

Memorandum

SEC Expands Exemptive Relief for Tender Offers and Exchange Offers for Non-Convertible Debt Securities

July 2, 2026

Introduction

On June 30, 2026, the staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (“SEC”) issued an [exemptive order](#) granting an exemption from Rules 14e-1(a) and (b) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), for certain qualifying tender or exchange offers for non-convertible debt securities (“Five Business Day Tender Offers”). The SEC exemptive order supersedes the Staff’s 2015 no-action letter (the “2015 Letter”)¹ relating to Five Business Day Tender Offers and is effective immediately.

The exemptive order expands the availability of a five-business-day offering period provided for in the 2015 Letter for certain types of debt tender and exchange offers and permits an issuer (or its parent company or a wholly-owned subsidiary) to conduct tender offers or exchange offers for any class or series of non-convertible debt securities² that remain open for a minimum period of five business days.

Background

Since its amendment in 1986, Rule 14e-1 of the Exchange Act has required, among other things, that any tender offer be held open for not less than 20 business days from the date that the offer is first published or sent to holders and, in the event of an increase or decrease in the percentage of securities being sought or the consideration offered, that the offer remain open for at least ten business days from when notice of the change is first published or sent to holders.³

¹ The 2015 Letter is available [here](#).

² The exemptive relief discussed in this memo is applicable only to debt securities that are not convertible or exchangeable for equity securities and, accordingly, references herein to “debt securities” exclude securities convertible or exchangeable for equity securities.

³ Acceptance for payment of an additional amount not exceeding 2% of the class of securities subject to the offer is not deemed an increase subject to the ten-business-day notice requirement.

On January 23, 2015, the Staff issued the 2015 Letter⁴ providing exemptive relief that permitted qualifying offers for debt securities to remain open for a minimum of five business days from and including the date the tender offer is first published or sent to holders, regardless of the credit ratings assigned to the subject securities, subject to a number of limitations, conditions and administrative requirements.

Similar to the equity tender offer exemptive order issued by the Staff on April 16, 2026⁵, the June 30, 2026 Five Business Day Tender Offer exemptive order expands the availability of a shorter offering period for debt tender offers by relaxing several key conditions set forth in the 2015 Letter while preserving core investor protections. Key changes are summarized below. See the attached Annex for a complete list of the conditions and administrative requirements included in the exemptive order.

	2015 No-Action Letter	2026 Exemptive Order
“Any and All” Requirement	Offer must be made for any and all of the subject class or series of debt securities.	Requirement eliminated—partial offers permitted, subject to requirement to accept and pay for securities on a pro rata basis in the event of oversubscription. In addition, the offeror to use commercially reasonable efforts to announce the proration factor by press release by 10:00 a.m. ET the first business day after expiration of the offer.
Concurrent Consent Solicitation	Prohibited entirely—any concurrent consent solicitation disqualified the offer.	Concurrent consent solicitations to any document governing the subject debt securities ⁶ are permitted for amendments that require consent of a simple majority of outstanding principal.
Tender Offers Financed with Senior Indebtedness	Offer must not be financed with proceeds of “Senior Indebtedness.”	Requirement eliminated.
Qualified Debt Securities Definition⁷	Identical in all material respects to the subject securities (other than maturity, payment dates, redemption, rate).	Substantially similar to either (i) the subject securities or (ii) the most recent issuance that is pari passu with the subject securities.

⁴ Following a series of SEC no-action letters granting relief from the 20-business-day requirement for certain tender offers for debt securities over the years, on January 23, 2015, the Staff issued a no-action letter that permitted an issuer (or its parent company or a wholly-owned subsidiary) to conduct tender offers for debt securities over a minimum period of 5 business days, subject to certain specified requirements.

⁵ Our memorandum discussing the exemptive order issued on April 16, 2026 is available [here](#) and the exemptive order is available [here](#).

⁶ This means amendments to security documents in the case of secured bonds would be permitted as well.

⁷ “Qualified Debt Securities” are now defined as 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 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.

	2015 No-Action Letter	2026 Exemptive Order
	Weighted average life of maturity longer than subject securities.	Eliminated weighted average life to maturity requirement.
	Coupon based on fixed spread to be fixed by 2:00 p.m. ET on last day of the offer.	Coupon based on fixed spread to be fixed by the expiration date of the offer.
Eligible Exchange Offers	QIBs and non-U.S. persons only. Required cash alternative for non-eligible holders.	Expanded to add institutions that are accredited investors (Rule 163B(c)(2)). Cash requirement eliminated – enables exchanges that exclude retail investors.
Notice Requirements for Material Changes	<i>Price/Percentage:</i> At least 5 business days before expiration. <i>Other Material Changes:</i> At least 3 business days before expiration.	<i>Price/Percentage:</i> Shortened to 3 business days before expiration. <i>Other Material Changes:</i> Shortened to 2 business days before expiration.
M&A / Extraordinary Transaction Bar	Broad prohibition on any offer made in anticipation of, in response to or concurrently with a merger, change of control or other extraordinary transaction.	Restructured with more precision: (i) no offer within 10 business days of announcement/consummation of change of control or other extraordinary transaction such as a merger, reorganization, liquidation or asset sale, (ii) not in anticipation of/in response to competing tender offers, (iii) not concurrent with another issuer tender offer that would add obligors, guarantors, or collateral or increase lien priority and (iv) not within 10 business days of a material asset transaction triggering Article 11 Regulation S-X pro formas.
Commencement Announcement Timing	Required (i) press release through widely disseminated news by 10:00 a.m. ET on first business day and (ii) furnishing of press release on form 8-K by 12:00 noon ET on first business day (for reporting companies).	Press release by 10:00 a.m. ET on commencement date (uniform for all issuers). Requirement to furnish 8-K eliminated.
Guaranteed Delivery	Required guaranteed delivery.	Requirement eliminated.

Conclusion

The SEC's new exemptive order provides issuers with greater flexibility to pursue and structure 5-day tender offers for non-convertible debt securities, enabling a greater opportunity to reduce exposure to fluctuations in interest rates and market events by decreasing the time required to complete such tender offers.

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Annex

The Staff's June 30, 2026 exemptive order grants an exemption from Exchange Act Rule 14e-1(a) and (b) to permit a tender or exchange offer for any class or series of non-convertible debt securities to remain open for a minimum offering period of five business days, so long as the following conditions are met:

- the offer is made by the issuer of the subject non-convertible debt securities, a direct or indirect wholly owned subsidiary of such issuer, or a parent company that directly or indirectly owns 100% of the capital stock (other than directors' qualifying shares) of such issuer;
- the offer is made for a class or series of non-convertible debt securities,⁸ regardless of any particular rating assigned to such securities by any nationally recognized statistical rating organization, as such term is defined in Exchange Act Section 3(a)(62);
- the offer is made solely for cash consideration and/or consideration of Qualified Debt Securities;⁹
- if the offer is for less than all of the outstanding class or series of non-convertible debt securities, and a greater amount of securities are tendered in the offer than the offeror is bound or willing to take up and pay for, the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the amount of securities tendered by each security holder during the offering period;
- if the offer is an exchange offer in which Qualified Debt Securities are offered, the offer is restricted to Qualified Institutional Buyers (as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act")), non-U.S. persons (within the meaning of Regulation S under the Securities Act), and/or institutions that are accredited investors (within the meaning of Rule 163B(c)(2) of the Securities Act)

⁸ Separate offers may be made for more than one class or series of non-convertible debt securities as part of the same offer to purchase document.

⁹ The consideration offered may be a fixed amount of cash (and/or Qualified Debt Securities) or an amount of cash (and/or Qualified Debt Securities) based on a fixed spread to a benchmark and, in the case of Qualified Debt Securities, the coupon may be based on a spread to a benchmark. A "benchmark" includes U.S. Treasury Rates, SOFR, swap rates and, in the case of securities denominated in currencies other than US dollars, sovereign securities or swap rates denominated in the same currency as the securities subject to the offer, in each case that are readily available on a Bloomberg or similar trading screen or quotation service. The spread used for determining the amount of consideration offered will be announced at the commencement of the tender offer. In the case of an offer of Qualified Debt Securities, if the interest rate or the spread used for determining the interest rate for such securities is not fixed and announced at the commencement of the offer, it will be announced at the commencement of the offer as a range of not more than 50 basis points, with the final interest rate or spread to be announced by 9:00 a.m., Eastern time, on the business day prior to the expiration date of the offer. The exact amount of consideration and the interest rate (in the case of amounts or interest rate based on fixed spreads to a benchmark) on any Qualified Debt Securities will be fixed no later than the expiration time of the offer. In addition, in the case of an offer of Qualified Debt Securities, a minimum acceptance amount would be announced at the commencement of the offer.

"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.

(collectively, “Eligible Exchange Offer Participants”) in a transaction exempt from the registration requirements of the Securities Act;

- the offer is not made in connection with a solicitation of consents to amend the indenture, form of security or note, or other agreement governing the subject non-convertible debt securities (collectively, the “Indenture”) where such amendment requires the consent of the holders of more than a simple majority of the outstanding principal amount of the subject securities;
- the offer is not made when a default or event of default exists under the Indenture or any other indenture or material credit agreement to which the issuer is a party;
- the offer is not made at a time 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;
- the offer is 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 the offeror, the class or series of non-convertible debt securities sought to be purchased, the type and amount of consideration offered, and the expiration date of the offer), the procedures for proration (if applicable), and contains an active hyperlink to a website address where security holders may access the tender offer materials, letter of transmittal (if any), and any other documents relating to the offer, by 10:00 a.m., Eastern time, on the date that the tender offer commences;¹⁰
- any (i) increase or decrease in the percentage of the subject non-convertible debt securities sought in the tender offer, other than the acceptance for payment of an additional amount of securities not to exceed two percent of the class or series of securities that is the subject of the tender offer, calculated in accordance with Section 14(d)(3) of the Exchange Act, or (ii) change in the consideration offered, is communicated in each case by press release or other public announcement that is widely disseminated no later than 9:00 a.m., Eastern time, on the third business day before the expiration date of the offer;
- any other material change in the terms of the offer is communicated by press release or other public announcement that is widely disseminated no later than 9:00 a.m., Eastern time, on the second business day before the expiration date of the offer;
- the offer provides for withdrawal rights that are exercisable (i) at least until the earlier of (x) the expiration date of the offer and (y) in the event that the offer is extended, the tenth business day after commencement

¹⁰ In addition, the offeror would (i) use commercially reasonable efforts to send via email (or other form of electronic communication) the press release announcing the offer to all investors subscribing to one or more corporate action emails or similar lists; (ii) use other customary methods in order to expedite the dissemination of information concerning the tender offer to beneficial holders of the subject non-convertible debt securities; and (iii) issue a press release promptly after the consummation of the offer setting forth the results of the offer.

of the offer, and (ii) at any time after the 60th business day after commencement of the offer if, for any reason, the offer has not been consummated within 60 business days after commencement;

- if the offer is for less than all of the outstanding class or series of non-convertible debt securities, the offeror will use commercially reasonable efforts to announce the proration factor by press release or other public announcement that is widely disseminated by 10:00 a.m., Eastern time, on the next business day after the expiration date of the offer, or as soon thereafter as practicable;
- the offer provides that the offeror will not pay the consideration in the offer until promptly after expiration of the offer pursuant to Exchange Act Rule 14e-1(c); and
- the offer is not (i) commenced within ten business days after the first public announcement or the consummation of a change of control or other type of extraordinary transaction involving the issuer, such as a merger (or similar business combination), reorganization or liquidation, or a sale of all or substantially all of its consolidated assets; (ii) made in anticipation of or in response to other tender offers for the issuer's securities; (iii) made concurrently with a tender offer for any other class or series of the issuer's securities made by the issuer (or any subsidiary or parent company of the issuer) if the effect of such offer, if consummated (by way of amendment, exchange, or otherwise), would be to add obligors, guarantors, or collateral (or increase the priority of liens securing such other class or series); or (iv) commenced within ten business days after the first public announcement or the consummation of the purchase, sale, or transfer by the issuer or any of its subsidiaries of a material business or amount of assets that would require the furnishing of pro forma financial information with respect to such transaction pursuant to Article 11 of Regulation S-X (whether or not the issuer is a registrant under the Exchange Act).