

SEC Exemptive Order Expands Five-Business-Day Framework for Debt Tender and Exchange Offers

July 7, 2026

Background. Exchange Act Rule 14e-1(a) generally requires tender offers to remain open for at least 20 business days, and Rule 14e-1(b) requires an offer to remain open for specified periods following changes in consideration or in the percentage of securities sought. Since 1986, the SEC staff has recognized that tender offers for non-convertible debt securities may be conducted on shorter timetables if certain conditions were met.

The 2015 Letter permitted “Five Business Day Tender Offers” for non-convertible debt securities that satisfied specified conditions, including that the offer (i) be made by the issuer or a specified affiliate, (ii) be open to all holders, (iii) be for any and all securities of the subject class or series, (iv) not be conducted with a consent solicitation, (v) include withdrawal rights and (vi) be launched through immediate widespread dissemination.

The Order retains the basic five-business-day framework but updates it in light of market practice. It also aligns several features of the debt tender framework with the SEC’s [April 2026 exemptive order](#) for certain equity tender offers, particularly the focus on public dissemination and specific cutoff times for disclosure of material changes.

What Is Required for the Five-Business-Day Period. The Order grants an exemption from Exchange Act Rules 14e-1(a) and 14e-1(b) for a tender or exchange offer for any class or series of non-convertible debt securities to remain open for a minimum of five business days, so long as the offer satisfies the Order’s conditions. Among other things:

- **Eligible offeror and securities.** The offer must be made by the issuer, a direct or indirect wholly owned subsidiary of the issuer or a parent company that directly or indirectly owns 100% of the issuer and must be made for a class or series of non-convertible debt securities, regardless of rating.

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- **Consideration.** The offer may be made for cash and/or Qualified Debt Securities.¹
 - **Partial offers.** The Order permits offers for less than all of the outstanding class or series. If a partial offer is oversubscribed, securities must be taken up and paid for as nearly as may be pro rata, and the offeror must use commercially reasonable efforts to announce the proration factor by 10:00 a.m. Eastern Time on the next business day after expiration or as soon as practicable.
 - **Exchange offers.** If Qualified Debt Securities are offered, the offer must be limited to qualified institutional buyers, non-U.S. persons and/or institutions that are accredited investors within the meaning of Rule 163B(c)(2)² in a transaction exempt from registration under the Securities Act of 1933, as amended.
 - **Consent solicitations.** The offer may not be made in connection with a consent solicitation to amend the indenture or similar agreement governing the subject non-convertible debt securities where such amendment requires the consent of holders of more than a simple majority of the outstanding principal amount of the subject securities.
 - **Launch and dissemination.** The offer must be announced by a widely disseminated press release by 10:00 a.m. Eastern Time on the commencement date. The release must include the basic terms of the offer, any proration procedures and an active hyperlink to the offer materials.
 - **Material changes.** Any change in the percentage of securities sought, other than an additional two percent of the subject securities, or in the consideration offered must be widely disseminated by 9:00 a.m. Eastern Time on the third business day before expiration. Other material changes must be widely disseminated by 9:00 a.m. Eastern Time on the second business day before expiration.
 - **Withdrawal rights and payment.** The offer must provide withdrawal rights at least until the earlier of expiration and, if the offer is extended, the 10th business day after commencement and at any time after the 60th business day after commencement if

¹ “Qualified Debt Securities” means non-convertible debt securities that are substantially similar in all material respects (including but not limited to the issuer(s), guarantor(s), collateral, lien priority, covenants and other terms) to either (1) the debt securities that are the subject of the tender offer or (2) the most recent issuance of debt securities that are pari passu to the debt securities that are the subject of the tender offer, except in either case for the maturity date, interest payment and record dates, redemption provisions, and interest rate; provided that Qualified Debt Securities must have all interest payable only in cash.

² Institutional accredited investors covered include certain regulated financial institutions and investment vehicles, employee benefit plans, private business development companies, tax-exempt organizations, corporations, limited liability companies and other business entities meeting applicable asset or investment thresholds, as well as certain trusts, family offices and institutional family clients.

the offer has not been consummated. Consideration may not be paid until promptly after expiration under Rule 14e-1(c).

- **Distressed and extraordinary transactions.** The offer may not be made when a default or event of default exists under the relevant indenture or any other indenture or material credit agreement, or when the issuer is the subject of bankruptcy or insolvency proceedings or has commenced a solicitation of consents for a “pre-packaged” bankruptcy proceeding, or if the board of directors of the issuer has authorized discussions with the issuer’s creditors to effect a consensual restructuring of the issuer’s outstanding indebtedness (“Distressed Scenarios”). The Order also limits use of the framework around change-of-control and other extraordinary transactions, competing tender offers and certain concurrent issuer tender offers.

Key Changes from the 2015 Letter. The Order supersedes the 2015 Letter and similar letters relating to abbreviated offering periods for tender or exchange offers for non-convertible debt securities. The principal changes include:

- **Exemptive relief, not no-action relief.** The Order is issued by the Division acting for the Commission pursuant to delegated authority and grants an exemption from Rules 14e-1(a) and 14e-1(b) rather than merely stating that the staff would not recommend enforcement action as was the case in the 2015 Letter.
- **Partial debt tender offers are now expressly permitted.** The 2015 Letter was limited to offers for any and all of a class or series of non-convertible debt securities. The Order permits offers for less than all of the outstanding class or series, subject to pro rata acceptance if the offer is oversubscribed. This change may be particularly useful for issuers seeking to manage impending maturities, reduce leverage by a targeted principal amount or retire debt opportunistically without launching a full any-and-all tender.
- **The Qualified Debt Securities concept is more flexible.** The 2015 Letter generally required Qualified Debt Securities to be identical in all material respects to the subject securities except for specified terms and to have a longer weighted average life to maturity. The Order instead requires substantial similarity to either the subject securities or the issuer’s most recent pari passu debt issuance, while retaining the requirement that interest be payable only in cash.
- **Eligible exchange offer participants are expanded.** The Order adds institutions that are accredited investors within the meaning of Rule 163B(c)(2), in addition to qualified institutional buyers and non-U.S. persons.

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- **Certain consent solicitations may now be paired with a five-business-day offer.** The 2015 Letter prohibited offers made in connection with a consent solicitation to amend the indenture or other debt instrument governing the subject securities. The Order narrows that prohibition to amendments requiring consent of more than a simple majority of the outstanding principal amount of the subject securities. This should permit issuers to combine a five-business-day tender or exchange offer with certain majority-consent covenant or technical amendments, while keeping more significant amendments outside the abbreviated framework.
 - **Several prior conditions have been removed or simplified.** The Order does not carry forward the 2015 Letter's condition prohibiting financing with proceeds of specified senior indebtedness, the guaranteed delivery procedure or the express Form 8-K furnishing condition.
 - **Timing mechanics for material changes have been recalibrated.** The Order expresses the timing requirement as cutoff times keyed to the scheduled expiration rather than as a requirement that the offer remain open for a specified number of business days after a change. Changes in consideration or the percentage of securities sought must be communicated by 9:00 a.m. Eastern Time on the third business day before expiration, and other material changes must be communicated by 9:00 a.m. Eastern Time on the second business day before expiration. In practice, a change made after the applicable cutoff would require the offer to be extended to satisfy the Order's timing condition.
 - **Restrictions around extraordinary transactions have been recast.** The 2015 Letter did not permit an abbreviated offer made in anticipation of, in response to or concurrently with a change of control or similar extraordinary transaction. The Order recasts this limitation by providing that the five-business-day framework is unavailable for offers commenced within 10 business days after the first public announcement or consummation of a change of control or other extraordinary transaction involving the issuer, such as a merger, reorganization, liquidation or sale of all or substantially all of its consolidated assets. The Order also continues to restrict offers made in anticipation of or response to other tender offers for the issuer's securities and certain concurrent issuer tender offers. Issuers should evaluate these limitations carefully when planning liability management transactions around M&A or asset-sale activity.

Using the Order Effectively. The Order should allow debt issuers to use abbreviated tender and exchange offers more deliberately as part of broader capital structure management. The following considerations may be particularly important in practice:

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- **Use the Order to reduce execution risk in refinancing transactions.** A five-business-day period can help issuers coordinate a tender or exchange offer with a new financing and reduce exposure to market and interest-rate fluctuations. Where Qualified Debt Securities are used as consideration, the Order's broader definition may make it easier to structure exchange offers that align with the subject securities or the issuer's most recent pari passu debt issuance.
 - **Consider partial tenders for targeted balance sheet objectives.** The ability to conduct partial tender offers is one of the Order's most significant changes. Issuers may use partial tender offers to retire a targeted amount of near-term maturities, improve leverage metrics, reduce interest expense or address concentrated holdings. Because oversubscribed partial offers must be prorated, issuers should describe the proration procedures in the offer materials and use commercially reasonable efforts to announce the proration factor promptly following expiration.
 - **Pair abbreviated offers with appropriately limited consent solicitations.** The Order creates a path for five-business-day offers to be used with consent solicitations that require no more than a simple majority approval. This may be useful for covenant clean-up amendments, technical amendments or other limited changes. More significant amendments that require supermajority approval remain outside the relief.
 - **Preserve flexibility while avoiding distressed transaction fact patterns.** The Order remains unavailable where a default or event of default exists under the relevant indenture or any other indenture or material credit agreement or where the issuer is in Distressed Scenarios. Issuers in Distressed Scenarios should not assume the five-business-day framework is available and should consider whether a traditional tender offer, privately negotiated exchange or other alternative is necessary.
 - **Do not treat the Order as a substitute for disclosure analysis.** The Order addresses Rules 14e-1(a) and 14e-1(b) only. Offerors remain responsible for complying with the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 10(b) and 14(e) of the Exchange Act and for providing adequate disclosure. The abbreviated timetable makes clear disclosure, consistent communications and careful coordination among the issuer and its advisers even more important.

Conclusion. The Order represents a meaningful modernization of the abbreviated debt tender offer framework. By replacing the prior no-action framework with exemptive relief and expanding the transactions eligible for a five-business-day offer period, the Order provides issuers with greater flexibility in structuring liability management

transactions while preserving key investor-protection safeguards. As a result, the Order should facilitate the use of abbreviated debt tender and exchange offers in a broader range of ordinary-course refinancing and liability management transactions.

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Please do not hesitate to contact us with any questions.



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