



THE 2023 BERKELEY FORUM M&A AND THE BOARDROOM

APRIL 26, 2023 | SAN FRANCISCO

CONFERENCE SCHEDULE



THE 2023 BERKELEY FORUM M&A AND THE BOARDROOM

APRIL 26, 2023

12:00 PM **REGISTRATION OPENS**

1:00 PM **WELCOME REMARKS**

SPEAKERS:

ADAM BADAWI, Professor, University of California, Berkeley
ETHAN KLINGSBERG, Partner, Freshfields
ANGELI PATEL, Executive Director, Berkeley Center for Law and Business

1:10 PM **ANTITRUST POLICY: PROTECTING AMERICA'S CONSUMERS**

SPEAKERS:

DAVID SINGH GREWAL, Professor, University of California, Berkeley
LINA M. KHAN, Chair, Federal Trade Commission

1:45 PM **BREAK**

1:55 PM **HOW BOARDS AND THEIR ADVISORS ARE TO MAKE SENSE OF THE EXPECTATIONS OF INSTITUTIONAL INVESTORS**

SPEAKERS:

ADAM BADAWI, Professor, University of California, Berkeley
GIUSEPPE BIVONA, Partner and CIO, Bluebell Capital Partners
MATT COLE, CIO, Global Head of Fixed Income, Strive
TARIQ FANCY, Author, *Secret Diary of a Sustainable Investor*
ETHAN KLINGSBERG, Partner, Freshfields
ANNE SIMPSON, Global Head of Sustainability, Franklin Templeton

2:55 PM **BREAK**

3:10 PM **FIRESIDE CHAT WITH THE DELAWARE COURT OF CHANCERY**

SPEAKERS:

THE HONORABLE NATHAN A. COOK, Vice Chancellor, Delaware Court of Chancery
STAVROS GADINIS, Professor, University of California, Berkeley
MEREDITH KOTLER, Partner, Freshfields

3:45 PM **BREAK**

4:00 PM **THE EVOLUTION OF CFIUS AND REGULATION OF OUTBOUND INVESTMENT FROM THE U.S.**

SPEAKERS:

ANDREW FAIR, CFIUS Staff Chair and Director, Office of Investment Review & Investigation, U.S. Department of the Treasury
IRENE LIU, Executive in Residence, Berkeley Law Executive Education
AIMEN MIR, Partner, Freshfields

4:35 PM **BREAK**

4:50 PM **ANTITRUST POLICY: WHAT COMES NEXT FOR EUROPE**

SPEAKERS:

LUCIA BONOVA, Head of Unit—Digital Platforms at DG Competition, European Commission
PRASAD KRISHNAMURTHY, Professor, University of California, Berkeley
JENN MELLOTT, Partner, Freshfields

5:25 PM **BREAK**

5:35 PM **SESSION WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION**

SPEAKER:

ERIK GERDING, Director, SEC Division of Corporation Finance, U.S. Securities and Exchange Commission

6:10 PM **CLOSING REMARKS AND COCKTAIL RECEPTION**

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ADAM BADAWI

PROFESSOR, UNIVERSITY OF CALIFORNIA, BERKELEY

Adam Badawi is a Professor of Law at UC Berkeley. He writes widely on issues of law and finance with an emphasis on corporate governance, corporate transactions, and shareholder litigation. Much of his recent work uses text analysis and machine learning to analyze debt agreements, merger documents, and shareholder class action complaints. At Berkeley Law, he teaches Contracts, Corporations, Mergers and Acquisitions, and seminars related to these topics.

His research includes *Does Voluntary Financial Disclosure Matter? The Case of Fairness Opinions in M&A* (forthcoming, *The Journal of Law and Economics*) (co-authored with Matthew D. Cain and Steven Davidoff Solomon), *How Informative is the Text of Securities Complaints?* (forthcoming, *Journal of Law, Economics & Organization*), *Social Good and Litigation Risk* (forthcoming, *Harvard Business Law Review*) (co-authored with Frank Partnoy); and *Is There a First-Drafter Advantage in M&A?*, *California Law Review* (2019, *California Law Review*) (co-authored with Elisabeth de Fontenay) (selected as one of the top 10 corporate and securities articles of 2019 by *Corporate Practice Commentator*).

Prior to joining the faculty of Berkeley Law in 2017, Badawi was a Professor of Law at Washington University in St. Louis. He has been a Visiting Professor at Northwestern Pritzker School of Law and he served as a Bigelow Fellow at the University of Chicago Law School. Before joining the academy he was a litigator in the San Francisco office of Munger, Tolles & Olson LLP and was a law clerk to the Hon. Michael McConnell of the Tenth Circuit Court of Appeals.

GIUSEPPE BIVONA

PARTNER AND CIO, BLUEBELL CAPITAL PARTNERS

Before launching Bluebell Capital Partners in 2019, Giuseppe was co-founder of its preceding firm, Bluebell Partners; a co-investor and advisory firm involved in high profile, successful activist campaigns in Europe.

Prior to Bluebell Partners, Giuseppe worked for 18 years with the investment banks Goldman Sachs, Morgan Stanley and Lehman Brothers in London. Before that, Giuseppe worked at McKinsey in Milan and IBM.

In his last position at Goldman Sachs, he was responsible for Fixed Income Sales in Italy, with direct responsibility for financial institutions' coverage and structured business across clients.

At Morgan Stanley, Giuseppe headed the European Sovereign Liability Management Team and afterward the Global Capital Market Team, with responsibility for Italian financial institutions on debt and equity capital market products.

At Lehman Brothers, Giuseppe headed the Capital Market and Structured Solution Group for Italy, focussing on financial institutions. Giuseppe has extensive experience in structuring and executing balance sheet restructurings, complex derivatives transactions and has advised major Italian banks and insurance companies on regulatory capital relief solutions.

Giuseppe holds a university degree in Mechanical Engineering from the University of Rome "La Sapienza" and an MBA from Columbia Business School.



LUCIA BONOVA

HEAD OF UNIT – DIGITAL PLATFORMS AT DG COMPETITION, EUROPEAN COMMISSION

Lucia Bonova heads a unit at the European Commission responsible for the implementation of Digital Markets Act and antitrust enforcement in the area of digital platforms. She holds a law degree from Université Panthéon-Assas in Paris and an LLM in International Business law from McGill University in Montreal. Lucia spent her entire professional career devoted to competition law enforcement, in particular merger control, and to a lesser extent, antitrust. Previously, she served in the private office of the Executive Vice-president of the European Commission for Competition and Europe fit for Digital Age, Margrethe Vestager. In addition to her experience at the European Commission, in 2009 Lucia spent three months at the Federal Trade Commission as an exchange official. Lucia was featured amongst 26 women at the forefront of global antitrust in GCR Women in Antitrust 2016: Enforcers and in 30 in their 30s Notable Women Competition Professionals in Enforcement in 2017.

MATT COLE

CHIEF INVESTMENT OFFICER, GLOBAL HEAD OF FIXED INCOME, STRIVE

Matt Cole is Chief Investment Officer at Strive Asset Management. He is the portfolio manager of Strive's existing passive equity ETFs and will be the lead portfolio manager of Strive's upcoming actively managed Fixed Income ETFs. Prior to joining Strive, Matt was a Portfolio Manager at CalPERS, where he oversaw more than \$70 billion in Fixed Income portfolios. During his 16 years at CalPERS, the actively managed portfolios Matt directed were among the best performing in the investment industry and did not underperform their benchmark in any single year.

Matt is an industry leading voice in defense of Shareholder primacy. While at CalPERS, the funds he oversaw did not purchase a single ESG asset. Increasing pressure to incorporate non-pecuniary factors into investment decisions and Corporate Governance at CalPERS motivated Matt to leave the pension in 2022. He joined Strive Asset Management to fix the breach of fiduciary duty he saw in the financial markets. In under a year since launching their first ETF, Strive has become the leading private market solution in defense of Shareholder primacy.



THE HONORABLE NATHAN A. COOK

VICE CHANCELLOR, DELAWARE COURT OF CHANCERY

The Honorable Nathan A. Cook was sworn in as Vice Chancellor of the Court of Chancery on July 21, 2022. Prior to joining the Court, Vice Chancellor Cook was the managing partner of Block & Leviton LLP's Delaware office, where he focused his practice on litigation before the Court of Chancery.

The Vice Chancellor received both his undergraduate degree and law degree from the University of Virginia. After law school, he clerked for Vice Chancellor John W. Noble of this Court.

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ANDREW FAIR

CFIUS STAFF CHAIR AND DIRECTOR, OFFICE OF INVESTMENT REVIEW & INVESTIGATION, U.S. DEPARTMENT OF THE TREASURY

Andrew Fair is the Staff Chairperson of the Committee on Foreign Investment in the United States (CFIUS) and the Director of the Office of Investment Review & Investigation at the U.S. Department of the Treasury. Andrew has nine years of Treasury experience in total, including as Deputy Director of the Office of Investment Review & Investigation, as an International Economist in the Offices of the Western Hemisphere and of Investment Security, and through work in the Office of International Monetary Policy. Before joining the Treasury, Andrew worked for a pollster and for a management consultancy. Andrew has an M.A. in International Relations and International Economics from Johns Hopkins University School of Advanced International Studies and a B.A. in Political Science from Grinnell College.

TARIQ FANCY

AUTHOR, SECRET DIARY OF A SUSTAINABLE INVESTOR

Tariq Fancy's unique perspective and experience give him unparalleled insights into arguably the most important challenge for global capitalism today: how to merge sustainability and social imperatives with traditional business models focused purely on profit. He has served as a successful investor, hands-on turnaround specialist, and entrepreneur.

In 2018 and 2019, he served as BlackRock's first-ever Global Chief Investment Officer for Sustainable Investing. After leaving he began publishing op-eds challenging the ESG status quo, culminating in a 2021 viral essay entitled *The Secret Diary of a Sustainable Investor* that argued that business leaders are "answering inconvenient truths with convenient fantasies." The essay was called "riveting" by the Economist and sparked a growing backlash against widespread ESG industry practices that constitute greenwashing with little to no real-world impact.

Tariq's writings and talks are informed by practical, hands-on experience turning around businesses from Shanghai to San Diego, building and executing on profitable new investment verticals, building consensus and implementing changes across large bureaucracies, and using new data and technological methods to carefully measure and supercharge social impact. He has developed a reputation as a rare contrarian in the ESG space, an intellectually honest voice that challenges us all to step outside of our short-term incentives and targets in order to find long-term solutions that actually work. He is especially popular as a voice amongst those who believe that we need a hard-nosed, practical and honest conversation about where business is today and where it needs to go, and want to get from the optical changes and PR initiatives of the last few years (talking the talk) to the real-life results (walking the walk).



STAVROS GADINIS

PROFESSOR, UNIVERSITY OF CALIFORNIA, BERKELEY

Professor Gadinis' research examines questions in corporate law and financial regulation, both domestic and international. He is particularly interested in the interplay between companies and regulators, exploring the institutional framework for law enforcement, compliance, and risk management. In the last few years, he has focused on sustainability and social issues as an attempt to expand the scope of corporate governance. *In Corporate Law and Social Risk* (co-authored with Amelia Miazad) (2020 Vanderbilt Law Review), the focus is on stakeholder outreach as a governance system seeking to identify and address social risks for the business. In a follow-up article, *A Test of Stakeholder Capitalism* (co-authored with Amelia Miazad) they explore how corporations relied on feedback from stakeholders to address the implications of the Covid pandemic. His article *The Hidden Power of Compliance* (co-authored with Amelia Miazad) (2019 Minnesota Law Review) explores how extensive internal reporting within companies impacts the liability of board members. In *Collaborative Gatekeepers* (co-authored with Colby Mangels) (2016 Washington & Lee Law Review) he explores anti-money laundering law as a model of pro-active misconduct reporting. Gadinis' work has also traced the spread of financial standards around the world, showing how private, regulator, or government supports leads to distinct results (*Three Pathways to Global Standards*, 2015 *American Journal of International Law*). Gadinis has argued that systemic risk reforms introduced after the 2008 financial crisis has resulted in increasing the role of political appointees over independent regulators in the oversight of the financial system (2012 *California Law Review*).

Before entering into academia, Gadinis practiced corporate law for four years in Europe. Gadinis completed his S.J.D. at Harvard in May 2010. He also holds an LL.M. degree from the University of Cambridge (UK), and a law degree from Aristotle University, Greece.

ERIK GERDING

**DIRECTOR, SEC DIVISION OF CORPORATION FINANCE,
U.S. SECURITIES AND EXCHANGE COMMISSION**

Erik Gerding is Director of the Division of Corporation Finance at the U.S. Securities and Exchange Commission. He joined the SEC from the University of Colorado School of Law, where he is a Professor of Law. He was previously on the law faculty at the University of New Mexico and taught as a visiting professor at the University of Georgia. Erik practiced in the New York and Washington, DC offices of Cleary Gottlieb. He is the author of *Law, Bubbles, and Financial Regulation* (Routledge 2014).



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DAVID SINGH GREWAL

PROFESSOR, UNIVERSITY OF CALIFORNIA, BERKELEY

David Singh Grewal is Professor of Law at UC Berkeley School of Law. His teaching and research interests include legal and political theory; intellectual history, particularly the history of economic thought; global economic governance and international trade law; intellectual property law and biotechnology; and law and economics. His first book, *Network Power: The Social Dynamics of Globalization*, was published by Yale University Press in 2008. His second book, *The Invention of the Economy*, is forthcoming from Harvard University Press. He has published on legal topics in the *Harvard Law Review*, the *Yale Law Journal*, and several other law reviews, and on a variety of questions in political theory and intellectual history in several peer-reviewed journals. His public writing has appeared in the *New York Times*, the *Los Angeles Times*, the *Huffington Post*, and elsewhere. He is a member of the Board of Directors of the BioBricks Foundation and a co-founder of the *Law and Political Economy* blog. He was a Junior Fellow of the Harvard University Society of Fellows, and holds B.A. (Economics) and Ph.D. (Political Science) degrees from Harvard and a J.D. from Yale Law School.

LINA M. KHAN

CHAIRPERSON, FEDERAL TRADE COMMISSION

Lina M. Khan was sworn in as Chair of the Federal Trade Commission on June 15, 2021.

Prior to becoming head of the FTC, Khan was an Associate Professor of Law at Columbia Law School. She also previously served as counsel to the U.S. House Judiciary Committee's Subcommittee on Antitrust, Commercial, and Administrative Law, legal adviser to FTC Commissioner Rohit Chopra, and legal director at the Open Markets Institute.

Khan's scholarship on antitrust and competition policy has been published in the *Columbia Law Review*, *Harvard Law Review*, *University of Chicago Law Review*, and *Yale Law Journal*. She is a graduate of Williams College and Yale Law School.



ETHAN KLINGSBERG

PARTNER, FRESHFIELDS

Ethan Klingsberg is partner and co-head of Freshfields' US Corporate and M&A practice in New York. *The Financial Times*, *Reuters Breaking Views*, *MarketWatch*, *The New York Law Journal* and *Harvard Law School Forum on Corporate Governance* have published his op-eds and essays, and CNBC, Bloomberg TV, and The Deal podcast have featured him, on topics relating to public company boards of directors, M&A, the SEC and corporate law. Qualtrics, Google, Goldman Sachs, bp, Ericsson, Cargill, America Móvil, Hewlett Packard Enterprise, eBay, Siemens, AstraZeneca, Western Union, UPS, Saint Gobain, Stanley Black & Decker and a number of committees of independent directors are among the clients for whom he's led corporate law and M&A projects recently. He has been repeatedly named a "BTI Client Service All-Star" based on the survey of general counsels of the Fortune 1000, including most recently in 2021, a Law360 M&A "MVP," one of the top four M&A lawyers in North America for 2020 by MergerLinks, and among only 30 "Legends of 2020" by Lawdragon, as well as having been selected, for a number of different assignments, as "Dealmaker of the Year," "Dealmaker of the Week," and "Dealmaker in the Spotlight" by *The American Lawyer* and *The Deal*, and as a recipient of the Burton Award for Legal Achievement for writing on fiduciary duties. He is recognized as one of the country's leading corporate lawyers in every major guide, including Chambers Global, Chambers USA, Legal 500 US, IFLR1000 and The Lawdragon 500 (the 500 most influential lawyers in the country).

MEREDITH KOTLER

PARTNER, FRESHFIELDS

Meredith specializes in high-stakes litigation, including securities, M&A, and shareholder disputes. She represents multi-national companies, financial institutions, and their boards and management in significant securities class actions, having secured important dismissals in both federal and state courts. As major M&A transactions and board-level controversies continue to receive scrutiny, Meredith has defended companies, their management and boards, and their financial advisors in litigation relating to dozens of transactions with a cumulative value of over \$150 billion in the last six years alone. She has also played a leading role in many matters raising novel corporate governance issues.

From 1998 to 2004, Meredith served as an Assistant US Attorney in the Southern District of New York, including as Deputy Chief Appellate Attorney. Her writings on the latest developments in securities litigation have been published in the *Harvard Law School Forum on Corporate Governance* and other outlets.

Meredith has been recognized by *Chambers* and *The Legal 500* for Securities Litigation, as a Hall of Fame Lawyer for M&A Litigation by *The Legal 500*, and as a National Practice Area Star for Securities Litigation by *Benchmark Litigation*. She is also included on *Benchmark's* Top 250 Women in Litigation list and *Lawdragon's* Leading Lawyers list.



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PRASAD KRISHNAMURTHY

PROFESSOR, UNIVERSITY OF CALIFORNIA, BERKELEY

Prasad Krishnamurthy joined the Berkeley Law Faculty in 2010. Prasad is a graduate of Yale Law School, where he served as Essays Editor on the *Yale Law Journal*. He holds an M.A. and Ph.D. in economics from U.C. Berkeley and an M.A. in political philosophy from the University of Chicago. He has taught at the National Academy of Legal Studies and Research (NALSAR) in Hyderabad, India as a Yale Law School Reubhausen Fellow. Prior to law school, Prasad was a social worker at Legal Aid Foundation of Los Angeles and taught mathematics at Dominguez High School in Compton, CA.

Prasad's research and teaching interests include financial regulation, antitrust and competition policy, law and economic development, and distributive justice. Prasad's research seeks to empirically analyze legal rules and institutions and to develop the normative implications of empirical research for law and policy. Prasad holds a JD from Yale Law School and a PhD from UC Berkeley. His publications can be found on his personal webpage.



IRENE LIU

EXECUTIVE IN RESIDENCE, BERKELEY LAW EXECUTIVE EDUCATION

Irene Liu is an Executive in Residence at UC Berkeley, School of Law and the founder of Hypergrowth GC, an advisory that empowers GCs and executives for hypergrowth.

She is also a regular speaker on topics ranging from government engagement strategies, M&A, privacy, and AI to diversity and inclusion. She is a frequent writer and contributor to the Thomson Reuters Institute and hosts the "Hypergrowth GC" video series on Luminare+.

Prior to going in-house, Irene worked at the U.S. Department of Justice, Antitrust Division, and the Federal Trade Commission in the Bureau of Consumer Protection. She gained extensive international policy, privacy, and compliance experience while overseeing BlackBerry's global law enforcement compliance team and at Lookout, an enterprise mobile security company.

Irene was the Chief Financial and Legal Officer of Hopin, a leading community engagement platform, where she oversaw legal, finance, policy, and trust & safety teams. She was also the General Counsel of Checkr, a provider of modern background checks. At Checkr, she managed legal, compliance, policy, finance, and customer education teams.

Irene has received recognition as General Counsel of the Year by Corporate Counsel, Top 50 Women Lawyer at the National Diversity and Leadership Conference, and In-house Leader by *L.A. Times*. She has spoken at academic institutions, government hearings, and leading industry conferences, including *Fortune's* Most Powerful Women Next Gen Conference, the Federal Reserve, and a Federal Trade Commission public hearing.

Irene received her J.D. from the University of California, Berkeley School of Law, and her B.A. from Mount Holyoke College.

JENN MELLOTT

PARTNER, FRESHFIELDS

Jenn is jointly based in our Washington DC and Brussels offices, and advises clients on multi-national transactions and other competition matters.

Jenn's dual location makes her exceptionally well placed to advise on a range of US, EU and international antitrust law issues. She advises on all aspects of US and EU competition law, including merger control, antitrust compliance counselling, antitrust litigation and behavioural investigations. She has extensive experience representing clients in complex Second Request and Phase II merger control proceedings and cartel investigations in the US, EU, and UK.

Jenn has experience advising clients in various industry sectors, including pharmaceutical and life sciences, telecommunications, technology, industrials, and financial sponsors.



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AIMEN MIR

PARTNER, FRESHFIELDS

Aimen is partner in the Washington D.C. office of Freshfields and heads the firm's practice related to the CFIUS. As a core member of the firm's national security practice, Aimen also advises clients on technology transfer policy, export control matters, and other national security and foreign policy-based regulations affecting international business transactions.

Prior to joining Freshfields, Aimen managed the CFIUS review process for eight years, first as CFIUS Staff Chair and then as Deputy Assistant Secretary for Investment Security at the Department of the Treasury. In these roles, Aimen coordinated review, consensus, and final action by the multi-agency committee in over 1,000 transactions across all sectors of the economy. He also served as the principal U.S. government liaison with partner governments on foreign investment review issues, the principal liaison with Congress on CFIUS, and played a leading role in shaping and negotiating the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), the most significant expansion of CFIUS's powers in 30 years. During his time in government, Aimen also served as counsel in the National Security Division of the U.S. Department of Justice.

ANGELI PATEL

EXECUTIVE DIRECTOR, BERKELEY CENTER FOR LAW AND BUSINESS

Angeli Patel is the Executive Director of the Berkeley Center for Law and Business. She is also a Lecturer at Berkeley Law for the Business in Society and the Sustainable Capitalism & ESG Executive Education course. Previously, Angeli was an attorney in the Sustainability & ESG Advisory Practice at Paul, Weiss, Rifkind, Wharton & Garrison LLP in San Francisco, where she advised clients on the governance of climate and social risks. Angeli has also held an advisory role at the UN Global Compact Network Australia focused on corporate sustainability matters. Prior to her legal career, Angeli was at The White House's Office of Management and Budget in the Obama Administration and served as a policy advisor at the Ministry of Finance in the Government of Chile. In addition to her career in law and government, Angeli is an adviser to Mandala, a mental health and DEI startup, and launched her own puzzle company for women of color in 2021.



ANNE SIMPSON

GLOBAL HEAD OF SUSTAINABILITY, FRANKLIN TEMPLETON

Anne Simpson is Global Head of Sustainability for Franklin Templeton, reporting to the President and CEO. In this newly created role, Ms. Simpson is responsible for driving the company's strategic direction on stewardship, sustainability and ESG investment strategy globally, while fostering best practices within the firm's autonomous specialist investment managers. She serves as the firm's primary spokesperson on matters related to sustainability and participates in industry engagement initiatives and advocacy activities with policy makers and regulators.

Ms. Simpson joined Franklin Templeton in 2022, bringing over 35 years of sustainable investment and academic expertise as well as extensive experience in the international regulatory and policy arena. She is a Visiting Fellow at Oxford University appointed by the Chancellor and teaches at University of California, Berkeley Haas Business School as a Lecturer in Sustainable and Impact Finance. In addition, Ms. Simpson is an advisory council member for the Official Monetary Financial Institutions Forum, a board member at Ceres, serves on the Leadership Council for the Robert F. Kennedy Center for Justice and Human Rights and on the steering committee of Climate Action 100+. She has previously served on the U.S. Securities and Exchange Commission's Investor Advisory Committee, the Public Company Accounting Oversight Board's Investor Advisory Group and the International Financial Reporting Standards Advisory Council.

Prior to joining FT, Ms. Simpson was with the California Public Employees Retirement System (CalPERS), one of the largest asset owners in the world, where she served as Managing Investment Director for Board Governance & Sustainability.

In 2019, *Time Magazine* named Ms. Simpson as one of the 15 women leading the global fight on climate change. In 2020, she was named one of the 100 Most Influential Women in US Finance by Barron's.

She graduated from Oxford University in the United Kingdom, where she studied Politics, Philosophy and Economics, received bachelor's and master's degrees and was a Slater Fellow at Wellesley College, Massachusetts.

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