

## LIABILITY MANAGEMENT RELATED DEVELOPMENTS

- The Division of Corporation Finance of the SEC recently 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 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:
  - Tender Offer for Equity Securities of Reporting Companies Subject to Regulation 14D;
  - Tender Offer for Equity Securities of Reporting Companies Subject to Rule 13e-4; and
  - Tender Offer for Equity Securities of Non-Reporting Companies.
- The SEC staff has been informally discussing potential changes to the 14E rules for debt tender offers
  - We anticipate that these may take the form of further exemptive relief
  - The New York City Bar Association and the Credit Roundtable recently submitted letters outlining their respective views with respect to the 14E rules

# SEC RELIEF FOR EQUITY TENDER OFFERS

	Tender Offer for Equity Securities of Reporting Companies Subject to Regulation 14D	Tender Offer for Equity Securities of Reporting Companies Subject to Rule 13e-4	Tender Offer for Equity Securities of Non-Reporting Companies
<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.  (So 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 commencement date of tender offer	Not applicable	Not applicable

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<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  (So 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

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<b>Disqualification: Competing Tender Offers</b>	<p>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.</p> <p>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 at least 20 business days from the date of commencement.</p> <p>(In other words, a concurrent tender offer disqualifies the subject offer from the exemptive relief).</p>		Not Applicable
<b>Immediate Widespread Dissemination</b>	<p>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 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 10 a.m. ET on the date of commencement.</p>		Not Required

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	Tender Offer for Equity Securities of Reporting Companies Subject to Regulation 14D	Tender Offer for Equity Securities of Reporting Companies Subject to Rule 13e-4	Tender Offer for Equity Securities of Non-Reporting Companies
<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 by press release or other public announcement that is widely disseminated no later than 9 a.m. ET on the fifth business day 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 9 a.m. ET on the second business day 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