

APRIL 27, 2026

## SEC ISSUES EXEMPTIVE RELIEF PERMITTING 10 BUSINESS DAY TENDER OFFERS FOR EQUITY SECURITIES

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On April 16, 2026, the Division of Corporation Finance (the “Division”) of the Securities and Exchange Commission (“SEC”) issued an exemptive order allowing certain qualifying tender offers for equity securities to remain open for a minimum of 10 business days, instead of the 20 business days required under the Securities Exchange Act of 1934 (the “Exchange Act”). The exemptive order applies to qualifying tender offers for equity securities of public and private companies and describes the following three categories of equity tender offers:

1. Tender Offer for Equity Securities of Reporting Companies Subject to Regulation 14D;
2. Tender Offer for Equity Securities of Reporting Companies Subject to Rule 13e-4; and
3. Tender Offer for Equity Securities of Non-Reporting Companies.

The Division stated that the exemptive relief aims to address market inefficiencies, better reflect technological advances, and reduce exposure to market fluctuations.

We provide some background and discuss key aspects of the exemptive order below.

### BACKGROUND

Exchange Act Rules 13e-4(f)(1)(i) and 14e-1(a) each require tender offers to remain open for at least 20 business days. These rules were put in place following the 1968 Williams Act as a response to abusive tender offer practices of the past. After nearly six decades of developments in financial information technology and capital markets practices, the 20-business day rule has come to be seen by market participants as unnecessarily restrictive in certain scenarios. In fact, in a series of no-action letters commencing in 1986, the SEC has granted relief from the 20-business day rule for certain tender offers for debt securities meeting certain criteria, including those set forth in the Division’s January 2015 no-action letter for abbreviated tender offers, which allowed five business day tender offers and exchange offers for non-convertible debt securities (the “2015 No-Action Letter”).

In contrast, the SEC’s latest tender offer relief applies to *equity securities*, which Section 3(a)(11) of the Exchange Act defines to include both common stock as well as securities convertible into common stock, such as convertible bonds.

The equity tender offer relief applies to three classes of tender offers, explained in the chart below. The classification into three classes of tender offers is based on: (1) whether the issuer of the subject securities is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act (*i.e.*, a reporting company) or it is not (*i.e.*, a non-reporting company), and (2) if such issuer is a reporting company, whether that tender offer is subject to Regulation 14D or Rule 13e-4 under the Exchange Act.

Regulation 14D applies to a tender offer by a third party offeror that, upon completion, would result in such offeror owning more than five percent of an issuer’s class of equity security registered under Section 12 of the Exchange Act. On the other hand, Rule 13e-4 applies to tender offers by an issuer for its own securities.

	<b>Tender Offer for Equity Securities of Reporting Companies Subject to Regulation 14D</b>	<b>Tender Offer for Equity Securities of Reporting Companies Subject to Rule 13e-4</b>	<b>Tender Offer for Equity Securities of Non-Reporting Companies</b>
<b>Kind of Tender Offer</b>	Third Party Tender Offer	Self / Issuer Tender Offer	Self / Issuer Tender Offer
<b>Offeror</b>	Third Party (Bidder/Acquirer)	Issuer	Issuer or Issuer’s wholly owned subsidiary
<b>Issuer of Equity Securities</b>	Reporting Company (Target)  Issuer has a class of equity security registered under Section 12 of Exchange Act, or is required to file reports under Section 15(d) of Exchange Act, or is a closed-end investment company registered under Investment Company Act	Reporting Company  Issuer has a class of equity security registered under Section 12 of Exchange Act, or is required to file reports under Section 15(d) of Exchange Act, or is a closed-end investment company registered under Investment Company Act	Non-Reporting Company  Issuer must not have any class of securities registered under Section 12 of Exchange Act (i.e., not even securities of a class not subject to the offer) and must not be required to file reports under Section 15(d) of Exchange Act
<b>“Friendly” M&amp;A Deal or Business Combination?</b>	Yes, the offer must be made pursuant to the terms of a negotiated merger or similar business combination agreement between the offeror and subject company (i.e., no hostile or unsolicited offers)	Not applicable	Not applicable
<b>Target Recommendation</b>	Subject company (Target) must file and disseminate Schedule 14D-9 no later than 5:30 pm, Eastern time (“ET”), on the first business day following	Not applicable	Not applicable

	<b>Tender Offer for Equity Securities of Reporting Companies Subject to Regulation 14D</b>	<b>Tender Offer for Equity Securities of Reporting Companies Subject to Rule 13e-4</b>	<b>Tender Offer for Equity Securities of Non-Reporting Companies</b>
	commencement date of tender offer		
<b>Must Offer be for Any and All outstanding securities of Issuer?</b>	Yes, the offer must be <i>for all</i> outstanding securities of the subject class	No, the offer must be <i>for less than all</i> outstanding securities of the subject class	No minimum or maximum.
<b>Consideration</b>	Only Cash at a fixed price. (i.e., cannot have offers with all stock, or mixed cash and stock, or variable prices, as consideration)		
<b>Disqualification: Going Private Transaction</b>	The offer cannot be subject to Rule 13e-3 (going private transaction).		Not Applicable (Issuer is already a private company)
<b>Disqualification: Tier II Cross-Border Tender Offers</b>	The offer may not be made in reliance on the cross-border exemptions set forth in Rule 14d-1(d) (Tier II cross border tender offers).	The offer may not be made in reliance on the cross-border exemptions set forth in Rule 13e-4(i) (Tier II cross border tender offers).	Not Applicable
<b>Disqualification: Competing Tender Offers</b>	At the time the offer is publicly announced, the subject securities may not be subject to a previously announced or pending tender offer by another offeror.  If another offer is publicly announced following commencement, the initial offer made in reliance on the exemptive relief must be extended such that it is open for <i>at least 20 business days</i> from the date of commencement.  (Accordingly, a concurrent tender offer disqualifies the subject offer from the exemptive relief)		Not Applicable
<b>Immediate Widespread Dissemination</b>	The offer must be announced in a press release issued through a widely disseminated news or wire service, which includes the basic terms of the offer (such as the identity of offeror, class of equity security sought to be		Not Required

	<b>Tender Offer for Equity Securities of Reporting Companies Subject to Regulation 14D</b>	<b>Tender Offer for Equity Securities of Reporting Companies Subject to Rule 13e-4</b>	<b>Tender Offer for Equity Securities of Non-Reporting Companies</b>
	purchased, amount of consideration offered, and expiration date of offer), and contains an active hyperlink to a website address where security holders may access tender offer materials, letter of transmittal, if any, and other documents relating to the offer, in each case by <i>10 a.m. ET</i> on the date of commencement.		
<b>Additional Notice for Post-Commencement Changes to Percentage of Equity Securities Sought or Consideration Offered in the Offer</b>	Any (i) increase or decrease in the percentage of the subject securities sought in the tender offer, other than the acceptance for payment of an additional amount of securities not to exceed 2% of the subject securities, or (ii) change in the consideration offered, must be communicated <i>by press release or other public announcement that is widely disseminated</i> no later than <i>9 a.m. ET</i> on the <i>fifth business day</i> before expiration of the offer.	Same requirement except that the notice need not be communicated via a press release or other widely disseminated public announcement	
<b>Additional Notice for Other Material Post-Commencement Changes (other than change in equity securities sought or consideration offered)</b>	Any such change must be communicated by press release or other public announcement that is widely disseminated no later than <i>9 a.m. ET</i> on the <i>second business day</i> before expiration of the offer.	Same requirement except that the notice need not be communicated via a press release or other widely disseminated public announcement	

## PRACTICAL CONSIDERATIONS

Overall, the Division’s exemptive order is a welcome development for market participants in tender offers for equity securities of public and private companies. The shortening of the minimum offering period affords bidders and issuers greater flexibility in structuring their equity tender offers and enables faster deal execution, particularly in the context of friendly merger or business combination transactions as well as issuer share repurchases, while at the same time minimizing exposure to market fluctuations or volatile stock price swings during the period from commencement to completion of the tender offer. The relief is also a recognition that technological advances, such as in information technology and other means of immediate widespread dissemination, can provide investors meaningful access to material information

that facilitates informed investment decisions, affording participants sufficient time to make a decision as to whether or not to tender securities owned.

Below we offer some thoughts on the immediate practical implications of the exemptive order and explore a few areas for consideration and possible further relief.

	<b>Tender Offer for Equity Securities of Reporting Companies Subject to Regulation 14D</b>	<b>Tender Offer for Equity Securities of Reporting Companies Subject to Rule 13e-4</b>	<b>Tender Offer for Equity Securities of Non-Reporting Companies</b>
<b>Immediate Practical Implication</b>	<p>This class of relief will be useful in friendly, negotiated, all-cash, tender offers for the acquisitions of public companies, <i>i.e.</i>, where an acquirer and its target enter into a merger agreement and agree on terms relating to the conduct of the tender offer (e.g., the requirement to file Schedule 14D-9, which, in a friendly offer would generally be filed by the target company expressing its support of the offer). The relief will most likely facilitate greater use of two-step mergers (where the front end tender offer to acquire control can now be executed on an accelerated basis, followed by a back-end “medium form” or short form merger to squeeze-out non-tendering security holders).</p>	<p>This class of relief will be useful for public companies that seek to purchase their own shares and return capital to shareholders. The registered tender offer can be made, from time to time, as an alternative to or in addition to, other means of issuer repurchases, such as open-market stock buybacks or accelerated share repurchase programs.</p> <p>However, it is important to note that this class of relief is only allowed for partial offers, <i>i.e.</i> offers of <i>less than all</i> outstanding securities of the subject class. Also, the relief only relaxes the minimum offering period requirement, hence, public companies will still continue to be subject to the other applicable requirements of Rule 13e-4, including the preparation and filing of a Schedule TO with the SEC that meets specific disclosure requirements.</p>	<p>This class of relief will be useful for private companies conducting tender offers intended primarily as a liquidity opportunity for their shareholders, including employees who are compensated in stock.</p> <p>Note that the relief allows the offeror to be the issuer or the issuer’s wholly owned subsidiary, hence private company issuer and subsidiary qualifying tender offers are covered.</p>

- **Tailored Exemption; Other Equity Tender Offer Rules and Federal Securities Laws Continue to Apply:** It is important to remember that the Division’s order only provides exemptions from Exchange Act Rules 13e-4(f)(1) and 14e-1(a) and (b) and shortens the applicable minimum offering period subject to the qualifying tender offer conditions we have described. This means other provisions applicable to tender offers for equity securities continue to apply. The Division stated that offerors conducting these tender offers are responsible for complying with all applicable provisions of the federal securities laws and should consider, in particular, the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 10(b) and 14(e) of the Exchange Act and the rules thereunder.
- **Closing Public Company Acquisitions Faster.** For public company target companies incorporated in Delaware (and certain other jurisdictions), the codification of the “medium form” merger (in which a squeeze-out merger can be effected immediately after the consummation of a tender offer that results in the acquirer owning shares sufficient to approve the merger if a stockholder meeting were to be held) has increased the use of two-step merger structures in friendly M&A deals. Current public company M&A practice particularly favors using a two-step merger structure for friendly, cash transactions that do not require regulatory approval (other than Hart-Scott-Rodino clearance for which a second request is not expected). Under current SEC rules, the principal advantage of the two-step merger structure is that the transaction can be completed in approximately half the time as a transaction structured as a one-step merger (in which the target company files a proxy statement and holds a shareholder meeting to approve the transaction). Under the exemptive relief, the speed advantage of a two-step merger is enhanced so that the transaction can potentially be closed two weeks faster than under the current SEC rules. Closing public company acquisitions faster is always favored by public company transaction parties because it increases closing certainty by reducing risk to the target company from adverse changes to its business and market factors during the interim period and reducing interloper risk for the acquirer.
- **How about Convertible Bonds?** The exemptive relief does not specifically mention convertible debt securities. But note that the exemptive order adopts the “equity security” definition under Section 3(a)(11) of the Exchange Act and Exchange Act Rule 3a-11. This means that, for purposes of the equity tender offer rules and the exemptive order, securities convertible into common stock, such as convertible bonds, are covered. However, overall, we expect that the exemptive relief will have limited application in the way tender offers for convertible bonds are currently conducted. To illustrate:

  - (1) The three categories of qualifying tender offers under the exemptive order all require that the consideration be *all cash at a fixed price*. Hence, tender offers with all stock, or mixed cash and stock, or variable prices, as consideration, will not qualify. This means exchange offers (where new securities are exchanged for existing securities) for convertible bonds (which has seen a significant rise in the past few years, including in the case of distressed situations) are not covered by the relief.
  - (2) The first category of relief (Tender Offer for Equity Securities of Reporting Companies Subject to Regulation 14D) would likely not be relevant to most convertible bond tender offers because this relief contemplates third party registered tender offers for public company acquisitions conducted on a friendly basis. The relief contemplates a particular situation for tender offers conducted by an acquirer for the target’s equity securities in an M&A deal context. In contrast, most convertible tender offers are self-tenders, not third party tenders, and are conducted for various reasons (e.g., liability management, distressed situation, extension of debt maturity profiles etc.) outside of the M&A context. And even in a merger

situation, the relief would have little application or use, because existing provisions in a typical convertible bond indenture would address the same. This is because, in most convertible bond indentures, such a merger or acquisition of the issuer public company target would constitute a “fundamental change” or “make-whole fundamental change,” which would provide the holders of such securities a “put” right (requiring the issuer to repurchase its securities at par) or the right to convert their bonds into shares at a higher make-whole conversion rate, resulting in additional shares.

- (3) The third category of relief (Tender Offer for Equity Securities of Non-Reporting Companies) would likely not be relevant to most convertible bond tender offers because this relief requires the issuer to be a non-reporting company, with no securities registered under Section 12 of the Exchange Act. In contrast, in most convertible debt issuances, issuers are public companies that have their underlying common stock listed on an exchange and registered under Section 12(b) of the Exchange Act, and they are subject to Section 15(d) reporting requirements.
- (4) The second category of relief (Tender Offer for Equity Securities of Reporting Companies Subject to Rule 13e-4) would be useful to issuers of convertible bonds who wish to conduct registered partial tender offers (i.e., offers of *less than all* outstanding convertible bonds), and are otherwise willing to comply with and be subject to the other applicable requirements of Rule 13e-4, including the preparation and filing of a Schedule TO with the SEC that meets specific disclosure requirements. In this regard, public company issuers conducting registered self-tenders may consider whether the benefits of having a shortened minimum offering period allowing partial tenders outweigh waiting an additional 10 business days to conduct registered self-tenders for up to any and all its convertible bonds.

In any event, these qualifying tender offers do not preclude or prevent the use of other methods of unregistered tender or exchange offers, subject to compliance with applicable laws. For instance, a number of tender offers and exchange offers for convertible bonds are conducted on an unregistered basis such as in reliance on Section 4(a)(2) or Section 3(a)(9) of the Securities Act of 1933.

## LOOKING FORWARD

The Division’s exemptive order on equity tender offers is a significant development in this area, consistent with the SEC’s goal of facilitating capital formation and protecting investors. The relief will add a powerful arrow to the quiver of issuers seeking to conduct stock buybacks or provide liquidity to employees and of acquirers and target companies looking to accelerate M&A deal execution timelines and processes in friendly, negotiated business combinations.

However, there are additional areas where further exemptive relief or clarification from the Division may prove beneficial for market participants. As outlined by the New York City Bar Association in its [April 10, 2026 letter](#) (the “City Bar Letter”) exemptive relief with respect to certain tender offer requirements under Section 14(d) and Section 14(e) of the Exchange Act may be warranted.

In particular, the City Bar Letter notes that there are certain instruments that fall into the definition of *equity securities* for purposes of the tender offer rules, but are in substance really treated as *debt* by market participants, such as non-convertible preferred stock, certain regulatory capital instruments and, subject to compliance with certain tests, convertible debt. Hence, treating such securities as debt for purposes of the tender offer rules would better reflect market reality and deal substance.

The City Bar Letter also recommends revisiting and updating a number of the conditions or requirements outlined in the 2015 No-Action Letter, to allow certain debt tender offers to become eligible under the five business day abbreviated tender offer relief.



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