

# SEC Issues Exemptive Order Permitting Shortened Tender Offer Periods

## WRITTEN BY

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## Overview

On April 16, 2026, the Division of Corporation Finance (Division) of the U.S. Securities and Exchange Commission (SEC) issued an [exemptive order](#) permitting certain tender offers for equity securities to remain open for a minimum of 10 business days, which halves the standard 20-business-day minimum requirement under Rules 13e-4(f)(1)(i) and 14e-1(a) of the Securities Exchange Act of 1934, as amended (Exchange Act). The order reflects the Division's stated goals of addressing market inefficiencies, aligning the regulatory framework with technological advancements and reducing offerors' and security holders' exposure to market fluctuations during extended offer periods. The order became effective immediately.

The order provides relief for two distinct categories, each of which is subject to certain conditions discussed below: (1) tender offers for equity securities of reporting companies made pursuant to Regulation 14D or Rule 13e-4 under the Exchange Act and (2) tender offers for equity securities of non-reporting companies made pursuant to Rule 14e-1 under the Exchange Act.

## Background

Under the SEC's existing tender offer rules prior to the order, tender offers for equity securities were generally required to remain open for a minimum of 20 business days. Historically, the Division issued various no-action letters and exemptive orders permitting shortened periods for certain debt securities and narrow categories of equity offers, but broad timing relief for tender offers of equity securities of reporting companies was not available on a general basis.

The order now extends streamlined relief more broadly, recognizing that certain offers, such as negotiated M&A deals and self-tenders where pricing and terms are fixed and transparency is high, do not warrant the full 20-business-day window to adequately protect investors.

## Key Conditions: Reporting Companies

To rely on the exemption for a 10-business-day offer period in a tender offer subject to Regulation 14D or Rule 13e-4 under the Exchange Act, the following conditions must each be satisfied:

1. **Scope of coverage.** The offer must be subject to Regulation 14D or Rule 13e-4 under the Exchange Act.
2. **Regulation 14D offers (third-party tender offers).** If the offer is subject to Regulation 14D: (i) it must be made

pursuant to a negotiated merger agreement or similar business combination agreement; (ii) it must be made for all outstanding securities of the subject class; and (iii) the subject company must file and disseminate a Schedule 14D-9 no later than 5:30 p.m. Eastern time on the first business day after commencement of the tender offer.

3. **Rule 13e-4 offers (issuer tender offers).** If the offer is subject to Rule 13e-4 under the Exchange Act, the offer must be made for less than all outstanding securities of the subject class.
4. **Cash only, fixed price.** The consideration must consist solely of cash at a fixed price.
5. **No Rule 13e-3 applicability.** The tender offer must not be a going-private transaction subject to Rule 13e-3 under the Exchange Act.
6. **No cross-border exemptions.** The tender offer cannot be made in reliance on the cross-border exemptions under Rule 14d-1(d) or Rule 13e-4(i) under the Exchange Act.
7. **No competing offer at announcement.** At the time of the initial public announcement of the tender offer, the subject securities must not be subject to a previously announced or pending tender offer by another offeror.
8. **Competing offer extension obligation.** If a competing tender offer is subsequently announced after commencement of the initial tender offer made in reliance on the order, the initial offeror must extend its offer so that it remains open for at least 20 business days from the original commencement date.
9. **Early morning press release at commencement.** The tender offer must be announced via a widely disseminated press release or wire service by 10:00 a.m. Eastern time on the commencement date. The press release must include the basic terms of the offer (offeror identity, class of equity security sought to be purchased, the amount of consideration offered, and the expiration date) and an active hyperlink to a website where security holders can access tender offer materials, the letter of transmittal (if any), and any other documents relating to the offer.
10. **Early notice for price/amount changes.** Any increase or decrease in the percentage of subject securities sought (other than the acceptance for payment of an additional amount of securities not to exceed 2%) or change 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 the expiration of the tender offer.
11. **Other material changes.** Any other material change in the terms of the tender offer must be communicated by a widely disseminated press release or other public announcement no later than 9:00 a.m. Eastern time on the second business day before the expiration of the tender offer.

### **Key Conditions: Nonreporting Companies**

The order also provides relief for tender offers for equity securities of nonreporting companies. To rely on the exemption for a 10-business-day offer period in a tender offer subject to Rule 14e-1 under the Exchange Act, the following conditions must each be satisfied.

- **Nonreporting 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 pursuant to Section 15(d) of the Exchange Act.
- **Offeror identity.** The tender offer must be made by the issuer itself, or by a wholly owned subsidiary of the issuer, for the securities of the issuer.
- **Cash only, fixed price.** The consideration must consist only of cash at a fixed price.
- **Early notice for price/amount changes.** Any increase or decrease in the percentage of subject securities sought (other than the acceptance for payment of an additional amount of securities not to exceed 2%) or change in the consideration offered must be communicated by notice to holders of the subject securities no later than 9:00 a.m. ET on the fifth business day before expiration.
- **Other material changes.** Any other material change in the terms of the tender offer must be communicated to holders no later than 9:00 a.m. Eastern time on the second business day before the expiration of the tender offer.

## **Practical Guidance for Clients**

The order presents meaningful opportunities to accelerate deal timelines and reduce market exposure for qualifying tender offers. The following considerations are important for clients evaluating whether and how to rely on the exemptive relief:

### **1. Negotiated M&A Transactions: A Game-Changer for Transaction Timing**

For a merger transaction structured as a two-step merger, the ability to run a 10-business-day tender offer rather than a 20-business-day offer can materially reduce the minimum period of time between signing and closing, reduce market risk associated with the subject company's stock and narrow the window for deal uncertainty or competing bidders to make a competing offer.

### **2. Cash Consideration Is a Threshold Requirement**

The order applies only to all-cash, fixed-price tender offers. Transactions with stock or mixed consideration are categorically excluded and remain subject to the traditional 20-business-day minimum tender offer requirements.

### **3. Time-Sensitive Press Release and Notices**

Offerors are responsible for ensuring that all required commencement press releases and notices related to material changes are timely made and disseminated in a manner consistent with the conditions set forth in the order.

### **4. Schedule 14D-9 Timeline Coordination**

For Regulation 14D tender offers, the target company's Schedule 14D-9 must be filed and disseminated by 5:30 p.m. Eastern time on the first business day after commencement. Target companies and their counsel should prepare the Schedule 14D-9 well in advance of the commencement of the tender offer to ensure compliance with this deadline.

### **5. Competing Bids Require Extension Back to 20 Business Days**

Although the order narrows the window in which a competing bidder could submit a competing bid, if a competing tender offer emerges after commencement of a tender offer, the initial offeror must extend its tender offer to be open for at least 20 business days from the original commencement date. Offerors should factor this contingency into their planning and ensure that merger agreements contain appropriate provisions addressing competing bid scenarios and the offeror's rights and obligations.

### **6. Rule 13e-4 Self-Tenders: Partial Buybacks Now Eligible**

The order expressly permits issuer tender offers under Rule 13e-4 of the Exchange Act conducted for less than all outstanding shares to use the 10-business-day period, which may encourage companies to conduct more frequent issuer tender offers. The reduced tender offer period will limit exposure to price volatility and market risk during the

tender offer period.

## **7. Significant Excluded Transactions**

The order does not apply to tender offers subject to Rule 13e-3 under the Exchange Act, which governs going-private transactions involving affiliated parties, offers involving noncash consideration, third-party partial bids, hostile or unsolicited bids, and offers relying on cross-border exemptions.

## **8. Anti-Fraud and Anti-Manipulation Rules Still Apply**

The order expressly notes that offerors relying on the exemption remain subject to 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. The Division also expressly reserves the right to reconsider, modify, or withdraw the order if the Division becomes aware of any material issues stemming from the order. Offerors should ensure that their offer materials and conduct comply fully with applicable law notwithstanding the availability of the shortened offering period.

## **Contact Us**

If you have questions about the order or how it may affect your pending or contemplated transactions, please contact any of the authors of this client alert or your regular Troutman Pepper Locke contact.

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