

JULY 2, 2026

SEC ISSUES EXEMPTIVE ORDER EXPANDING AVAILABILITY OF FIVE-BUSINESS DAY TENDER OFFER RELIEF FOR NON-CONVERTIBLE DEBT SECURITIES

On June 30, 2026, the Office of Mergers and Acquisitions of the Division of Corporation Finance (the "Division") of the Securities and Exchange Commission ("SEC") issued an exemptive order (the "2026 Exemptive Order") allowing certain qualifying tender or exchange offers for non-convertible debt securities to remain open for a minimum of five business days, instead of the 20 business days required under the Securities Exchange Act of 1934 (the "Exchange Act"). The 2026 Exemptive Order supersedes all prior SEC relief related to abbreviated offering periods in tender and exchange offers for non-convertible debt securities, including the Division's January 2015 no-action letter (the "2015 No-Action Letter"), which permitted certain tender and exchange offers for non-convertible debt securities to remain open for a minimum period of only five business days. The 2026 Exemptive Order expands and enhances the abbreviated tender offer relief afforded by the 2015 No-Action Letter, including relaxing or eliminating some of the prior qualifying conditions. An issuer, its wholly owned subsidiary, or a parent that owns 100% of the capital stock of such issuer, can conduct tender and exchange offers for non-convertible debt securities using a five-business-day minimum offer period, as long as certain conditions are met.

The Division stated that the exemptive relief aims to address market inefficiencies, better reflect technological advances, reduce exposure to market and interest rate fluctuations, and facilitate the availability of tender offers, consistent with the SEC's investor protection goals.

This debt tender offer exemptive relief follows an earlier exemptive order, issued by the Division last April, that allows 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 Exchange Act, which we address in a [prior alert](#).

Below we provide some background and discuss key aspects of the 2026 Exemptive Order, as well as compare the 2026 Exemptive Order with the 2015 No-Action Letter in a table and a specific blackline.

BACKGROUND

Exchange Act Rule 14e-1(a) requires debt tender offers to remain open for at least 20 business days. In addition, under Exchange Act Rule 14e-1(b), an increase or decrease in the percentage of the class of securities sought, the consideration offered or the dealer's solicitation fee, requires a debt tender offer to remain open for at least 10 business days from the date the notice of such change is first sent to security holders. These rules were put in place following the 1968 Williams Act as a response to abusive tender offer practices. 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 staff

has granted relief from the 20-business-day rule for certain debt tender offers meeting specific criteria, including those set forth in the 2015 No-Action Letter for abbreviated tender offers. Debt capital markets participants and liability management practitioners have heavily relied on the 2015 No-Action Letter in conducting tender or exchange offers for non-convertible debt securities, but have found certain features of the 2015 No-Action Letter unduly limiting or restrictive.

THE 2026 EXEMPTIVE ORDER

Key Changes

The 2026 Exemptive Order grants similar exemptive relief from Exchange Act Rules 14e-1(a) and (b), but introduces several key changes and enhancements to the 2015 No-Action Letter:

- **Partial Tender Offers Allowed.** The new relief eliminates the condition that abbreviated tender or exchange offers be made for “*any and all*” outstanding debt securities of the subject class or series. Instead, partial offers or capped offers are now permitted, subject to proration and the offeror publicly announcing the proration factor used, by 10 a.m. Eastern time (“ET”) on the next business day following the offer’s expiration date.
- **Institutional Accredited Investors Can Participate in Unregistered Exchange Offers; No Need for Concurrent Cash Tender Offers to Retail Holders.** The new relief eliminates the condition that the offer be open to all record and beneficial holders of the subject debt securities. Similar to the 2015 No-Action Letter, exchange offers in which Qualified Debt Securities (“QDS”) are offered may be made, in a transaction exempt from the Securities Act’s registration requirements, to qualified institutional buyers (“QIBs”) under Rule 144A and to non-US persons in reliance on Regulation S. However, the new relief expands the universe of eligible exchange offer participants to also include institutional accredited investors (“IAIs”) within the meaning of Rule 163B(c) of the Securities Act. In addition, the new relief eliminates the requirement for a concurrent cash tender offer to retail investors. Under the old rule, if there are holders who are neither QIBs nor non-US persons that can rely on Regulation S (and hence, disqualified to receive QDS in the unregistered exchange offer), then the offeror must give such holders a concurrent option to be paid in cash approximating the QDS value. This is no longer required under the new relief.
- **Concurrent Offer with Simple-Majority (or Less than Simple-Majority) Consent Solicitation Permitted.** Under the old rule, the presence of a consent solicitation in a tender offer disqualifies the offeror from relying on the five-business-day offering period. The new relief replaces this blanket bar against a concurrent tender offer and consent solicitation, with a narrower bar: a consent solicitation can now be conducted concurrently with a tender offer, as long as the proposed amendment does not require the consent of more than a simple majority of the principal amount of the subject debt securities.
- **Modifications to Qualified Debt Securities Definition.** Under the old rule, to qualify as QDS, the non-convertible debt securities exchanged in the offer must be *identical* in all material respects (including as to issuer, guarantor, collateral, lien priority, covenants, etc.) to the existing debt securities subject to the offer (except for maturity date, interest, record dates, etc.). Under the new relief, to qualify as QDs, the non-convertible securities exchanged must be *substantially similar* in all material respects to *either* the existing subject debt securities or the issuer’s *most recent issuance of debt securities that are pari passu to the* debt securities subject to the offer. In addition, the old rule required the non-convertible debt securities exchanged to have a weighted

average life to maturity that is longer than the debt securities subject of the offer. This is no longer required under the 2026 Exemptive Order.

- **Financing With Senior Indebtedness Restriction Eliminated.** Under the old rule, an offer could not be financed with the proceeds of any “Senior Indebtedness,” which the 2015 No-Action Rule defined as indebtedness incurred to finance all or part of the consideration in the tender offer (excluding existing credit or debt facility borrowings) if such indebtedness (i) has obligors, guarantors or collateral (or a higher priority with respect to collateral) that the subject debt securities do not have; (ii) has a weighted average life to maturity less than that of the subject debt securities; or (iii) is otherwise senior in right of payment to the subject debt securities. The 2026 Exemptive Order eliminates this restriction.
- **Launch Form 8-K Requirement Eliminated.** Under the old rule, if the issuer or offeror is a reporting company under the Exchange Act (including a “voluntary filer”), it must furnish the press release announcing the launch of the offer in a Current Report on Form 8-K filed with the SEC prior to 12:00 noon, ET, on the first business day of the offer. The 2026 Exemptive Order eliminates this condition.
- **Guaranteed Delivery Procedures Eliminated.** Under the old rule, the offer must put in place guaranteed delivery procedures that would allow a holder to tender prior to the expiration time but deliver its debt securities afterwards, up to the close of business on the second business day following the offer’s expiration. This is no longer required in the 2026 Exemptive Order.
- **Shorter 3-Business-Day and 2-Business-Day Notice Periods for Post-Commencement Changes.** A change to the consideration or an increase or decrease in the percentage of the class or series of securities sought must now be announced by 9 a.m. ET on the *third* business day before expiration. The old rule required any change to the consideration to be announced by 10 a.m. ET on the fifth business day before expiration. All other material changes to the offer must now be announced by 9 a.m. ET on the *second* business day before expiration (previously 10 a.m. ET on the third business day before expiration).
- **Change of Control/Extraordinary Transactions Condition Modified.** The 2015 No-Action Letter broadly disallowed offers made in anticipation of, in response to, or concurrently with a change of control or other type of extraordinary transaction of an issuer, such as a merger, business combination or sale of all or substantially all of its consolidated assets. In contrast, the 2026 Exemptive Order provides a *timing restriction* i.e., the offer cannot be commenced within 10 business days after the first public announcement or consummation of such change of control or extraordinary transaction.

Comparing the 2026 Exemptive Order with the 2015 No-Action Letter

See and download our table comparing key aspects of the relief granted in the 2026 Exemptive Order with those previously granted in the 2015 No-Action Letter, [here](#).

In addition, for illustrative purposes, we prepared a strategic redline of the main qualifying conditions in the 2026 Exemptive Order against those in the 2015 No-Action Letter, which is available [here](#).

PRACTICAL CONSIDERATIONS

The 2026 Exemptive Order is a significant and welcome development for market participants. The relaxation and liberalization of certain 2015 No-Action Letter conditions will allow issuers greater flexibility in undertaking liability management transactions and optimizing their capital structures, while at the same time minimizing exposure to market and interest rate fluctuations during the period from commencement to completion of the tender or exchange offer.

Below we offer some thoughts on the immediate practical implications of the 2026 Exemptive Order and explore a few areas for consideration.

Greater Flexibility and a Deeper Liability Management Toolbox

- **Partial Tender Offers.** By eliminating the condition that an abbreviated tender offer be made for “any and all” outstanding securities of the subject class or series, the 2026 Exemptive Order affords issuers flexibility to conduct partial or capped offers from time to time, taking into account real-time market windows and cash availability considerations. This would include the ability to conduct cascading or “waterfall” capped tender offers. Abbreviated tender offers require payment consideration consisting solely of cash or Qualified Debt Securities or a combination of both. For distressed issuers that do not want to (or are unable to) issue new debt securities, cash is both a constraint and a valuable scarce resource requiring efficient allocation; funding an “any and all” tender offer with cash might simply not be possible. On the flipside, conducting a partial or capped offer under the longer, 20-business-day period exposes the issuer to market and interest rate risk. An issuer seeking to reduce a significant portion of a series of outstanding debt securities trading below their redemption price may be constrained to redeem the debt at a higher make-whole redemption price, if allowed under the relevant indenture, or conduct a 20-business-day tender offer that would expose it to market and interest rate risk swings and fluctuations for a longer duration.
- **Expanded Relief for Exempt Exchange Offers.** Inclusion of institutional accredited investors in the universe of eligible exchange offer participants (in addition to QIBs under Rule 144A and non-US persons in reliance on Regulation S), and the elimination of the requirement for a concurrent cash tender offer to retail investors, will encourage the use of exempt exchange offers. A significant portion of US investment grade and high yield debt securities are issued to QIBs, non-US persons and IAIs, in accordance with Securities Act registration exemptions. Section 4(a)(2) or 3(a)(9) exchange offers are an efficient, less costly and often a quicker means of refinancing an issuer’s outstanding debt securities, as opposed to a new debt issuance. The previous requirement that debt exchanges be open to all record and beneficial holders (which the 2026 Exemptive Order eliminated) meant that an issuer either had to conduct an SEC-registered debt exchange offer (which is not practical) or a concurrent cash tender offer for retail investors.
- **Expanded Qualified Debt Securities.** Enhancements made by the 2026 Exemptive Order to the QDS definition also encourage the use of exempt exchange offers. Under the old rule, an issuer seeking to avail of the five-business-day exchange offer relief, must issue QDS with terms that are *identical* in all material respects (including as to issuer, guarantor, collateral, lien priority and covenants) with the existing debt securities subject of the offer. If, for example, the existing debt securities were issued 10 or 15 years ago, this means that the new debt securities to be issued in the unregistered exchange offer must be forced to have identical terms in all material respects as the old securities. This would prevent an issuer from updating its covenants or the collateral or

lien priority package or align the same with the issuer's present and more current credit risk profile, financial position and capital structure or to current market standards and practices. The 2026 Exemptive Order addresses this point by requiring the QDS terms to be *substantially similar* (instead of identical) in all material respects to *either* the issuer's existing debt securities subject of the offer *or the issuer's most recent debt issuance that is pari passu to the subject debt securities*. Moreover, the old rule had a blanket requirement that the QDS have a weighted average life to maturity that is longer than the existing debt securities subject to the offer. The new relief removes this restriction; this gives both the issuer and institutional investors the flexibility and optionality to issue shorter dated QDS and decide for themselves the economic terms of the new debt securities.

- **Elimination of Financing With Senior Indebtedness Restriction.** In the same vein, the elimination of the old rule that prohibited the financing of the offer with the proceeds of any "Senior Indebtedness" affords greater flexibility and optionality. Holders should be able to make informed, independent, investment decisions on whether to tender their existing junior bonds and whether to invest in new senior bonds.

Fewer Disqualifying Events; Concurrent Liability Management and/or M&A Transactions

- **Concurrent Offer with Simple-Majority Consent Solicitation.** The new relief now allows a consent solicitation to be conducted concurrently with a tender offer, as long as the proposed amendment does not require consent of more than a simple majority of the principal amount of the subject debt securities. We expect that a substantial number of issuers would be able to take advantage of this new accommodation, as most investment grade and high-yield indentures generally require consent of only a simple majority for most corporate actions, including covenant strips. Most concurrent consent solicitations in the US capital markets are in fact significant covenant strips rather than specific covenant modifications. The new relief also makes sense considering that there is no minimum period for which a standalone consent solicitation needs to remain open, and in a concurrent tender offer and consent solicitation, consenting holders exit and no longer hold the amended debt securities after the tender offer is consummated. The presence of a consent solicitation then (especially where simple majority consents are involved) should not be a disqualifying event for participants to rely on the abbreviated five-day tender offer relief. Holders of debt securities should be able to tender using the same five-business-day or abbreviated tender offer period, regardless of whether the tender offer is accompanied by a concurrent consent solicitation. By allowing concurrent offers/solicitations on an abbreviated timeline, the new relief makes this combination more attractive to issuers seeking to manage their capital structure and covenant packages.
- **Change of Control; Extraordinary Transactions.** By replacing the broad prohibition for conducting offers made in anticipation of, in response to, or concurrently with, a change of control or extraordinary transaction, with a timing restriction that the offer cannot be commenced within 10 business days after the first public announcement or consummation of such change of control or extraordinary transaction, the 2026 Exemptive Order opens up the use of abbreviated tender offers in the context of M&A transactions, in which change of control put rights and covenant restrictions come into play.

Streamlined Disclosure/Immediate Widespread Dissemination Process

- The 2026 Exemptive Relief revised the disclosure and widespread dissemination requirements applicable to abbreviated tender offers as illustrated in the table below. The new relief is a recognition that technological advances, such as in information technology and other means of immediate widespread dissemination, 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 or exchange their non-convertible debt securities.

Disclosure / Dissemination Item	2015 No-Action Letter	2026 Exemptive Order
Announcement of the Offer by Press Release or Immediate Widespread Dissemination	By 10:00 a.m. ET on the first business day of the offer, which announcement includes the basic terms of the offer and an active hyperlink or Internet address whereat which a record or beneficial owner could obtain copies of the offer to purchase and letter of transmittal (if any) and other instructions or documents (including a form of guaranteed delivery instruction).	By 10:00 a.m. ET on the date the offer is commenced, which announcement includes the basic terms of the offer, the proration procedures (if applicable) and an active hyperlink to a website where securityholders may access the tender offer materials, letter of transmittal (if any) and any other documents.
Launch Form 8-K Filed by Reporting Issuers	By 12:00 p.m. ET on the first business day of the offer.	N/A
Increase or Decrease in the Percentage of Subject Securities Sought	N/A (the previous relief was limited to "any and all" offers).	By 9:00 a.m. ET on the third business day prior to the expiration date.
Change in the Consideration Offered	By 10:00 a.m. ET on the fifth business day prior to the expiration date.	By 9:00 a.m. ET on the third business day prior to the expiration date.
Any Other Material Changes	By 10:00 a.m. ET on the third business day prior to the expiration date.	By 9:00 a.m. ET on the second business day prior to the expiration date.
Proration Procedures for Oversubscribed Offers	N/A (the previous relief was limited to "any and all" offers).	By 10:00 a.m. ET on the business day following expiration, or as soon as practicable thereafter.

While the launch Form 8-K requirement is no longer in place, we note that in addition to the standard four-business day Form 8-K deadline, where applicable, Regulation FD requires the

simultaneous public disclosure when an issuer (or a person acting on the issuer's behalf, such as a dealer-manager) intentionally discloses material nonpublic information to certain persons.

LOOKING AHEAD

The 2026 Exemptive Order significantly expands the availability of abbreviated tender offers as a liability management tool and enhances an issuer's ability to manage, modify and optimize its outstanding debt securities. We expect this new relief to pave the way for greater flexibility for issuers to use tender offers and exchange offers and in combination with other liability management transactions such as consent solicitations and privately negotiated or open-market debt repurchases.



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