

Five Is the New Twenty: SEC Issues Exemptive Order Permitting Five-Business-Day Tender and Exchange Offers for Non-Convertible Debt Securities

July 10, 2026

On June 30, 2026, the Office of Mergers and Acquisitions of the Division of Corporation Finance (the “Division”) of the Securities and Exchange Commission (the “SEC”) issued an [exemptive order](#) (the “2026 Order”) granting an exemption from Exchange Act Rules 13e-4(f)(1) and 14e-1(a) and (b) under the Securities Exchange Act of 1934 (the “Exchange Act”) to permit tender and exchange offers for non-convertible debt securities to remain open for a minimum offering period of five business days (a “Five Business Day Tender Offer”),¹ subject to specified conditions. The 2026 Order supersedes the Division’s January 23, [2015 no-action letter](#) (the “2015 Letter”), which had governed abbreviated debt tender offer practice for over a decade. Unlike the 2015 Letter, which was a staff statement of enforcement forbearance, the 2026 Order is a formal exemptive order issued under authority delegated by the SEC, and it substantially expands the scope of available relief. The 2026 Order follows closely on the heels of the Division’s April 16, 2026 exemptive order permitting 10-business-day tender offers for equity securities and continues the SEC’s trend of adapting its rules to the tempo and communication methods of modern markets.

At a Glance: What You Need to Know

- **New instrument, greater durability.** The relief is a formal exemptive order, not a staff no-action letter, and expressly supersedes the 2015 Letter.
- **Partial tender offers are now permitted.** The 2015 Letter’s “any and all” requirement is gone; offerors may now conduct a Five Business Day Tender Offer for less than the full class or series, subject to pro rata proration.
- **The exchange offer investor base has expanded.** “Eligible Exchange Offer Participants” now include “institutional accredited investors” in addition to “qualified institutional buyers” and non-U.S. persons.
- **The “Qualified Debt Securities” standard has been loosened.** New securities need only be “substantially similar,” not “identical,” and may reference the issuer’s most recent *pari passu* issuance rather than the tendered securities themselves.
- **The longer-maturity requirement for exchange consideration is gone.** Qualified Debt Securities no longer need a weighted average life to maturity longer than the securities being tendered for.
- **Simple-majority consent solicitations are no longer disqualifying.** A Five Business Day Tender Offer may be combined with a consent solicitation so long as the amendment requires only a simple majority.
- **The Senior Indebtedness financing restriction has been eliminated.** Issuers may now fund a Five Business Day Tender Offer with proceeds of a new senior financing.
- **Guaranteed delivery and same-day Form 8-K conditions are gone.** A Five Business Day Tender Offer no longer needs to have guaranteed delivery procedures nor require the filing of a Form 8-K.

Conditions to Qualify as a Five Business Day Tender Offer

A tender or exchange offer for non-convertible debt securities may rely on the 2026 Order’s five-business-day minimum offering period if, among other things:

- **Eligible offeror** — The offer is made by the issuer, a direct or indirect wholly owned subsidiary of the issuer, or a parent company that directly or indirectly owns 100% of the issuer’s capital stock (other than directors’ qualifying shares). This would help acquirors that want to exchange acquired company debt for acquiror/parent company debt to avoid SEC reporting at the subsidiary level or having to provide a parent guarantee.
- **Rating-agnostic** — The offer is made for a class or series of non-convertible debt securities regardless of any rating assigned by a nationally recognized statistical rating organization. The 2026 Order makes clear

that 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.

- **Consideration** — The offer is made solely for cash and/or “Qualified Debt Securities.”
- **Proration for partial offers** — If the offer is for less than all of the outstanding class or series, securities are accepted on a pro rata basis.
- **Restricted exchange offers** — If Qualified Debt Securities are offered in an exchange offer, participation 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, and institutional accredited investors (collectively, “Eligible Exchange Offer Participants”) in a transaction exempt from registration under the Securities Act.
- **Limited consent solicitations** — The offer is not made in connection with a solicitation of consents to amend the governing indenture where the amendment requires more than a simple majority of outstanding principal amount.
- **No default or insolvency overhang** — No default or event of default exists under the indenture or any other material credit agreement, and the issuer is not in bankruptcy, insolvency, or pre-packaged restructuring discussions, nor has its board authorized consensual restructuring discussions with creditors.
- **Prompt, hyperlinked announcement** — The offer is announced by 10:00 a.m., Eastern time, on the commencement date via a widely disseminated press release containing an active hyperlink to the offer materials.
- **Advance notice of changes** — Any change in consideration (or a change in the amount sought of more than 2%) is announced no later than 9:00 a.m., Eastern time, on the third business day before expiration, and any other material change no later than 9:00 a.m., Eastern time, on the second business day before expiration.
- **Withdrawal rights** — Withdrawal rights are exercisable until the earlier of expiration or, if extended, the 10th business day after commencement, and reopen after the 60th business day if the offer has not been consummated.
- **Prompt announcement of proration factor** — If the offer is for less than all of the outstanding class or series, the offeror must use commercially reasonable efforts to announce the proration factor 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.
- **No proximity to extraordinary transactions** — The offer is not commenced within 10 business days after the announcement or consummation of a change of control or similar extraordinary transaction, or of a material acquisition or disposition requiring Article 11 Regulation S-X pro forma financial information, and is not made in anticipation of or in response to a competing tender offer.

Key Changes from the 2015 Letter

Practitioners who structured debt tender offers under the 2015 Letter should note the following principal changes, several of which involve specific wording changes worth flagging for precedent documents.

- **Partial tender offers are now permitted.** The 2015 Letter conditioned relief on the offer being made “for any and all” of the subject class or series; genuinely partial offers did not qualify. The 2026 Order removes that limitation entirely and instead adds a new proration mechanic.

The 2015 Letter required the offer to be “made solely for cash consideration and/or consideration consisting of Qualified Debt Securities, for any and all of such debt securities.” The 2026 Order drops the “for any and all” language and instead provides that, “if the offer is for less than all of the outstanding class or series . . . and a greater amount of securities are tendered . . . 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.” A corresponding new condition requires the proration factor to be announced by 10:00 a.m., Eastern time, on the business day after expiration.

- **The universe of Eligible Exchange Offer Participants has expanded.** The 2015 Letter defined eligible exchange counterparties as Qualified Institutional Buyers under Rule 144A and non-U.S. persons under Regulation S only, and separately required a concurrent cash alternative for holders who did not qualify. The 2026 Order adds “institutions that are accredited investors” under Securities Act Rule 163B(c)(2) as a third eligible category. Importantly, the 2026 Order does not include the requirement found in the 2015 Letter that holders who are not Eligible Exchange Offer Participants (i.e., retail investors) be given an option to receive cash to approximate the value of the Qualified Debt Securities being offered. Counsel structuring an exchange offer should independently confirm the securities law treatment of non-eligible holders notwithstanding the absence of that express condition.
- **The “Qualified Debt Securities” standard has been loosened.** The definition of Qualified Debt Securities—the new securities that may be offered as exchange consideration—has changed in several material respects.

The 2015 Letter defined Qualified Debt Securities as securities “identical in all material respects” to the securities subject to the offer, and required that they have “a weighted average life to maturity that is longer than” the old securities. The 2026 Order redefines QDS as securities “substantially similar in all material respects” to either (1) the subject securities or, alternatively, (2) “the most recent issuance of debt securities that are *pari passu*” to the subject securities and eliminates the longer-weighted-average-life requirement altogether. As a result, an issuer may now structure an exchange around an already outstanding *pari passu* series rather than minting bespoke securities, and the new securities are no longer required to extend the issuer’s maturity profile. The benchmark definition also now references SOFR in place of LIBOR, and the deadline for fixing the exact consideration and interest rate on QDS has moved from “2:00 p.m., Eastern time, on the last business day of the offer” to “the expiration time of the offer.”

Where the amount of consideration offered is based on a fixed spread to a benchmark, 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 must be fixed no later than the expiration time of the offer. This may require some changes in current exchange offer practice where the pricing is often not done until the day after the tender offer (or early tender period) expires. Importantly, the 2026 Order requirement that the amount of consideration be fixed no later than the expiration time of the offer does not, by its terms, apply to cash tender offers.

- **Consent solicitations are no longer automatically disqualifying.** The 2015 Letter disqualified any offer “made in connection with a solicitation of consents to amend the Indenture,” full stop. The 2026 Order narrows that bar to consent solicitations seeking an amendment that “requires the consent of the holders of more than a simple majority of the outstanding principal amount”—meaning a simple-majority (or lesser) consent solicitation may now run alongside a Five Business Day Tender Offer. This appears responsive to industry commentary, including the New York City Bar Association’s [2026 recommendation](#) that the SEC revisit this condition.
- **Certain procedural and financing restrictions have been eliminated.** The 2015 Letter’s bar on financing the offer with proceeds of newly incurred “Senior Indebtedness” does not appear in the 2026 Order, giving issuers materially greater flexibility to fund a Five Business Day Tender Offer with a concurrent senior financing. The 2015 Letter’s guaranteed delivery mechanic (permitting late tenders for up to two business days after expiration) is also absent, as is the requirement that reporting-company offerors furnish the announcement press release on Form 8-K by noon Eastern time on the first day of the offer.
- **The change-in-terms and change of control provisions have been restructured.** The 2015 Letter measured notice periods forward from the date of announcement (five business days for a consideration change; three business days for other material changes). The 2026 Order instead sets fixed clock-time deadlines measured backward from expiration—9:00 a.m. Eastern time on the third business day before expiration for consideration changes (or changes in the amount sought beyond a new 2% cushion, mirroring the Section 14(d)(3) *de minimis* concept), and the second business day before expiration for other material changes. Separately, the 2015 Letter’s open-ended bar on offers made “in anticipation of or in response to, or concurrently with” a change of control has become a bright-line rule barring commencement within 10 business days after the announcement or consummation of such a transaction—an easier standard for deal teams to apply with certainty.

The requirement that a change in consideration or a change in the amount sought of more than 2% be announced on the third business day before expiration lessens the benefits of the 2026 Order. Under common practice, an issuer may launch a 20-business day capped tender offer with an early tender date (and typically an early tender premium) on business day 10. If the tender offer is oversubscribed, the issuer can “upsized” the tender offer and accept the higher amount on the morning of business day 11 and still comply with the requirement to keep the amended tender offer open for an additional 10 business days. If an issuer wanted to keep similar optionality with a Five Business Day Tender Offer, it would announce the

increase (assuming it is above 2%) on day 6 and then keep the Five Business Day Tender Offer open until business day 8, a savings of just three business days.

Rationale and Policy Considerations

The Division’s stated rationale for the 2026 Order (i.e., addressing market inefficiencies, better reflecting technological advancements, and reducing exposure to market and interest rate fluctuations) tracks the reasoning first articulated in the 2015 Letter and echoed in the SEC’s [April 2026 exemptive order](#) allowing for 10 day tender offers for certain equity securities (the “Equity Exemptive Order”). Debt tender offers frequently involve refinancing higher-rate debt with lower-rate debt, or extending near-term maturities during favorable market windows; the ability to execute quickly reduces “negative carry” exposure from holding two series of debt simultaneously and lessens the issuer’s exposure to intervening rate movements. Because holders evaluating a cash or QDS tender offer are typically making a financial, trading-oriented decision rather than an evaluation of the issuer’s underlying business, the Division continues to view a materially shorter offering period as consistent with investor protection, particularly where paired with prompt, hyperlinked dissemination of offer materials.

Practical Implications for Issuers, Dealer Managers, and Investors

- **For issuers and sponsors:** Liability management transactions (partial tender offers, targeted buybacks, and debt-for-debt exchanges) can now be executed on a substantially compressed timeline, reducing negative carry and market exposure. The removal of the Senior Indebtedness restriction also allows tender offers to be funded with proceeds of new senior financings, and issuers pursuing amend-and-extend strategies can now pair a simple-majority consent solicitation with a Five Business Day Tender Offer rather than running a bifurcated or 20-business-day process. While not explicitly dealt with in the 2026 Order, a number of common debt tender offer features appear compatible with the 2026 Order, including waterfall structures (in which issuers tender for multiple series of debt securities up to a maximum amount per series, accepting securities of higher ranked series before those of lower rank) and modified Dutch auction tender offers (in which issuers specify a range of prices at which it will accept tenders and then sets a “clearing price” at which it accepts bonds based on bondholder submissions). Early tender premiums and early settlement options, neither of which has been explicitly blessed by the SEC, seem unnecessary in Five Business Day Tender Offers.
- **For dealer managers and underwriters:** Precedent offer to purchase, letter of transmittal, and dealer manager agreement forms built around the 2015 Letter (in particular, the guaranteed delivery mechanic, the Senior Indebtedness restriction, and the “any and all” structure) need to be revised, including new proration mechanics and disclosure. The removal of the guaranteed delivery procedure also warrants a fresh look at settlement and clearance timing with The Depository Trust Company and custodian banks, and the expanded Eligible Exchange Offer Participant category will require updated investor eligibility-certification procedures.
- **For investors and holders:** Holders should expect shorter response windows across a broader range of liability management transactions, including partial buybacks that previously would not have qualified for

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abbreviated treatment, and should build internal processes to evaluate and respond to tender notices within five business days, factoring in the risk of proration on offers for less than all of a series.

- **Continuing obligations.** The 2026 Order does not relieve offerors of the anti-fraud and anti-manipulation provisions of the federal securities laws, including Exchange Act Sections 10(b) and 14(e); disclosure adequacy remains the offeror’s responsibility, and the Division has expressly disclaimed any view on such adequacy or on the application of the Securities Act or other law to a given offer.

Looking Ahead

The 2026 Order represents the most significant liberalization of debt tender and exchange offer timing since 2015, and—unlike its predecessor—does so through generally available exemptive relief rather than staff enforcement forbearance. Because the relief remains sub-regulatory and was issued under delegated authority rather than through SEC rulemaking, it can be reconsidered, modified, or withdrawn by the Division at any time, and issuers and dealer managers should build appropriate flexibility into transaction timelines accordingly. Companies contemplating a debt tender or exchange offer should update precedent documents now and consider how the 2026 Order, read together with the Equity Exemptive Order, may affect the timing and structure of pending or contemplated transactions.

If you have any questions regarding this client alert, please contact the Willkie attorney with whom you regularly work.



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¹ The SEC provided that, for purposes of the 2026 Order, a Five Business Day Tender Offer is treated as having commenced on the first business day on which the offer is made so long as it is announced in a press release issued through a widely disseminated news or wire service by 10:00 a.m., Eastern time, on such business day and, importantly, that the last day of a Five Business Day Tender Offer is treated as a business day if expiration occurs on or after 5:00 p.m., Eastern time, on such business day. Under SEC Rule 14d-1(g)(3), a “business day” normally doesn’t end until 12:00 midnight. In the Equity Exemptive Order, the SEC did not modify the definition of “business day,” so 10-day equity tender offers must expire at 12:00 midnight Eastern time on the last day of the 10-day period.