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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

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IN THE MATTER OF DETERMINING) Order No.: S-17-2224-18-CO01
Whether there has been a violation of the)
Securities Act of Washington by:) CONSENT ORDER AS TO JERRY A.
) SCHOLTEN AND ICON ORGANICS INC.
Kerry L. SimsHauser;)
Aardvark Organics Inc.;)
Aqua Vita, LLC;)
Jerry A. Scholten;)
ICON Organics Inc.;)
)
Respondents)

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INTRODUCTION

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On October 2, 2018, the Securities Administrator of the Securities Division of the Department of Financial Institutions (“Securities Division”) issued a Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, to Impose a Fine, and to Charge Costs (“Statement of Charges”), Order Number S-17-2224-18-SC01, against Respondents Kerry L. SimsHauser; Aardvark Organics Inc.; Aqua Vita, LLC; Jerry A. Scholten; and ICON Organics Inc. Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division and Respondents Jerry A. Scholten and ICON Organics Inc. do hereby enter into this Consent Order in settlement of the matters set forth in the Statement of Charges and as alleged below. Respondents Jerry A. Scholten and ICON Organics Inc. neither admit, nor deny the Findings of Fact and Conclusions of Law as stated below.

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FINDINGS OF FACT

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Respondents

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1. Kerry L. SimsHauser (“SimsHauser”) resides in Lynden, Washington. From 2009 to 2011, SimsHauser was the President of Aardvark Organics Inc. From 2009 to 2011, SimsHauser was a managing member of Aqua Vita, LLC. In 2011, SimsHauser was the Secretary of ICON Organics Inc. SimsHauser

1 has represented to investors that he was the inventor of two organic products: a natural antibiotic named
2 GEO (or GeoCeutical) and an organic fungicide and fertilizer named pHix.

3 2. Aardvark Organics Inc. (“Aardvark”) is a Washington corporation formed on November 29,
4 1994 under the name Reel to Reel, Inc. On March 21, 2001, the company name was changed to Aardvark
5 Organics Inc. Aardvark was administratively dissolved on April 3, 2018. Aardvark had its principal place
6 of business in Lynden, Washington. Aardvark offered and sold investments and raised funds to promote the
7 production and marketing of GEO and pHix.

8 3. Aqua Vita, LLC (“Aqua Vita”) was a Wyoming limited liability company formed on June 6,
9 2003 under the name Glacier Pond LLC. On August 13, 2004, the company name was changed to Aqua
10 Vita, LLC. On August 9, 2016, Aqua Vita was administratively dissolved. Aqua Vita had its principal
11 place of business in Lynden, Washington. Aqua Vita’s stated primary business purpose was to market
12 GEO, a natural antibiotic.

13 4. Jerry A. Scholten (“Scholten”) resides in Everson, Washington. From 2010 to 2011,
14 Scholten was the President of ICON Organics Inc. During 2011 and 2012, Scholten was the President of
15 Agra Tek Humanitar Ltd.
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17 5. ICON Organics Inc. (“ICON”) was a Nevada corporation that was formed on September 21,
18 2010. ICON’s primary business purpose was to manufacture pHix, an organic fungicide and fertilizer.

19 **Related Companies**

20 6. Agra Tek Humanitar Ltd. (“Agra Tek”) was a Belize corporation that was formed on August
21 7, 2009. Originally, Agra Tek was wholly owned by Scholten and his wife. Scholten represented to
22 investors that the company would receive significant revenues from agricultural technology projects and the
23 revenues would be sheltered from U.S. federal income tax.
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1 7. EU Capital Investments Inc. (“EU Capital”) was a British Columbia corporation that was
2 formed on December 16, 2002 under the name Gem Manufacturing Inc. On January 7, 2008, the company
3 name was changed to EU Capital Investments Inc. Cheryl Ann Archibald and Michael Slamaj, a married
4 couple residing in Canada, were both officers and directors of EU Capital.

5 **Overview of Investments**

6 *Summary*

7 8. From 2009 to 2014, SimsHauser and/or Scholten offered and sold five different investments
8 totaling more than \$1.1 million to six Washington investors, four of whom were nearing retirement.
9 SimsHauser and Scholten represented that the investors would receive large returns from the sale of organic
10 products and agricultural technologies. SimsHauser and Scholten gave the investors misleading information
11 about the investments. SimsHauser and Scholten also failed to provide financial information about the issuer
12 of the investments and failed to disclose material risks of the investments.

13 *Aardvark and Aqua Vita*

14 15 9. From 2009 to 2011, SimsHauser and Aardvark offered and sold a total of \$95,000 worth of
16 Aqua Vita stock to three investors and a \$60,000 Aardvark promissory note to one investor. SimsHauser
17 gave the investors misleading financial projections and misleading offering materials. SimsHauser
18 represented that Aardvark and Aqua Vita were involved in the sale of GEO, a natural antibiotic, and pHix, an
19 organic fungicide and fertilizer. SimsHauser failed to disclose that Aardvark and Aqua Vita did not own any
20 interest in GEO or pHix. SimsHauser failed to disclose that GEO was rejected during its initial product
21 launch in Vietnam and there were never any commercial sales of GEO or pHix.

22 *ICON*

23 10. In 2011, SimsHauser and Scholten offered and sold a total of \$240,000 worth of ICON stock
24 to two investors. SimsHauser and Scholten gave the investors misleading financial projections and
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1 misleading offering materials. SimsHauser and Scholten represented that ICON would manufacture pHix,
2 but failed to disclose that ICON investors did not own any interest in pHix.

3 *AgraTek*

4 11. In 2011 and 2012, Scholten offered and sold two investors a total of \$175,000 worth of stock
5 in AgraTek, a Belize corporation that was supposed to benefit from the development of new agricultural
6 technologies. Scholten failed to provide financial statements for AgraTek. Scholten also failed to disclose to
7 the investors that AgraTek had no significant assets or business operations.

8 *EU Capital*

9 12. In 2013 and 2014, SimsHauser offered and sold three investors a total of approximately
10 \$580,000 worth of investments issued by EU Capital, a company that was supposed to finance agricultural
11 technologies with funds from European financiers. SimsHauser represented that investors would earn
12 returns of six times or fourteen times the amount they invested. SimsHauser failed to provide financial
13 statements for EU Capital or to disclose how the investor funds would be repaid. SimsHauser also failed to
14 disclose that the Chief Executive Officer of EU Capital, Michael Slamaj, had a prior criminal conviction for
15 fraudulently issuing United States Treasury bonds.
16

17 **Aardvark and Aqua Vita Stock Offering**

18 13. From approximately May 2009 through May 2011, in at least nine separate transactions,
19 SimsHauser offered and sold more than \$95,000 worth of stock to at least three Washington investors who
20 were nearing retirement. SimsHauser directed the investors to make their investment checks payable to
21 Aardvark. However, weeks later, SimsHauser provided the investors with stock certificates issued by a
22 limited liability company, Aqua Vita. SimsHauser represented to the investors that Aqua Vita was the
23 marketing company for GEO and that Aardvark was only a research and development company.
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1 14. When soliciting the investments, SimsHauser distributed product literature and provided test
2 results for GEO and pHix. SimsHauser represented that the investors would need to invest quickly because
3 the “H-Fund,” a humanitarian fund, was going to provide funding, and thereafter the investment opportunity
4 would be closed.

5 15. SimsHauser failed to disclose to the investors that he was the sole owner of the GEO and
6 pHix product formulas, and that he had never licensed the product for use by any other person or company.
7 Consequently, the investors had no ownership of the GEO or pHix product formulas. SimsHauser,
8 Aardvark, and Aqua Vita each failed to provide financial statements or disclose any information about the
9 assets and liabilities and the revenues and expenses of Aardvark and Aqua Vita.

10 16. SimsHauser failed to disclose the operating history of his companies. For example,
11 SimsHauser failed to disclose that sometime around the end of 2008, GEO was demonstrated at a product
12 launch in Vietnam. The manufacturer had added Stevia as a product flavoring without SimsHauser’s
13 authorization. The unexpected difference in taste caused potential Vietnamese customers to reject the
14 product. SimsHauser also failed to disclose that there were never any commercial sales of GEO in Vietnam.

15 17. SimsHauser provided misleading sales forecasts for pHix. In a May 28, 2009 email to a co-
16 worker who was providing information to the investors, SimsHauser stated that “The Company expects in
17 the first 12 months that demand will be somewhere around 200,000 gallons just from ‘Nam [Vietnam].”
18 Less than a week later, in a June 3, 2009 email message, SimsHauser predicted that 200,000 to 300,000
19 gallons of pHix would be sold within the first 12 months of operation in Vietnam. SimsHauser failed to
20 provide any reasonable basis for the pHix sales estimates. In fact, there were never any commercial sales of
21 pHix in Vietnam.

22 18. When soliciting at least one of the stock purchases, SimsHauser provided misleading profit
23 projections. Around December 2009, SimsHauser provided the investor with a booklet regarding pHix.
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1 The booklet included projections that indicated the demand for pHix would be 192,000 gallons per month,
2 which would result in a profit of \$960,000 per month. The booklet did not include any costs associated with
3 the product, and SimsHauser failed to provide any reasonable basis for the projected sales and profit figures.

4 19. SimsHauser sold stock to the investors for a price of 70 cents per share. SimsHauser failed to
5 disclose that the offering price was arbitrary and did not reflect the underlying book value of the issuing
6 company. In some cases, SimsHauser failed to identify the issuer of the stock.

7 20. SimsHauser, Aardvark, and Aqua Vita each failed to disclose other material risks of the
8 investments. SimsHauser, Aardvark, and Aqua Vita failed to disclose the risk of inadequate capitalization.
9 SimsHauser, Aardvark, and Aqua Vita failed to disclose the minimum required capital for completing
10 specific projects. SimsHauser, Aardvark, and Aqua Vita failed to disclose that there was no patent
11 protection for GEO or pHix. SimsHauser, Aardvark, and Aqua Vita failed to disclose that the GEO and
12 pHix product formulas were known by outside manufacturers who were not subject to any confidentiality
13 agreements. SimsHauser, Aardvark, and Aqua Vita failed to disclose the risk that GEO and pHix were
14 made for human consumption and there could be adverse product reactions that could result in product
15 liability claims against the sellers. SimsHauser, Aardvark, and Aqua Vita failed to disclose the risks of
16 doing business in a foreign country, including a lack of onsite supervision, communication barriers,
17 transportation issues, currency fluctuations, and governmental regulations.
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19 **Aardvark Promissory Note Investment**

20 21. In October 2011, SimsHauser personally solicited a Washington investor to make a \$60,000
21 loan to Aardvark for working capital. The investor was a passive investor who was relying on SimsHauser
22 and Aardvark to generate the return on the investment. To evidence the investment, Aardvark gave the
23 investor a promissory note dated October 20, 2011 that was signed by SimsHauser and the investor. The
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1 \$60,000 loan was due in full on May 1, 2012, plus \$12,000 interest (for a 20% return, or approximately 38%
2 annual interest). After the loan came due, the investor was never repaid.

3 22. As described in paragraphs 17, 18, and 22 above, SimsHauser and Aardvark failed to
4 disclose material information regarding Aardvark. SimsHauser failed to provide any financial statements
5 for Aardvark. SimsHauser and Aardvark failed to disclose any specific risks of the investment, and
6 SimsHauser and Aardvark failed to disclose the source of repayment for the Aardvark promissory note.

7 **ICON Organics Stock Offering**

8 23. From March 2011 to July 2011, SimsHauser, Scholten, and ICON offered and sold a total of
9 at least \$240,000 worth of ICON stock at \$1.20 per share to at least two Washington investors through in-
10 person solicitations.

11 24. When offering and selling the ICON stock, SimsHauser, Scholten, and ICON failed to
12 disclose financial information about ICON. SimsHauser, Scholten, and ICON failed to disclose that the
13 ICON stock price was arbitrary and did not represent the underlying book value of the company.
14 SimsHauser, Scholten, and ICON failed to disclose that ICON stock was being sold at varying prices per
15 share and that some of the stock had been issued with no consideration paid. SimsHauser, Scholten, and
16 ICON failed to provide the investors with any financial statements or financial information regarding the
17 assets and liabilities and the revenues and expenses of ICON.
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19 25. Scholten sent an ICON investor letter with a misleading estimate of the demand for pHix. As
20 President of ICON, Scholten issued a letter dated March 23, 2011. The letter indicated that sales of pHix
21 should begin in the next month, April 2011. The letter stated that there would be 37,000 available acres and
22 every 10 days, 1 quart of pHix would be used for each acre. Scholten failed to provide any reasonable basis
23 for the pHix sales estimate. In fact, no commercial sales of pHix were ever made.
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1 26. SimsHauser, Scholten, and ICON provided the investors with a misleading offering
2 document. The offering document projected pHix sales of 150,000 gallons in 2011, 250,000 gallons in
3 2012, 400,000 gallons in 2013, and 650,000 gallons in 2014, with a profit of \$5 per gallon. SimsHauser,
4 Scholten, and ICON failed to provide any reasonable basis for the sales or profit projections and no
5 commercial pHix sales were ever made. The offering document misleadingly indicated that there was a \$1
6 billion annual market for Mai Vang (a floral tree) and bonsai trees in Vietnam, without disclosing that there
7 were no sales contracts for pHix with any Mai Vang or bonsai tree growers. The offering document
8 misleadingly stated that there was an immediate demand for 710,000 gallons of pHix per year, including
9 90,000 gallons per year for Washington and Oregon cherries. SimsHauser, Scholten, and ICON failed to
10 disclose that tests by Washington State University for using pHix on cherries did not indicate any significant
11 benefits.

12 27. SimsHauser, Scholten, and ICON failed to disclose other material risks of the ICON stock
13 investments. SimsHauser, Scholten, and ICON failed to disclose the risk of inadequate capitalization.
14 SimsHauser, Scholten, and ICON failed to disclose the minimum required capital for completing specific
15 projects. SimsHauser, Scholten, and ICON failed to disclose that SimsHauser was the sole owner of pHix
16 and that SimsHauser had never licensed pHix to ICON. SimsHauser, Scholten, and ICON failed to disclose
17 that there was no patent protection for pHix. SimsHauser, Scholten, and ICON failed to disclose the need to
18 obtain required government approvals for the domestic use of pHix. SimsHauser, Scholtne, and ICON
19 failed to disclose ICON's reliance on a Vietnamese sales company that had never sold any GEO or pHix.
20 SimsHauser, Scholten, and ICON failed to disclose the risks of doing business in foreign countries,
21 including a lack of onsite supervision, communication barriers, transportation issues, currency fluctuations,
22 and governmental regulations.
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Agra Tek Stock Offering

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2 28. From November 2011 to February 2012, Scholten offered and sold a total of more than
3 \$153,000 worth of stock in Agra Tek Humanitar Ltd. to at least three Washington investors for a price of \$1
4 per share. In face-to-face meetings with investors, Scholten represented that Agra Tek would receive funds
5 from newly developed agricultural technologies that would use inflatable domes to grow plants. Scholten
6 represented that the technologies would produce food, dispose of waste, and convert waste into energy.
7 Scholten also represented that because Agra Tek was a Belize corporation, it would pay lower income taxes
8 than a domestic corporation.

9 29. Scholten and Agra Tek failed to disclose that the \$1 per share offering price was arbitrary
10 and did not reflect the underlying book value of Agra Tek. Scholten and Agra Tek failed to provide any
11 financial statements and failed to disclose Agra Tek's assets and liabilities or revenues and expenses.
12 Scholten and Agra Tek failed to disclose the equity holdings in Agra Tek and failed to disclose that Scholten
13 and his wife owned a controlling interest in Agra Tek, but had only contributed \$8,000.

14 30. Scholten and Agra Tek failed to disclose other material risks of the Agra Tek stock
15 investment. They failed to disclose the risk of inadequate capitalization. They failed to disclose the
16 minimum required capital for completing specific projects. They failed to identify the developers of the
17 proposed technology and their prior business history. They failed to disclose the intended use of the
18 investors' funds.
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EU Capital Investments Sales

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21 31. From at least August 2013 to October 2014, SimsHauser sold a total of more than \$580,000
22 worth of investments in EU Capital Investments Inc. to at least three Washington investors. Approximately
23 half of the invested funds were deposited into an ICON bank account that was controlled by Scholten and
24 SimsHauser. SimsHauser personally solicited the investors. SimsHauser claimed that the investments were
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1 supposed to return either six times the amount invested or fourteen times the amount invested within a one-
2 year period. The investors were passive investors who were relying on EU Capital to generate the return on
3 their investment.

4 32. SimsHauser provided the investors with written Investment Agreements that were signed by
5 EU Capital and its President, Cheryl Ann Archibald. The agreements stated that EU possessed specific
6 assets and financial contacts in Europe that would handle a “transaction process” that would generate a
7 profit. Some agreements recited that investor funds would be budgeted for travel expenses, without
8 providing any more specific information. According to the Investment Agreements, profits were supposed
9 to be paid to the investors in twelve monthly installments, beginning 42 days after the funds were
10 transferred from the United States to the EU Capital account in Canada.

11 33. When offering and selling the EU Capital investments, SimsHauser failed to disclose to the
12 investors that Michael Slamaj, who was Cheryl Ann Archibald’s husband and a corporate officer and
13 director of EU Capital, had a 2003 criminal fraud conviction.

14 34. SimsHauser also failed to disclose other material information relating to the EU Capital
15 investments. SimsHauser failed to disclose the specific intended use of investor funds. SimsHauser failed
16 to disclose the source of repayment for the investments. SimsHauser failed to provide any financial
17 statements for EU Capital or provide any financial information about the assets and liabilities and the
18 revenues and expenses for EU Capital.

20 **Registration Status**

21 35. Aardvark Organics Inc. and Aqua Vita, LLC are not currently registered to sell their
22 securities in the state of Washington and have not previously been so registered.

23 36. Kerry L. SimsHauser is not currently registered as a securities salesperson or broker-dealer in
24 the state of Washington and has not previously been so registered.

1
2 Based upon the above Findings of Fact, the following Conclusions of Law are made:

3 **CONCLUSIONS OF LAW**

4 1. The offer and/or sale of the investments, LLC membership interests, promissory note
5 investment, and stock described above constitute the offer and/or sale of a security as defined in RCW
6 21.20.005.

7 2. Kerry L. SimsHauser, Aardvark Organics Inc., and Aqua Vita, LLC have each violated RCW
8 21.20.140, because, as set forth in the Findings of Fact, the Respondents offered and/or sold securities for
9 which no registration is on file with the Securities Administrator.

10 3. Kerry L. SimsHauser has violated RCW 21.20.040 by offering and/or selling said securities
11 while not being registered as a securities salesperson or broker-dealer in the state of Washington.

12 4. Kerry L. SimsHauser; Aardvark Organics Inc.; Aqua Vita, LLC; Jerry A. Scholten; and
13 ICON Organics Inc. have each violated RCW 21.20.010, because, as set forth in the Findings of Fact, the
14 Respondents each made untrue statements of material fact or omitted to state material facts necessary to
15 make the statements made, in light of the circumstances in which they were made, not misleading.

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17 Based upon the foregoing and finding it in the public interest:

18 **CONSENT ORDER**

19 IT IS AGREED AND ORDERED that Respondents Jerry A. Scholten and ICON Organics Inc., their
20 agents and employees each shall cease and desist from violating RCW 21.20.010, the anti-fraud section of
21 the Securities Act of Washington.

22 IT IS FURTHER AGREED AND ORDERED that Respondent Jerry A. Scholten shall be liable for
23 and shall pay a fine of \$5,000. \$500 shall be paid prior to the entry of this Consent Order. The remaining
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1 \$4,500 shall be paid in installments of \$300 per month from January 15, 2019 until March 15, 2020, with
2 payments due on the 15th of each month.

3 IT IS FURTHER AGREED that if Respondent Jerry A. Scholten fails to make any monthly
4 payment, the remaining balance of the fine shall become immediately due and payable, and the Securities
5 Division may seek enforcement of the Consent Order pursuant to RCW 21.20.395.

6 IT IS FURTHER AGREED that Respondent Jerry A. Scholten shall continue to cooperate with the
7 Securities Division in this and any related investigation or hearing.

8 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

9 IT IS FURTHER AGREED that Respondents Jerry A. Scholten and ICON Organics Inc., entered
10 into this Consent Order freely and voluntarily and with a full understanding of its terms and significance.

11 IT IS FURTHER AGREED that in consideration of the foregoing, Respondents Jerry A. Scholten
12 and ICON Organics Inc. waive their right to a hearing and to judicial review of this matter pursuant to RCW
13 21.20.440 and Chapter 34.05 RCW.

14 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

15 Signed this ___2nd___ day of _____November_____, 2018

16 Signed by:

17
18
19 /s/ _____
20 Jerry A. Scholten, individually

21 Signed by:

22 Icon Organics Inc.

23
24 /s/ _____
25 Jerry A. Scholten
President

1 Approved as to form by:

2

3 /s/ _____
4 John A. Shultz, Attorney for Scholten
5 WSBA #42542

6 Signed and Entered this 13th day of November, 2018

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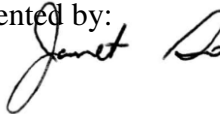
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11 William M. Beatty
12 Securities Administrator

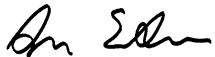
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14 Approved by:

15 Presented by:
16 

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19 Suzanne Sarason
20 Chief of Enforcement

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22 Janet So
23 Financial Legal Examiner

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25 Reviewed by:

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29 Robert Kondrat
30 Financial Legal Examiner Supervisor

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