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Securities Alert

July 7, 2026

SEC 2026 Order expands debt tender offer relief

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The SEC's 2026 Order expands five-business-day debt tender offer relief, replacing 2015 guidance with broader, more flexible rules.



What's the impact?

- The SEC's 2026 Order expands five-business-day tender offer relief for nonconvertible debt securities, superseding its 2015 no-action guidance.
- The Order adds flexibility for partial tender offers, exchange offers, financing structures, and limited consent solicitations.
- Offerors must satisfy specific conditions, including dissemination, withdrawal rights, pro rata purchase rules, and limits on defaults or restructurings.

Earlier this year, during the Securities and Exchange Commission (SEC) Speaks conference, the staff of the Division of Corporation Finance (Division) stated that they would be looking at the minimum 20-business-day offering period requirement for tender offers set forth in Rule 14e-1 under the Securities Exchange Act of 1934, as amended (Exchange Act). The Division, using delegated authority from the SEC, issued an [exemptive order](#) on June 30, 2026 (2026 Order) to further expand the availability of a five-business-day minimum offering period in certain types of

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debt tender offers to address market inefficiencies, better reflect technological advancements, reduce exposure to fluctuations in the market and in interest rates, and facilitate the availability of tender offers as debt management transactions. The 2026 Order supersedes the no-action letter issued by the Division's staff in January 2015 (2015 Letter).

Background of the 2015 Letter

Rule 14e-1(a) generally provides that as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices within the meaning of section 14(e) of the Exchange Act, no person who makes a tender offer shall hold such tender offer open for less than 20 business days from the date such tender offer is first published or sent to security holders and Rule 14e-1(b) generally requires an offer to remain open for at least 10 business days after certain changes in the offer, including a change in consideration, are published or sent to security holders.

The minimum tender offer period was originally proposed in 1976 as 15 business days, then withdrawn and re-proposed in February 1979 as 30 business days. In November 1979, Rule 14e-1(a) was adopted with a 20-business-day minimum offer period; however, it did not apply to issuer tender offers unless made in anticipation of or in response to a third party's tender offer for securities of the same class. Therefore, the 20-business-day minimum offering period requirement did not originally apply to issuer tender offers for debt securities. That ended when, in an effort to provide an equal regulatory playing field between issuers and hostile bidders, the SEC removed the reference in Rule 14e-1(a) to issuer tender offers in anticipation of, or response to, third-party tender offers in January 1986 to eliminate the confusion resulting from the disparities in the offering periods for issuers, defensive issues and third parties and the difficult factual question whether an issuer tender offer was made in anticipation of or in response to a third party tender offer.

As a result of this broader application of the minimum 20-business-day offering period, market participants engaged in nonconvertible debt security tender offers approached the Division staff for relief consistent with the market practices concerning such offers that had developed over several years. Consequently, a series of no-action letters was issued by the Division beginning in 1986 for certain tender offers of nonconvertible debt securities (generally limited to investment-grade debt securities), with abbreviated offering periods based on customary market practice. In January 2015, the Division issued the 2015 Letter, superseding the prior no-action letters, which indicated that it will not recommend enforcement action under Rule 14e-1 if an offeror conducts a tender offer for nonconvertible debt securities with a minimum offering period of five business days, so long as the tender offer satisfies the applicable criteria outlined in the 2015 Letter. The 2015 Letter expanded the use of abbreviated offering periods beyond investment-grade debt securities.

The 2026 Order

Under the 2026 Order, the Division granted an exemption from Rules 14e-1(a) and (b) permitting a tender or exchange offer for any class or series of nonconvertible debt securities to remain open for a minimum offering period of five business days, so long as the conditions set forth in the 2026 Order are met. The conditions are described below. The 2026 Order notes that offerors conducting a five-business-day tender offer should consider 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.

Differences between the 2026 Order and the 2015 Letter

There are several differences between the 2015 Letter and the 2026 Order. The more notable differences are:

MORE AUTHORITATIVE

It should be noted that this recent action taken by the Division to provide relief from the minimum offering periods in Rule 14e-1 is in the form of an exemptive order utilizing delegated authority from the SEC, which provides an exemption that can be relied upon by all offerors that comply with the conditions of the order. The 2015 Letter was a no-action letter, which is a statement by the staff of the Division that it will not recommend enforcement action. No-action letters generally may not be relied upon by any person other than the recipient of the no-action letter and are less authoritative.

DECREASED TIME PERIODS FOR CHANGES TO THE OFFER

The 2015 Letter required communication, by immediate, widespread dissemination, at least five business days prior to the expiration of the offer, of any change in the consideration being offered in the offer, and at least three business days prior to the expiration of any other material change to the offer. The 2026 Order has shortened these time periods. Changes in the amount of securities sought or consideration offered must be announced at least three business days before the expiration date of the offer. Other material changes in the terms of the tender offer must be announced at least two business days before the expiration date of the offer.

The tender offer rules generally permit the acceptance for payment of an additional amount of securities not to exceed two percent of the securities being sought without extending the offer. With the expansion of abbreviated offering periods to partial tender offers as described below, the 2026 Order permits offerors making a five-business-day tender offer to accept for purchase an additional amount of debt securities not to exceed two percent of the subject class or series without extending the offer.

In addition, the 2026 Order removes the Form 8-K filing requirement for changes in the consideration by offerors that are reporting companies.

MORE FLEXIBILITY TO FINANCE ABBREVIATED TENDER OFFERS

The 2026 Order removed the restriction in the 2015 Letter prohibiting a five-business-day tender offer from being financed with the proceeds of any “senior indebtedness,” as defined in the 2015 Letter.

EXPANSION TO PARTIAL TENDER OFFERS

The minimum five-business-day offering period permitted in the 2015 Letter could not be relied upon for partial tender offers (i.e., offers for less than all of the outstanding debt securities). The 2026 Order expands the ability to use the minimum five-business-day offering period for partial tender offers of nonconvertible debt securities but prescribes a pro rata purchase requirement in the conditions, as described below.

ADDITIONAL FLEXIBILITY FOR QUALIFIED DEBT SECURITIES

The definition of “Qualified Debt Securities” has been modified to provide more flexibility. They do not need to be *identical* in all material respects to the subject debt securities but must be *substantially similar* in all material respects. In addition, the debt securities may constitute Qualified Debt Securities if they are substantially similar to the most recent issuance of debt securities that are pari passu to the debt securities that are the subject of the tender offer. Also, the requirement that Qualified Debt Securities must have a weighted average life to maturity that is longer than the debt securities that are the subject of the offer has been removed in the 2026 Order. Under the 2026 Order, offerors can now use a five-business-day exchange offer to shorten maturities or roll long-term debt into shorter-term notes.¹

EXPANSION TO CONSENT SOLICITATIONS

The 2015 Letter prohibited use of the five-business-day offering period if the tender offer was made in connection with a solicitation of consents to amend the indenture or agreements governing the terms of the subject debt securities. The 2026 Order has relaxed this prohibition and permits use of the abbreviated offering period for a tender offer made in connection with a

¹ For purposes of the 2026 Order, “Qualified Debt Securities” means nonconvertible 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 (i) the debt securities that are the subject of the tender offer or (ii) 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.

consent solicitation, provided the amendment to the indenture does not require the consent of more than a simple majority of the outstanding principal amount of the debt securities.

REMOVAL OF GUARANTEED DELIVERY PROCEDURES

The 2026 Order removed the requirement in the 2015 Letter that a five-business-day tender offer permit tenders, before the expiration of the offer, through a guaranteed delivery procedure by means of a certification by or on behalf of a holder that such holder is tendering securities beneficially owned by it, and that the delivery of such securities will be made no later than the close of business on the second business day after the expiration of the offer.

Definition of business day

For purposes of the 2026 Order, a “business day” is defined differently than in Rule 14d-1(g)(3). A business day for a five-business-day tender offer is any day, other than Saturday, Sunday, or a federal holiday, and a five-business-day tender offer is treated as having commenced on the first business day on which the tender offer is made, so long as it is announced in a press release issued through a widely disseminated news or wire service (see the description of the dissemination requirements below) by 10:00 am, ET, on such business day. The last day of a five-business-day tender offer is treated as a business day if expiration occurs on or after 5:00 pm, ET, on such a business day.

Dissemination requirements

A five-business-day tender offer must be announced in a press release, issued through a widely disseminated news or wire service, that includes the basic terms of the offer (such as the identity of the offeror, the class or series of securities sought to be purchased, the type and amount of consideration offered, and the expiration date of the offer), the procedures for pro ration, if applicable, and 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 am, ET, on the date that the tender offer commences. The 2026 Order removed the requirement in the 2015 Letter that if the issuer or the offeror is a reporting company under the Exchange Act, it furnishes the press release announcing the offer in a Current Report on Form 8-K filed with the SEC before 12:00 noon, ET, on the first business day of the offer.

In addition, the offeror in any debt securities tender offer also should:

- / 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.
- / Use other customary methods to expedite the dissemination of information concerning the

tender offer to beneficial holders of the subject debt securities.

- / Issue a press release promptly after the offer is consummated, setting forth the results of the offer.

Conditions for five-business-day tender offers

In addition to the requirements discussed above, any offeror of a nonconvertible debt tender offer wanting to utilize the exemption provided by the 2026 Order must comply with the following conditions:

OFFEROR MUST BE ISSUER OR CERTAIN AFFILIATES

A five-business-day tender offer must be made by the issuer of the subject 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.

CLASS OF NONCONVERTIBLE DEBT SECURITIES REGARDLESS OF RATING

The subject securities of the five-business-day tender offer must be a class or series of nonconvertible debt securities. As noted above, the series of no-action letters prior to the 2015 Letter limited the relief from the requirements of Rule 14e-1(a) to investment-grade debt securities. However, that distinction was eliminated in the 2015 Letter and not included in the 2026 Order. Thus, a five-business-day tender offer may be made for nonconvertible debt securities regardless of any particular rating assigned by any nationally recognized statistical rating organization, as defined in Section 3(a)(62) of the Exchange Act. Also, separate offers may be made for more than one class or series of debt securities as part of the same offer to purchase document.

FORM OF CONSIDERATION

A five-business-day tender offer must be made solely for cash consideration and/or consideration consisting of Qualified Debt Securities (as defined in the 2026 Order. See below).

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 (as described in the 2026 Order) and, in the case of Qualified Debt Securities, the coupon may be based on a spread to a benchmark. The spread used for determining the amount of consideration offered must 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 must 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 am, ET, 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 rates based on fixed spreads to a benchmark) on any Qualified Debt Securities must be fixed no later than the expiration time of the offer. The 2015 Letter required that the exact amount of consideration and the interest rate to be fixed no later than 2:00 pm, ET, on the last business day of the offer. In addition, in the case of an offer of Qualified Debt Securities, a minimum acceptance amount should be announced at the commencement of the offer.

PRO RATA PURCHASE FOR PARTIAL TENDER OFFERS

If the debt security tender offer is for less than all of the outstanding class or series of nonconvertible debt securities and the offer is oversubscribed, the offeror must take up and pay the tendered securities as nearly as may be pro rata, disregarding fractions, according to the amount of securities tendered by each security holder during the offering period. The offeror must use commercially reasonable efforts to announce the proration factor by press release or other public announcement widely disseminated by 10:00 am, ET, on the next business day after the expiration date of the offer, or as soon as practicable thereafter.

EXCHANGE OFFER WITH QUALIFIED DEBT SECURITIES

Exchange offers in which Qualified Debt Securities are offered must be restricted to eligible exchange offer participants, which include Qualified Institutional Buyers (as defined in Rule 144A under the Securities Act of 1933, as amended (Securities Act)), non-US 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) in a transaction exempt from the registration requirements of the Securities Act. The 2026 Order added institutional accredited investors to the list of eligible exchange offer participants.

The 2026 Order removed the requirement in the 2015 Letter that exchange offers provide holders that are not eligible exchange offer participants (or an affiliate thereof) be given an option concurrent with such offer (which could be part of the same offer to purchase document) to receive cash for such holders' debt securities in a fixed amount determined by the offeror, in its reasonable judgment, to approximate the value of the Qualified Debt Securities being offered and such an amount is set forth at the commencement of the offer. Under the 2026 Order, offerors can now conduct a five-business-day exchange offer solely to eligible exchange offer participants, without having to extend a concurrent cash option to all holders.

LIMITED CONSENT SOLICITATIONS

A five-business-day tender offer must not be made in connection with a solicitation of consents to amend the indenture, form of security or note, or other agreement governing the subject debt



securities, where such amendment requires the consent of the holders of more than a simple majority of the outstanding principal amount of the subject debt securities.

NO DEFAULTS

A five-business-day tender offer must not be made if 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.

NO BANKRUPTCY OR INSOLVENCY PROCEEDINGS

A five-business-day tender offer must not be made if at the time of the offer, 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 creditors of the issuer to effect a consensual restructuring of the issuer’s outstanding indebtedness.

ANNOUNCE CHANGE IN CONSIDERATION OR OTHER MATERIAL TERMS

If the offeror in a five-business-day tender offer increases or decreases the percentage of the subject debt securities sought in the tender offer or changes the consideration offered, the offeror must communicate such change by press release or other public announcement that is widely disseminated no later than 9:00 am, ET, on the third business day before the expiration date of the offer. The 2026 Order provides for the acceptance for payment of an additional amount of securities not to exceed two percent of the class or series of the subject securities (calculated in accordance with section 14(d)(3) of the Exchange Act) without extending the offer.

Any other material change to the offer must be communicated by press release or other public announcement widely disseminated no later than 9:00 am, ET, on the second business day before the expiration date of the offer.

WITHDRAWAL RIGHTS

A five-business-day tender offer must provide for withdrawal rights that are exercisable:

- / At least until the earlier of the expiration date of the offer and, if the offer is extended, the 10th business day after commencement of the offer, and
- / 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.

PAYMENT OF THE CONSIDERATION

A five-business-day tender offer must provide that the offeror will not pay the consideration in the offer until promptly after expiration of the offer pursuant to Rule 14e-1(c).

NOT MADE IN ANTICIPATION OF CHANGE IN CONTROL OR RESPONSE TO OTHER TENDER OFFER

A five-business-day tender offer must not be (i) commenced within 10 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 10 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).

Nixon Peabody's [Business and Finance](#) team helps issuers, investors, and [financial institutions](#) navigate debt tender offers, exchange offers, and SEC compliance with practical, transaction-focused guidance. We are ready to help clients assess how the SEC's 2026 Order may affect their capital markets and debt management strategies.

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