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SEC Staff Issues Exemptive Relief Allowing 10-Business Day Equity Tender Offers

It is clear that the exemptive relief will provide public and private companies with significantly more flexibility in the structuring and timing of their transactions.

On April 16, 2026, the Staff of the Securities and Exchange Commission (the SEC)'s Division of Corporation Finance (the Division) issued an [exemptive order](#) granting relief that will permit certain equity tender offers to remain open for 10 business days instead of the 20 business days specified in the Securities Exchange Act of 1934 (the Exchange Act) rules.^[1] The exemptive relief is a significant expansion of the Staff's prior positions on abbreviated tender offers, which up to this point have primarily involved tender offers for debt securities.^[2] The Division Staff indicated that the purpose of the expanded relief is to "address market inefficiencies, better reflect technological advancements, and reduce exposure to market fluctuations."^[3]

Subject to the specified conditions in the order, the exemptive relief can be used in two types of equity tender offers: (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 that are subject to Regulation 14E.^[4]

In contrast to market practice that has developed around abbreviated offers involving debt securities, it remains to be seen how frequently companies will use the relief granted for tender offers involving equity securities.^[5] However, it is clear that the exemptive relief will provide public and private companies with significantly more flexibility in the structuring and timing of their transactions.

Tender Offers for Equity Securities of SEC Reporting Companies

With respect to tender offers for equity securities^[6] of reporting companies, the Division will grant exemptions from Exchange Act Rules 13e-4(f)(1) and 14e-1(a) and (b)^[7] to permit a tender offer for any class of equity security to remain open for an abbreviated minimum offering period of 10 business days so long as all of the following conditions are satisfied.

Offers Allowed

1. **Friendly Third-Party and Issuer Tender Offers.** The tender offer must be subject either to the provisions of Regulation 14D or Rule 13e-4 under the Exchange Act^[8]:
 - a. For **third-party tender offers**, (i) the offer must be made pursuant to the terms of a negotiated merger or similar business combination agreement between the target company and the offeror, (ii) for all outstanding securities of the subject class, and (iii) the target company must file and disseminate its recommendation statement on Schedule 14D-9 no later than 5:30 p.m. Eastern time on the first business day following the date of commencement of the tender offer; and
 - b. For **issuer tender offers**, the offer must be partial (i.e., for less than all outstanding securities of the subject class).
2. **Fixed Cash-Only Consideration.** Consideration offered in the tender offer must be cash only at a fixed price (i.e., no formulaic pricing or consideration in the form of securities).
3. **Manner of Dissemination.** The 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 and an active hyperlink to a website where security holders may access the tender offer materials, letter of transmittal (if any), and any other documents relating to the offer on the date the tender offer commences.
4. **Notice of Material Changes.** Any increase or decrease in the percentage of the subject securities sought in the tender offer greater than 2% *or* any change in the consideration offered must be communicated and widely disseminated by press release or other public announcement no later than 9:00 a.m. Eastern time on the **fifth business day before expiration of the offer**, while any other material change in the terms of the tender offer must be communicated and widely disseminated by press release or other public announcement no later than 9:00 a.m. Eastern time on the **second business day before expiration of the offer**.

Offers Excluded

1. **No “Going Private” Effect.** The tender offer cannot be subject to Exchange Act Rule 13e-3.^[9]
2. **Not Reliant on Cross-Border Relief.** The tender offer cannot be made in reliance on the Tier II tender offer cross-border exemptions.^[10]
3. **No Competition at Commencement.** Upon the first public announcement of the offer, the subject securities cannot already be the subject of a previously announced or pending tender offer by another offeror.

4. **No Competition After Commencement.** If a competing tender offer is announced after commencement of the initial offer, the initial tender offer must be extended so that the offer remains open for at least 20 business days from the date the initial offer commenced.

Tender Offers for Equity Securities of Non-Reporting Companies

With respect only to issuer tender offers for equity securities of non-reporting companies, the Division will grant exemptions from Exchange Act Rule 14e-1(a) and (b) to permit a tender offer for any class of equity security to remain open for an abbreviated minimum offering period of 10 business days so long as all of the following conditions are satisfied:

1. **Non-Reporting Company.** The target company does not have a class of registered equity security and is not a public reporting company;
2. **Offer by Issuer or Wholly Owned Subsidiary.** The tender offer must be made by the issuer or a wholly owned subsidiary of the issuer of the subject securities;
3. **Fixed Cash-Only Consideration.** Consideration offered in the tender offer must be cash only at a fixed price (i.e., no formulaic pricing or consideration in the form of securities); and
4. **Notice of Material Changes.** Any increase or decrease in the percentage of the subject securities sought in the tender offer greater than 2% or any change in the consideration offered must be communicated to security holders no later than 9:00 a.m. Eastern time on the **fifth business day before expiration of the offer**, while any other material change in the terms of the tender offer must be communicated to security holders no later than 9:00 a.m. Eastern time on the **second business day before expiration of the offer**.

Takeaways

The exemptive order has the potential to significantly facilitate, and reduce the time and costs associated with, certain types of transactions. In that regard, the relief is aligned with the SEC's overall goals of facilitating capital market transactions and providing more options and flexibility for companies. While it remains to be seen whether and how companies will apply the exemptive relief, set forth below are considerations of how public and private companies might use the relief.

Use of the Relief: Public Companies and Transactions

The increased flexibility provided by the order to structure and time transactions will likely change market practice around negotiated third-party offers.^[11] For example, a 10-business day offer period increases the attractiveness of a merger transaction structured as a two-step merger because the front-end tender offer can now be conducted far more quickly, which may accelerate the timing of the second-step merger and deal closure. This will increase deal certainty by reducing the minimum period of time when the tender offer will be subject to the effects of volatility in the target stock and challenge by potential interlopers or shareholder activists. However, because there will only be half the time to solicit shareholders to tender their shares, the benefits of the 10-business day offer period may be offset to some extent for more complex deals or deals in which there is a significant retail shareholder base.

For public companies, abbreviated offer periods could also incentivize companies to conduct more frequent issuer tender offers in order to, among other things, return capital to shareholders (demonstrating board and management confidence in the company) or reduce the number of their shareholders or their outstanding shares. The relief could also provide companies with an alternative method of repurchasing their own shares from the marketplace in small amounts from time to time.

That said, while there may be potential benefits that derive from a shorter minimum offer period, there will still be practical considerations that may limit how often the relief will be used. For example, the two-step tender offer structure has generally only been used when the parties believe that antitrust and any other regulatory approvals can be obtained during the same time period as the tender offer, allowing for a speedier closing than when parties are soliciting proxies for a shareholder vote. Given the waiting period for approval under the Hart-Scott-Rodino (HSR) Act in cash tender offers is 15-calendar days, the 10-business day tender offer will allow for a meaningful increase in speed to closing for transactions where HSR Act approval is likely to be received within that 15-calendar day period. However, when regulatory approvals are likely to take longer than the time it takes to obtain approval via a shareholder vote, transacting parties still may prefer to use one-step mergers in order to more quickly mitigate and end the risk of an interloper's challenge.^[12] Finally, another factor for companies considering whether to rely on this exemptive relief is that they must still comply with all other tender offer rule requirements.^[13]

Use of the Relief: Private Companies and Transactions

For private companies, the relief creates more opportunities to reduce the base of unaccredited shareholders in order to make a company an easier target for a future private acquisition transaction. The relief could also help a private company remain under 2,000 shareholders to avoid exceeding the thresholds that trigger the requirement to register as a public reporting company at the end of its fiscal year.^[14] A 10-business day period might also result in cost savings and mitigate the market risk that issuers face when offering to repurchase their shares. Those benefits might also encourage private issuers (or public issuers whose stock is very thinly traded) to conduct a self-tender to provide a liquidity opportunity for their shareholders, including private companies that issue stock to their employees.

Use of the Relief: Potential Risks

In relying on the Exemptive Order, companies should consider that any tender offer involving retail equity holders may continue to gain extra scrutiny by potential plaintiffs. A shorter deadline may increase this scrutiny. Additionally, in third-party tender offers, target boards will need to consider, taking into account the robustness of their pre-signing market check, whether the truncated timeframe for a so-called "window shopping" period when competing offers could potentially emerge is sufficient to satisfy their fiduciary duties under the *Revlon* doctrine.

Conclusion

The exemptive relief represents the Staff's evolving views on the appropriateness of abbreviated tender offer periods in the context of equity tender offers and the Staff's attempt to balance the goals of expanding options available to companies transacting in the capital markets with investor protection goals. As noted above, it remains to be seen how often the relief will be used, but if

used, the relief could enhance deal structure flexibility, speed and certainty.

[1] See Rules 13e-4(f)(1)(i) and 14(e)-(1)(a).

[2] See SEC Order at note 2 (citing historical guidance and relief provided for offers involving debt securities and exemptive relief provided for an offer to purchase equity securities of an Indian public limited liability company pursuant to mandatory provisions under Indian law).

[3] The Division is authorized to grant the exemptive relief contemplated by the order through the Division's receipt of delegated authority from the Commission. See 17 CFR 200.30-1(f)(16).

[4] See, e.g., Exchange Act Rules 14e-1 through 14e-8 (Regulation 14E) available at <https://www.ecfr.gov/current/title-17/chapter-II/part-240/subpart-A/subject-group-ECFR465b90927e2fdb3?toc=1>.

[5] In the context of debt tender offers, the use of an abbreviated tender offer period is cited as both consistent with market practice and helpful in mitigating companies' exposure to debt refinancing risks. See e.g., Gibson Dunn Client Alert, [Five Day Tender Offers: Conditions & Timelines](#).

[6] See Section 3(a)(11) of the Exchange Act and Exchange Act Rule 3a11-1 for the definition of "equity security."

[7] Exchange Act Rule 13e4(f)(1) and 14e-1(a) specify the minimum 20-business day period an offer must remain open. Rule 14e-1(b) specifies the 10-business day period a tender offer must remain open after a change in the percentage of securities sought or the consideration offered.

[8] Regulation 14D applies to third-party tender offers for over 5% of a class of equity securities, while Rule 13e-4 governs issuer tender offers.

[9] 17 CFR § 240.13e-3.

[10] See, e.g., the cross border exemptions set forth in Exchange Act Rule 14d-1(d); Exchange Act Rule 13e-4(i).

[11] Unlike the SEC Staff no-action letters that established a 5-day minimum offer period for issuer tender and exchange offers for the issuer's non-convertible debt securities, the exemptive relief is available for third-party tender offers involving equity securities.

[12] In the case of a proxy solicitation, interloper risk ends at the time of the shareholder vote. In contrast, in tender offers, the interloper risk ends at the closing of the transaction, which may be delayed if regulatory approvals have not been obtained or other closing conditions have not been satisfied.

[13] The Staff reminds offerors: "[o]fferors conducting these offers 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. Responsibility for compliance with all applicable provisions of the federal securities laws rests with the offeror conducting the tender offer." SEC Exemptive Order for Tender Offers for Equity Securities (Apr. 16, 2016) at 3.

[14] See e.g., Exchange Act Section 12 and Rule 12g-1 (outlining the thresholds for registration as a public company).

The following Gibson Dunn lawyers prepared this update: [Mellissa Campbell Duru](#), [Brian Lane](#), [Sebastian Fain](#), [Alisa Babitz](#), and [Matt Staugaard](#).

Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any member or leader of the firm's [Securities Regulation & Corporate Governance](#) or [Mergers & Acquisitions](#) practice groups:

Securities Regulation & Corporate Governance:

[Aaron Briggs](#) – San Francisco (+1 415.393.8297, abriggs@gibsondunn.com)

[Mellissa Campbell Duru](#) – Washington, D.C. (+1 202.955.8204, mduru@gibsondunn.com)

[Elizabeth Ising](#) – Washington, D.C. (+1 202.955.8287, eising@gibsondunn.com)

[Thomas J. Kim](#) – Washington, D.C. (+1 202.887.3550, tkim@gibsondunn.com)

[Brian J. Lane](#) – Washington, D.C. (+1 202.887.3646, blane@gibsondunn.com)

[Julia Lapitskaya](#) – New York (+1 212.351.2354, jlapitskaya@gibsondunn.com)

[Ronald O. Mueller](#) – Washington, D.C. (+1 202.955.8671, rmueller@gibsondunn.com)

[Michael A. Titera](#) – Orange County (+1 949.451.4365, mtitera@gibsondunn.com)

[Geoffrey E. Walter](#) – Washington, D.C. (+1 202-887-3749, gwalter@gibsondunn.com)

[Lori Zyskowski](#) – New York (+1 212.351.2309, lzyskowski@gibsondunn.com)

Mergers & Acquisitions:

[Sebastian L. Fain](#) – New York (+1 212.351.5238, sfain@gibsondunn.com)

[Robert B. Little](#) – Dallas (+1 214.698.3260, rlittle@gibsondunn.com)

[Saeed Muzumdar](#) – New York (+1 212.351.3966, smuzumdar@gibsondunn.com)

[George Sampas](#) – New York (+1 212.351.6300, gsampas@gibsondunn.com)

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