

SEC Hits Fast-Forward Button on Certain Equity Tender Offers

(New Exemptive Order Permits a 10-Business Day Minimum Offering Period)

April 30, 2026

On April 16, 2026, the staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “SEC”) issued an [exemptive order](#) (the “Order”) permitting certain equity tender offers to remain open for a minimum of 10 business days, rather than the 20 business days otherwise required by Rules 13e-4(f)(1)(i) and 14e-1(a) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Staff’s move represents a significant expansion of its prior positions on abbreviated tender offers, which historically have been limited primarily to tender offers for non-convertible debt securities.¹

According to the Order, the expanded relief is intended to “address market inefficiencies, better reflect technological advancements, and reduce exposure to market fluctuations.” The Order is available to both (1) third-party and issuer tender offers for equity securities of SEC reporting companies and (2) issuer tender offers for equity securities of non-reporting companies. In each case, offerors must satisfy a set of conditions designed to preserve key investor-protection features.

Tender Offers for Equity Securities of Reporting Companies

For equity² tender offers subject to Regulation 14D or Rule 13e-4 under the Exchange Act, the Staff will permit a 10-business day minimum offering period so long as each of the following conditions is met:

¹ See *Latham & Watkins* (SEC No-action Letter dated January 23, 2105); *Goldman, Sachs & Co.* (SEC No-action Letter dated March 26, 1986); *Salomon Brothers Inc* (SEC No-action Letter dated March 12, 1986); and *Salomon Brothers Inc* (SEC No-action Letter dated October 1, 1990).

² See Section 3(a)(11) of the Exchange Act and Exchange Act Rule 3a11-1 for the definition of “equity security.”

- **Friendly deals only.** If the offer is subject to Regulation 14D,³ it must be made pursuant to a negotiated merger or similar business combination agreement between the subject company and the offeror, must be made for all outstanding securities of the subject class, and the subject company must file and disseminate its Schedule 14D-9 by 5:30 p.m. Eastern time on the first business day after commencement. If the offer is subject to Rule 13e-4,⁴ it must be for less than all outstanding securities of the subject class.
- **Fixed cash price only.** Consideration must consist solely of cash at a fixed price. This excludes exchange offers in which securities are offered. It also excludes tender offers where the price is determined based on a formula, such as the volume weighted average price, or VWAP, of the securities including trading days after announcement.
- **No going-private or cross-border reliance.** The offer cannot be subject to Rule 13e-3 and cannot be made in reliance on the cross-border exemptions in Rule 14d-1(d) or Rule 13e-4(i).
- **No competing offer.** At announcement, the subject securities cannot already be the target of a previously announced or pending tender offer by another offeror. And if a competing offer surfaces after commencement, the initial offer must be extended so that it remains open for at least 20 business days from the date the initial offer commenced.
- **Prompt, public announcement.** The tender offer must be announced through a widely disseminated press release that includes the basic terms of the offer and an active hyperlink to a website where security holders can access the offer materials, letter of transmittal (if any), and other offer-related documents. The press release must be issued by 10:00 a.m. Eastern time on the date of commencement.
- **Advance notice of material changes.** Any change in the percentage of securities sought (other than an acceptance of up to 2% in additional securities) or in the consideration offered must be communicated by a widely disseminated press release or other public announcement no later than 9:00 a.m. Eastern time on the fifth business day before expiration. Any other material change must be similarly communicated by 9:00 a.m. Eastern time on the second business day before expiration.

Tender Offers for Equity Securities of Non-Reporting Companies

The Order separately grants relief from Rules 14e-1(a) and (b) for issuer tender offers for equity securities of non-reporting companies, allowing a 10-business day minimum offering period subject to the following conditions:

- **Private issuer.** The issuer must not have a class of securities registered under Section 12 of the Exchange Act and must not be required to file reports under Section 15(d).

³ Regulation 14D applies to tender offers by third parties for over 5% of a class of registered equity securities.

⁴ Rule 13e-4 applies to issuer tender offers.

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- **Self-tender.** The offer must be made by the issuer, or by a wholly owned subsidiary of the issuer, for the issuer's own equity securities.
- **Fixed cash price only.** As with the reporting-company exemption, consideration must be cash only at a fixed price.
- **Advance notice of material changes.** The same 5-business day and 2-business day notice windows apply, but notice may be delivered directly to holders of the subject securities rather than by a public announcement.

The Order does not disturb any of the other federal securities law requirements applicable to tender offers. The Staff reminded offerors that responsibility for compliance with the anti-fraud and anti-manipulation provisions of the Exchange Act (including Sections 10(b) and 14(e)) continues to rest squarely with the offeror and reserved the right to reconsider, modify, or withdraw the relief if material issues emerge.

Implications for Companies

The Order has the potential to meaningfully reshape deal timing in two-step all-cash merger transactions. With the front-end tender offer now running on a 10-business day clock, parties can accelerate closing, reduce exposure to target-stock volatility, and shrink the window during which an interloper or activist might surface. The shorter period is particularly attractive for cash tender offers in which Hart-Scott-Rodino antitrust clearance is subject to a 15-calendar day waiting period (rather than a 30-day waiting period), since the tender and the regulatory clock can run in parallel without meaningfully extending the critical path.

That said, the 10-business day period will not suit every deal. The halved solicitation window gives retail holders less time to tender, which may prove challenging for targets with significant retail ownership or deal terms that require extensive explanation. Where regulatory approvals are expected to take substantially longer than a shareholder vote, a one-step merger may still be preferable. And because the Order is limited to all-cash, fixed-price offers and excludes Rule 13e-3 going-private transactions, hostile takeovers and Tier II cross-border offers, the relief will simply be unavailable for a meaningful slice of deals.

While periodic tender offers by privately held companies have become common paths to pre-IPO liquidity for employees, it is unclear whether the shorter period will be useful in practice as such companies are not subject to market volatility and may want to provide employees with adequate time to evaluate the offer and participate. However, the shorter period provides new flexibility to run liquidity programs for employee shareholders, manage Section 12(g) record-holder thresholds, or trim the unaccredited shareholder base in advance of a sale process.

Public-company issuer tender offers also stand to benefit. A 10-business day period makes it more practical to deploy self-tenders as a nimble capital-return or share-count-management tool, including in volatile markets where a 20-business day commitment may be a harder sell to a board.

Implications for Counsel

For practitioners, the compressed timeline raises the stakes on pre-commencement preparation. Because the Schedule 14D-9 must be filed and disseminated by 5:30 p.m. Eastern time on the first business day after commencement, and because the offer must be publicly announced with a live hyperlink to offer materials by 10:00 a.m. Eastern time on the commencement date, the target's board process, offer documents, dealer manager and information agent arrangements, depository setup, and wire-service release must all be essentially closed-out before the offer launches. There is no room in a 10-business day offer for mid-offer drafting exercises.

Target-side counsel in third-party transactions should also revisit the market-check analysis through a *Revlon* lens. The shorter offer period compresses the practical "window shopping" period during which a superior proposal could emerge, which places more weight on the robustness of the pre-signing market check and on the scope and operation of any fiduciary-out provisions in the merger agreement. Offerors and targets should also be mindful that retail-heavy equity tender offers may continue to attract heightened scrutiny from the plaintiffs' bar, and that a shorter deadline may amplify that attention.

Finally, on the drafting front, counsel should not forget the material-change mechanics. The Order's notice windows (5 business days for changes in percentage sought or consideration, 2 business days for other material changes) are hardwired conditions of the relief, not best-practice guidance. A late-breaking material change that cannot be communicated within the applicable window will likely require extending the offer beyond the 10-business day minimum, eroding the timing benefit of the relief.

Looking Ahead

It remains to be seen how quickly market practice will evolve around the new relief. In the debt tender offer context, abbreviated offer periods became standard quickly; in the equity context, the interplay with *Revlon*, HSR timing, and retail solicitation dynamics is likely to produce a more mixed picture. What is clear is that the Order meaningfully expands the structuring toolkit for both public and private companies — and that boards, financial advisors, and counsel should analyze the Order's conditions now so they are in a position to capture the timing benefit when the right transaction comes along.

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