Parties to corporate governance

There are many parties involved in reforming the corporate governance codes [10]. These include regulatory bodies, policymakers, research institutions, activists groups, consultants, etc. Shareholders, employees, and customers play an important role. The increase in market capitalization, equity holding of investors has made a significant dent in the concept of separation of ownerships. Boards play a pivotal role in implementing the organizational strategies, developing directional policy framework, supervising and governing the functioning, and ensuring accountability and responsibility. The corporate performance depends directly and indirectly upon the involvement of the board and the governance codes. Every stakeholder is responsible for the business's success while the employees and directors receive remuneration, shareholders receive the capital return.

The new corporate governance has been understood with various important parameters such as ownership and business landscape, governance framework, rights of shareholders, and boards independence. It is evident from various research studies that corporate governance impacts the stakeholders such as employees,

creditors, shareholders, etc. [11], reducing the business and operational risk [12]. Corporate entities with good corporate governance result in trading, strengthen financial markets, and create value. Proper implementation of governance rules/codes makes institutions less corrupt [13]. The standards and methods have to be implemented while working on the accounting policies and legal systems [14, 15].

According to the PWC¹, the shift in the global landscape in which companies operate is expected to change in the next few decades considerably. The research shows a projection of 46% by 2025² and this shift brings a change in the investment pattern to improve regulatory framework add an effective governance system among the cooperates. Effective governance system both at the board and senior level strategizes on the objectivity of corporate success. As investors and companies are equally responsible for corporate governance, companies are required to demonstrate that they are acting in the best interests of the shareholders, while the investors should demonstrate that they are acting in the interests of stakeholders.

The economic and the global environment play a critical role in forcing the corporates to change the existing business models. The competitive nature of global capital markets made CEOs believe they are prepared to handle high volatile and complex business requirements. The success of an organization depends on the attitudes and mentality of its leaders. Organizational changes occur when leaders remain calm and focused with a clear understanding of the organizational goals. The expansion of economic boundaries has diversified the global marketplaces to exploit the opportunities and remain competitive, resulting in technological up-gradation and cultural diversity. The number of global alliances through mergers and acquisitions increased, improving the skilling and communication methods. The corporates follow a flexible operating strategy with the right mix to succeed to meet global competition. According to a study of the CG practices of BRICS economies, cross-border mergers and acquisitions led to a cultural shift and improved corporate entities' performance [16]. Research by PWC² projects that by 2050, the E7 economies could reach 50 percent of the share in the world GDP. It is reported that China would have 20 percent of the world GDP and would become the largest economy, followed by India in second place.

4. Corporate scandals

The occurrence of corporate scandals was known to the world with less frequency and magnitude. However, due to the open economic conditions and competition in the markets, the magnitude of fraud increased tremendously, leading to trauma situations among stakeholders. These scandals were not confined to the enterprise alone but were impacting the economic conditions beyond borders. During the 1980s and 1990s, due to unethical practices, many corporate giants failed to leave many questions on the governance framework. These corporate failures have given a new role for corporate governance. The entities' legal and regulatory framework made the entities do due diligence and compliance, ensuring transparency and accountability. A few of the classic frauds that led to revolutionary changes in corporate governance are detailed in **Box 1**.

In the context of developing countries, there is a linkage between governance and corruption. If the level of corruption in the country is high, the country's

¹ <https://www.pwc.com/gx/en/world-2050/assets/pwc-the-world-in-2050-full-report-feb-2017.pdf>

² <https://www.pwc.com/gx/en/issues/the-economy/assets/world-in-2050-february-2015.pdf>

Enron, USA, 2001, Accounting fraud	Window dressing of financial statements, lack of internal controls, conflict of interest, unethical behavior, failure of auditors
Xerox Corporation, USA, 2002, Financial fraud	Non-disclosure of true and fair view operating results
Lehman Brothers, USA, 2008, Financial fraud	Devaluation of assets
Satyam Computer Services Ltd., India 2009, Accounting Fraud	Unethical behavior, unconvinced role of independent directors, misrepresentation of audit and accounting figures, insider trading
Kingfisher Airlines Ltd., 2012, India, Governance failure	Huge accumulated losses, nonpayment of taxes, defaulted bank loans, salaries, etc.
(Source: Authors compilation).	

Box 1.
Classic corporate scandals.

corporate governance would be weak. Transparency International³, a nonprofit organization, aims to stop corruption in various societies by promoting transparency. The corruption perception index (CPI) provides the ranking of countries having low corruption. In 2020, New Zealand ranked first, followed by Denmark, Finland, Switzerland, and Singapore. All five countries have very strong corporate governance codes [10]. In New Zealand, the corporate governance standards are high by international standards, while Singapore promotes high standards of disclosures relating to level, the structure of ownership and compensation [17], Nordic model of governance give priority to shareholders to control and take long-term responsibility for creating value for shareholders [18].

5. CG codes and their relevance

We discuss below some prominent CG codes and their relevance.

5.1 USA

In the United States, the corporate governance concept gained prominence after the landmark scandal of Watergate. As a result, the regulatory and legislative bodies constituted various committees to undertake a forensic audit to find the reasons for the failures leading to creating a Foreign and Corrupt Practices Act (FCPA) in 1977. Later the act supported the formation of the Securities and Exchange Commission. The Act contains specific provisions regarding establishing, maintaining, and reviewing internal control systems.

After a subsequent investigation, US regulatory and legislative bodies found out failures that had allowed corporations to make political contributions, legal and bribing officials. Later, the Securities and Exchange Commission’s (SEC), 1970 came into force mandatory internal financial controls for all the listed

³ <https://www.transparency.org/en/cpi/2020/index/nzl>

corporates in the USA. The Tradeway Report highlighted the need for proper environmental controls, functions, and an effective audit committee. The two major scandals Worldcom and Enron, have raised questions on transparency, the role of boards, and their performance. The result was an enactment of the Sarbanes Oxley Act (SOXA), 2002. Since then, greater autonomy was given to SEC.

5.2 UK

The modern Companies Act 2006 brought clear statutory statements of directors, their duties, and responsibilities. The Act highlighted the exiting legal framework for companies, role, and responsibilities of directors, auditors, actuaries, shareholders, etc.⁴ The Companies Act 2006 primarily details the legislation that applies to companies directly. The act has many regulations, orders, and provisions that the companies have to follow. The various codes of corporate governance in the UK Stewardship code 2020, UK CG Code [19], UK CG Code, 2014, Companies Act 2004, Civil Partnership Act 2004.

5.3 Malaysia

The Malaysian Corporate Governance framework has a strong foundation for the boards and board-level committees. It clearly states the roles, timely actions, disclosures, integrity reporting methods, risk management initiatives, internal controls, participation of shareholders in annual general meetings, etc. The following are the important codes of corporate governance in Malaysia.

- Bursa Malaysia's Corporate Governance Code, 2013
- Amendments to CMSA to empower SC to prosecute CG, 2010
- Corporate governance blueprint 2011
- Listing Requirements amendment on Related Party Transactions, CG and internal control disclosure, 2012
- Bursa Malaysia's Corporate Governance, 2010
- New Malaysian Code on CG, 2017
- Malaysian Code of CG, 2000
- Lumpur Stock Exchange Listing Requirements, 2001

5.4 Australia

In 1999, the Government proposed the corporate law reform program Act to provide statutory guidelines to corporates, revised provisions for directors, accounting standards, etc. Australian Listed companies have a unitary board structure. The act has defined eight core principles to companies about their corporate governance structures. The Australian Securities Exchanges (ASX) listing rules

⁴ *Company Law Review Group in 1998 to consider in detail how company law could be modernized.*

mandate the companies to have an audit committee. The board should have 1/3rd members as IDs. The various codes of CG in Australia are Corporate Governance Principles and Recommendations, 2014, 2010, 2007, Principles of Good Corporate Governance and Best Practice Recommendations, 2003, Corporate Governance Report, 2002, 1999.

5.5 India

The culmination of various expert reports submitted to the Government, interventions of the Ministry of Corporate Affairs, Government of India, and the capital market regulator known as the Securities and Exchange Board of India (SEBI) have been bundled together as the Code of Corporate Governance. The Companies Act, 2013 has raised the bar for the boards in India. It talked about various compliances that companies must follow, taking into the global environment. The Companies Act, 2013 has raised the bar for the boards in India [20]. The act tried to benchmark with global best governance practices. The act highlighted women directors strike gender diversity on boards, enhanced disclosure norms, performance evaluation methods, mandating corporate social responsibility, introducing class actions suits, internal financial controls, and risk management mechanisms, addressing shareholders grievances, etc. The act also elucidated Independent Directors' role and responsibilities, protecting minority shareholders' interest, shareholder activism, and insolvency regulation. The latest committee is SEBI's Kotak Committee Report, 2017. The earlier committees are Companies Act, 2013, JJ Irani Committee Report, 2003, SEBI's Kumar Mangalam Birla Committee, 2000, CII code, 1998, etc.

6. Global governance trends

The boards are accountable to the company, shareholders, and society at large. Boards are expected to deal fairly with stakeholders. The shift in the governance enhances the board's responsibilities, independence, quality, and evaluation. OECD Report [21] highlighted the rights of shareholders, their equitable treatment, disclosure, transparency, and role of the board. The governance framework should protect the interest of minority shareholders' rights in the company. It also facilitates its stakeholders by creating wealth, employment, and a sustainable business environment. The framework should underpin the board's accountability to corporates and members. In general, there is an increased realization among corporates that corporate governance is a tool to create transparency, accountability, and trust to enhance investment, stability, and growth by value creation. The following **Table 2** depicts phase-wise governance issues and various committees.

Modern corporate governance emphasizes shareholder value creation. It is treated as an integrated approach considering the rights and interests of stakeholders, social-economic concerns, risk mitigation methods, etc. The following are some of the latest trends in governance empowering the boards and the stakeholders.

- 1. Enhanced roles of board:** The committees play a significant role in implementing the governance codes. There are two types of controls. They are governance and internal control systems. The audit, nomination, and remuneration committee, risk management committee are the three prominent governance committees, while the risk management committee is

Phase 1 (1990-2000)	Phase 2 (2000-2010)	Phase 3 (2010-2020)
Composition	Board composition, strength, and size	Board Committees, size of the board, etc.
Disclosure and transparency	Disclosure and transparency	Disclosure and transparency with ethical code of conducts
Remuneration policy	Remuneration policy and disclosure of Directors remuneration	Remuneration and Nomination committee
Board Meetings	Board meeting and matters to be reserved for board decision	Mandatory attendance for the specified number of the board meeting, relevant qualifications, legal compliance
—	Board's performance evaluation	Board's evaluation and ESOPs
—	Orientation and training of directors	Mandatory Training for Directors
—	Reporting mechanism – Directors Report	Business Responsibility Report
—	—	CG 2.0
—	RBC 1	RBC 2

(Source: Authors' compilation).

Table 2.
Phase-wise governance issues and various committees.

treated as the internal control committee. **Table 3** depicts the various corporate governance regulatory bodies responsible in different countries.

Table 4 details the governance control and internal control committees in various countries. India mandates the Audit, nomination, and remuneration committee, CSR Committee, Stakeholders Grievance Redressal committee for all the listed companies. In Singapore, some companies have a common Audit and Risk Management Committee.

2. Greater attention towards director independence

Independent Directors act as coaches and mentors to companies. The role of an independent director is very enhanced in the present context. They help in improving credibility and governance standards by working and helping in managing risk. The most significant contribution of the IDs must enhance the competence of the board to take the objectives and decisions. Independent directors are responsible for ensuring better governance by actively involving in various committees constituted by the company. IDs are truly independent and have the right to question the board in all its decisions.

3. Introduction of lead directors

A lead director is a board member who is an independent member of the board elects. The Lead Director has certain important duties relating to the board [23]. This Director often is the chair of the governance committee of the board. SEC and NASDAQ required listed companies with non-independent chairpersons to elevate one of their independent directors to the position of lead directors. The lead Director maintains good relationships and functions with the board and the stakeholders [24].

Jurisdictions	Key regulators	Ruling body	Members	Representatives from specific entity				Appointments
				Government	Central Bank	Others Public	Others private	
India	SEBI/MCA	Board	9	Y	Yes	—	—	Ministry of Finance
United States	SEC	Commission	5		—	—	—	President
United kingdom	FCA	Board	12	Y	—	Y	—	Treasury
Australia	ASIC	Commission	3-8 (5)	—	—	—	—	Government –General
Singapore	MAS	Board of Directors	9	—	—	—	—	President
Malaysia	SC	Commission	d	Y				Ministry of Finance
Y – Yes. (Source: Authors’ compilation).								

Table 3.
Regulators for corporate governance.

Jurisdictions	Governance Control			Internal Control	
	AC	NC	RC	RM	Other Committees
United States of America	SEC 17	Yes	Yes (SEC, Rule 10C-1)	Yes	—
United Kingdom	Yes (UKCG Code, 2018)	Yes	Yes (UKCG Code, 2018)	Enterprise-wide Risk Committee	—
Australia	Yes	Yes	Yes	Yes	—
Singapore	Yes (Audit Committee Code Principle 12 Code Guideline 12.1,12.9)	Yes	Yes (Code principle 8 and 9)	Yes	Executive Committee
Malaysia	Yes (MCCG Paragraph 15.17 of Bursa's Listing Requirements)	Yes(MCCG Paragraph 6.2 of Bursa's Listing Requirements)	Yes	Yes (MCCG [22], Paragraph 15.25of Bursa Malaysia Listing Requirements)	Committee Shareholders
India	Yes (Section 177)	Yes [Section 178(1) to (4)]	Yes (Section 178 (1) to (4))	Yes	Shareholders Committee (Section 178(5) to (8)), CSR Committee Section 135),

(Authors' compilation).

Table 4.
Governance and internal committees.

4. Board evaluations

Board evaluation ensures a good understanding of the directors' duties, adopts effective governance practice, and protects the community and shareholders. Board evaluation would help the directors to have an enhanced role and act in good faith in promoting the interest of the stakeholders. Higgs Report, 2003 was one among the first board performance evaluation reports which highlighted the role and effective functioning of independent directors in the UK. Board evaluation examines the role of the board and the entailing responsibilities and assesses how effectively the board fulfills these. By doing so, the boards can identify the key challenges faced by the organization and add real value to corporates. OECD's⁵ has identified four dimensions of board evaluations. Board evaluation includes (i) Monitoring and risk management, which highlights parameters such as compliance, law, regulation, whistleblower approach, related party transactions, conflict, etc., (ii) Strategy and business involving innovation, growth, value creation, network connections, etc., (iii) composition and diversity includes gender, skill, integrity, independence, knowledge, etc. (iv) board dynamics and process details on commitment, engagement, preparation, schedule, etc.

⁵ Board Evaluation: Overview of International Practices, OECD, 2018.

5. Board diversity

The heterogeneous composition of age, gender, education, race, lifestyle, culture, experience, nationality, religion, and many facets that make us unique is called diversity. Although the board deals with the external environment of the corporate [25], directors' as members appointed on Board, their experience and their equity ownership in the firm resulted in the board heterogeneity [26]. For example, 59 percent of the directors in S&P 500 companies were women or were men belonging to a racial or ethnic minority group [27]. Research findings depict that diversity and inclusion benefit individuals, teams, and society. In contrast, women at the top of the leadership ladder express interest in an organization and perceive the organizational objectives [28].

6. Shareholder's activism

Activism is a broad spectrum. Shareholder activism includes shareholders' voting rights, discussions forums, behavioral influences, communications, resolutions, shareholder meetings, etc. It is a powerful tool that shareholders have to influence a corporate by exercising their rights as company owners. Recently, this movement has moved across companies in all sectors. As a result, shareholders can assert their rights and power as owners of the Company. It involves the shareholders' efforts to bring desired changes in the operation of companies and influence the management on the governance mechanism and protect the interest of the shareholder. Through this, they create value by acting as a positive catalyst for corporate growth a [29].

7. Information technology governance

Technological advancement created opportunity and risk. The sheer growth in the size of companies has become more complex, and their dependence on the online cloud platforms has become necessary. There has been a transformational shift in the technology application in the board room. An E-voting facility has been introduced. Most of the companies are engaged in data management using AI and cloud-based technology to safeguard the data. Companies have adapted e-tendering for calling the procurement tenders. The evaluation of tenders is also done online. An increase in strong security systems has reduced cybercrimes.

8. Compensation, risk, and ESG Governance

These are emerging and hotly debated issues in the realm of corporate governance. The compensation to the CEOs has gone through the roof and is termed as "abusive". Under "No Disclosure Agreement", companies are not obliged to disclose the amount of compensation and the bonuses given after the tenure or as part of severance packages. Such abusive compensation is not even linked to scientific parameters. However, some companies have started linking CEO compensation to ESG parameters. The overall performance of the board and board members are also gaining currency. ESG parameters and contribution to strategic decision-making is employed to evaluate the Board's performance. Risk management has gained a huge spotlight as a corporate governance parameter. The risk could include the nature of political, product, market, and financial factors. Responsible business conduct is a new dimension that is replacing corporate social responsibility.

7. Conclusion

An efficient, effective, and futuristic corporate governance is considered the hallmark of sound business management. Corporate governance encompasses the internal and external dynamics of controlling and directing business. A quality board supported by professionally managed board committees, well-oiled internal control machinery, transparent reporting and compliance, non-abusive compensations to key managerial personnel and CEOs, safeguard against related party transactions, and weaving the company operations with the thread of ESG could ensure a company to be corporate governance compliant. Good corporate governance is sine – qua – non for the financial stability of corporates and economies, on the one hand, and builds confidence among the investors, on the other.

As corporate governance is associated mostly with listed companies, the unlisted companies have not complied with corporate governance norms. Many countries do not mandate corporate governance codes for unlisted companies. To bring the unlisted companies under the governance framework is a bigger challenge for governments as the companies are characterized in various sectors. But some government is trying to create an effective internal and external mechanism for unlisted companies to improve the socio-economic growth of the Company. Larger companies that are unlisted are brought under the scan of the Government in terms of their ownership structures, professional management, transparency, awareness, etc. One of the major challenges countries would face making unlisted companies comply with corporate governance codes.

Abbreviations

ASIC	Australian Securities and Investment Commission
CEO	Chief executive officer
CG	Corporate Governance
CSR	Corporate Social Responsibility
ERM	Enterprise Risk Management
ESG	Environment, social and governance
FCA	Financial Conduct Authority
GFC	Global Financial Crisis
ID	Independent Directors
MCA	Ministry of Corporate Affairs
PWC	Price Waterhouse Cooper
RBC	Responsible Business Conduct
SC	Securities Commission
SEBI	Securities Exchange Board of India
SEC	Securities Exchange Commission
SOX	Sarbanes Oxley
UK	United Kingdom
USA	United States of America

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