

# SEC Modernizes Debt Tender Offer Rules with New Exemptive Order

*July 2, 2026*

The SEC has issued a significant [exemptive order](#) modernizing and expanding the ability of issuers to conduct tender offers for their non-convertible debt securities over an abbreviated period of five business days. This new exemptive order expressly supersedes previous guidance contained in the [2015 no-action letter](#), often referred to as the Abbreviated Debt Tender Offer Letter, and **introduces greater flexibility and efficiency for liability management transactions**, including the ability to conduct partial tender and exchange offers, conduct exchange offers without an accompanying retail tender offer, and couple typical consent solicitations with an offer. This pragmatic shift recognizes current market realities and technological advancements, and continues the trend established by the [SEC's April 2026 exemptive order for equity tender offers](#) (which permitted a minimum 10 business day offering period for certain equity tender offers), offering a more robust framework for managing outstanding debt.

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## A Modern Approach to Debt Tender Offers

Historically, Rule 14e-1(a) under the Securities Exchange Act of 1934 mandated that tender offers remain open for a minimum of 20 business days. This lengthy period often exposed both issuers and investors to significant market volatility and interest rate fluctuations. To address this, the Division of Corporation Finance previously issued no-action letters that allowed for abbreviated offering periods for certain non-convertible debt tender offers. The most recent iteration of this guidance, the 2015 no-action letter, permitted five-business-day tender offers for non-convertible debt securities under specified conditions.

Recognizing the need for a more robust and flexible framework, the SEC has now issued a formal exemptive order that directly supersedes the 2015 no-action letter. Tender offers that satisfy the conditions included in the 2026 exemptive order and summarized below may be conducted with a minimum offering period of five business days, rather than the standard 20 business days required under Rule 14e-1(a). The 2026 exemptive order aims to address persistent market inefficiencies, integrate technological advancements, and further facilitate debt management transactions.

The following chart compares the key conditions and features of the 2015 no-action letter (which governed abbreviated debt tender offers for over a decade) with the 2026 exemptive order effective June 30, 2026. The 2026 exemptive order formally supersedes the 2015 no-action letter and provides a stronger legal basis for reliance.

| Feature                          | 2015 No-Action Letter   | 2026 Exemptive Order   |
|----------------------------------|---|--|
| <b>Threshold Eligibility</b>     |   |  |
| <b>Eligible Offerors</b>         | Issuer, direct / indirect wholly owned subsidiary, or 100% parent company.  | Unchanged. Third-party tender offers remain subject to the full 20-business-day period.  |
| <b>Covered Securities</b>        | Any non-convertible debt securities, irrespective of rating.  | Unchanged.   |
| <b>No Default/Bankruptcy</b>     | No default or event of default under any indenture or material credit agreement; no bankruptcy/insolvency proceedings or pre-packaged solicitation. | Unchanged.   |
| <b>Offer Structure and Scope</b> |   |  |
| <b>Partial Tenders</b>           | The issuer must offer to purchase all securities (“any and all”) in the outstanding class or series; tendering for only a portion was not allowed.  | Now available. Offerors may seek less than all outstanding securities of a class or series. Oversubscribed offers must be allocated pro rata among tendering holders. The proration factor must be disclosed via press release or other public announcement by 10:00 a.m. ET on the business day following expiration. |
| <b>Minor Upsizing</b>            | Not applicable (any-and-all offers only).   | Offerors may accept up to 2% additional securities without prior announcement.   |

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| <b>Concurrent Consent Solicitations</b>                             | Prohibited. The offer could not be run alongside any solicitation of consents to amend an indenture.  | Permitted where an indenture amendment requires only a simple majority (or less) of outstanding principal. Amendments requiring supermajority or higher thresholds are excluded from the scope of the 2026 exemptive order.   |
| <b>Extraordinary Transaction Restriction</b>                        | The offer could not be launched “in anticipation of or in response to, or concurrently with” a change of control or other extraordinary transaction. Fact-intensive and ambiguous standard. | A clear 10-business-day restriction now applies: offers may not launch within 10 business days after the first public announcement or closing of (i) a change of control, merger, reorganization, liquidation, or sale of all / substantially all assets; or (ii) a material acquisition or disposition requiring pro forma financials. |
| <b>Concurrent Offers – Structural Subordination</b>                 | Prohibited where the effect would give another series added obligors, guarantors, or collateral (or a higher lien priority), or would shorten the weighted average life of another series.  | Prohibition on concurrent offers that would add obligors, guarantors, collateral, or increase lien priority for another series remains. The weighted average life restriction for concurrent offers has been eliminated.  |
| <b>Exchange Offers and Consideration</b>                            |   |   |
| <b>Exchange Offer Eligibility</b>                                   | Participation was confined to QIBs (under Rule 144A) and non-US persons (under Reg S). The exchange must be exempt from Securities Act registration.  | Retains QIBs and non-US persons, and has been broadened to include institutions qualifying as accredited investors under Rule 163B(c)(2). Consistent with the 2015 no-action letter, the exchange must be exempt from Securities Act registration.  |
| <b>Qualified Debt Securities (QDS) Definition – Similarity Test</b> | QDS had to be “identical in all material respects” to the tendered securities, other than maturity, coupon, interest payment dates, and CUSIP.  | QDS now need only be “substantially similar” (rather than identical) in all material respects – covering issuer(s), guarantor(s), collateral, lien priority, covenants, and other terms – to either: (i) the subject debt securities, or (ii) the issuer’s most recent <i>pari passu</i> debt issuance.                                 |
| <b>QDS – Weighted Average Life</b>                                  | QDS had to carry a longer weighted average life to maturity than the subject debt securities.   | Eliminated. QDS no longer need a longer weighted average life than the subject securities.  |

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| <b>QDS – Interest Rate (Exchange Offers)</b>        | Interest rate on QDS must be fixed at commencement or determined by reference to a benchmark.  | If interest rate is not fixed at commencement, must be announced as a range of no more than 50 bps. Final rate announced by 9:00 a.m. ET on the business day prior to expiration. Minimum acceptance amount must also be announced at commencement. |
| <b>Benchmark Rates</b>                              | The enumerated benchmarks were U.S. Treasury rates, LIBOR, and swap rates.   | U.S. Treasury rates, SOFR, swap rates, and applicable foreign-currency benchmarks. LIBOR has been retired.  |
| <b>Final Pricing Deadline</b>                       | Consideration and QDS coupons had to be fixed by 2:00 p.m. ET on the offer’s last business day.  | Final consideration and QDS coupon must be set by offer expiration.   |
| <b>Concurrent Cash Offer for Ineligible Holders</b> | Ineligible holders had to be given a simultaneous cash option – fixed at launch – roughly equal to the value of the QDS.   | No longer required. Holders who do not qualify for the exchange may be left without a cash alternative unless the offeror voluntarily provides one.   |
| <b>Process, Timing, and Mechanics</b>               |  |   |
| <b>Offer Timing</b>                                 | Offer commences on day press release issued by 10:00 a.m. ET. Consideration may not be paid until promptly after expiration.   | Unchanged, with one clarification: the final day is a full business day if the offer expires on or after 5:00 p.m. ET. Consistent with the 2015 no-action letter, consideration may not be paid until promptly after expiration.                    |
| <b>Launch Announcement and Dissemination</b>        | Launch press release by 10:00 a.m. ET via widely disseminated wire service. Must include basic terms, hyperlink to offer materials. Also see “Form 8-K/6-K Condition” below. | Substantially unchanged. Offerors must also use commercially reasonable efforts to email the press release to investors on corporate action lists and use customary methods to expedite dissemination to beneficial holders (e.g., via DTC).        |
| <b>Notice – Consideration or Size Changes</b>       | A change in consideration forced the offer to stay open at least five additional business days.  | Changes to consideration or the targeted percentage (except accepting up to 2% more) must be announced by press release by 9:00 a.m. ET three business days before expiration.  |
| <b>Notice – Other Material Changes</b>              | Any other material change required the offer to remain open at least three more business days.   | Material change must be announced by press release by 9:00 a.m. ET two business days before expiration.   |
| <b>Guaranteed Delivery Procedure</b>                | Required.  | Eliminated.   |

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| <b>Financing Restrictions</b> | The offer could not be funded with proceeds of “Senior Indebtedness.”   | Eliminated. Offerors may now use any funding source.  |
| <b>Form 8-K/6-K Condition</b> | Mandatory; reporting companies (including voluntary filers) had to furnish the launch press release – and any consideration-change notice – on Form 8-K/6-K by 12:00 p.m. ET on the first day of the offer. (This was a condition of the 2015 no-action letter, not a requirement under the SEC rules, and was frequently overlooked by issuers.) | Eliminated.   |
| <b>Withdrawal Rights</b>      | Withdrawable until earlier of expiration or 10 <sup>th</sup> business day after commencement (if extended); also after 60 <sup>th</sup> business day if not consummated.  | Unchanged.  |
| <b>Results Announcement</b>   | Results had to be published by press release promptly following completion of the offer.  | Same requirement, plus: where applicable, the proration factor must be announced by 10:00 a.m. ET on the next business day. |

### Additional Observations

The following transactions remain subject to the standard 20-business-day minimum offering period under Rule 14e-1(a) and are *not* eligible for the five-business-day relief under the 2026 exemptive order:

- **Tender offers for convertible debt securities.** The 2026 exemptive order applies exclusively to non-convertible debt. Tender or exchange offers for convertible debt, equity-linked notes, or contingent convertible securities remain subject to the 20-business-day minimum period.
- **Consent solicitations requiring more than a simple majority.** If a proposed indenture amendment requires the consent of holders of more than a simple majority of the outstanding principal amount (e.g., a supermajority or consent of all holders affected), the combined tender offer/consent solicitation must comply with the standard 20-business-day framework.
- **Third-party (non-issuer) tender offers.** The 2026 exemptive order is limited to issuer self-tenders. Third-party tender offers for debt securities remain subject to the full 20-business-day period.
- **A/B exchange offers.** So-called “A/B exchange offers” under the Exxon Capital no-action letter (in which issuers exchange unregistered debt for substantially identical registered debt securities) do not appear to be permitted under the new five-business-day offer rules. The 2026 exemptive order requires that exchange offers for QDS be restricted to Eligible Exchange Offer Participants in transactions exempt from Securities Act registration, which is inconsistent with the typical registration rights agreement requirements related to A/B exchanges.
- **Early settlement.** Because consideration may not be paid until promptly after expiration, issuers cannot utilize an early settlement feature in a five-business-day offer, as is common in 20-business-day offers.

### **What This Means for Issuers**

The 2026 exemptive order marks a substantial and welcome evolution in debt liability management. We understand the SEC is engaged in a multi-stage process to modernize the tender offer rules, and Cleary Gottlieb has been closely involved in this area, including by representing The Securities Industry and Financial Markets Association (SIFMA) in its discussions with the staff. The 2026 exemptive order provides issuers with significantly enhanced tools to proactively manage their balance sheets, optimize debt profiles, and respond to changing market conditions with greater agility. The increased flexibility around exchange offers and the possibility of concurrent consent solicitations also unlock new strategic possibilities for corporate finance teams. For example, by eliminating the concurrent cash offer requirement – a condition that discouraged many issuers from utilizing the abbreviated five-day format because they were reluctant to deploy cash – the new framework opens the door to more efficient exchange transactions. Issuers should carefully evaluate these new provisions when planning future liability management exercises. We recommend consulting with counsel to assess how these changes can best serve an issuer’s specific liability management objectives.

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