

GIBSON DUNN



Capital Markets | Securities Regulation & Corporate
Governance Update

July 2, 2026

New Exemptive Order Modernizes and Significantly Expands Abbreviated Five-Business Day Non-Convertible Debt Tender Offers

Companies will be able to take advantage of a high-velocity, more flexible mechanism to optimize balance sheets and have the ability to more nimbly conduct liability management exercises in a single calendar week, while reducing exposure to market and interest rate volatility.

In a major regulatory development for issuers and liability management practitioners, the U.S. Securities and Exchange Commission's (SEC) Division of Corporation Finance, acting via delegated authority, has issued a significant Exemptive Order materially expanding the framework for abbreviated tender and exchange offers for non-convertible debt securities. As a result, companies will be able to take advantage of a high-velocity, more flexible mechanism to optimize balance sheets and have the ability to more nimbly conduct liability management exercises in a single calendar week while reducing exposure to market and interest rate volatility. This Exemptive Order, effective June 30, 2026 (the "2026 Exemptive Order"),^[1] supersedes the long-standing January 23, 2015 No-Action Letter (the "2015 Letter"),^[2] which previously governed the market for abbreviated non-convertible debt tender offers.

Introduction: Regulatory Context

Under Exchange Act Rule 14e-1(a), all tender offers—whether for equity or debt—must remain open for a minimum of 20 business days, 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.^[3]

Recognizing that debt transactions serve different commercial purposes, have different timing considerations, and present fewer investor protection risks than equity tender offers, the SEC staff has taken various no-action positions since 1986 that permitted shorter offering periods for non-convertible debt.^[4]

Following the SEC's recent April 2026 "Equity Order" (which shortened the period that certain friendly equity tender offers must remain open to 10 business days, as discussed in more detail on our Client Alert dated April 20, 2026),^[5] the SEC states that the 2026 Exemptive Order is intended to address market inefficiencies, better reflect modern technological advancements, reduce interest rate exposure, and expand structural flexibility for corporate debt management.

Overview of the Baseline 2015 No-Action Letter Framework

For over a decade, the 2015 Letter served as the standard playbook for fast-track debt liability management.^[6] It permitted an offeror to conduct a tender or exchange offer for non-convertible debt securities in an abbreviated five business day window, provided that a rigid set of criteria was met:

- **"Any and All" Only:** The relief was strictly confined to offers to acquire "any and all" of the target debt; partial tender offers or tiered caps were entirely excluded from the abbreviated timeline.
- **Prohibition on Consent Solicitations:** The offer could not be coupled with any solicitation of consents to amend the underlying indenture or agreements governing the terms of the target debt.
- **Restrictive Exchange Offers:** While exchange offers for "Qualified Debt Securities" were permitted, they were restricted to offers to Qualified Institutional Buyers (QIBs) and non-U.S. persons. Crucially, offerors were required to provide a concurrent, fixed cash option to retail or non-eligible holders to prevent them from being locked out of the transaction's economic benefits.
- **Maturity Restrictions:** Any new "Qualified Debt Securities" issued in an exchange offer were required to be identical in all material respects to the target debt and to possess a longer weighted average life to maturity than the target debt.
- **Strict Financing Caps:** The abbreviated offer could not be financed with the proceeds of any "Senior Indebtedness" (debt senior in payment right, possessing extra guarantors/collateral, or having a shorter maturity than the target debt).

- **Notice Requirements:** Offerors were required to issue a press release by 10:00 a.m., Eastern Time, on the first day of the offer, file a Current Report on Form 8-K before 12:00 noon, Eastern Time, on the same day, and provide a mandatory two-business-day guaranteed delivery procedure.

The Paradigm Shift: Key Changes Introduced by the 2026 Exemptive Order

The 2026 Exemptive Order goes far beyond simply re-authorizing the no-action position under the 2015 Letter; it meaningfully transforms the abbreviated debt tender offer landscape by removing decades-old structural restrictions, shortening extension windows, and providing greater legal certainty.

1. Shift from “No-Action” Comfort to a Binding “Exemptive Order”

While the 2015 framework was established through a standard staff “no-action” position (which merely states that the staff will not recommend enforcement action and does not bind courts or third parties), the 2026 relief is provided by a formal Exemptive Order issued by the Division under delegated Commission authority. This provides across-the-board statutory exemptive relief and protection for any compliant offer from claims that the offer violated Exchange Act Rules 14e-1(a) and (b).

2. Authorization of Partial Tender Offers for Non-Convertible Debt Securities

In an important change, the 2026 Exemptive Order permits partial tender offers (offers for less than 100% of the outstanding class or series) for non-convertible debt securities to be completed in five business days. If an offer is oversubscribed, the offeror must accept the securities on a pro-rata basis. Offerors must use commercially reasonable efforts to announce the final proration factor via a widely disseminated press release by 10:00 a.m., Eastern Time, on the next business day following expiration of the offer.

3. Concurrent Consent Solicitations Now Permitted (with a Cap)

While the 2015 Letter barred combining an abbreviated tender offer timeline with solicitation of approval of an indenture amendment, the 2026 Exemptive Order allows consent solicitations to run concurrently with a 5-business-day offer, *provided* that the proposed amendment does not require the consent of holders of more than a simple majority of the outstanding principal amount.

This enables offerors to conform standard covenants or execute exit consents—both important tools in liability management exercises—on an accelerated schedule, though protective amendments requiring supermajority or unanimous debt holder approval remain excluded.

4. Streamlined Exchange Offers and Expanded Institutional Pool

The 2026 Exemptive Order simplifies and expands the use of fast-track exchange offers in two ways:

- **Inclusion of IAs:** The pool of “Eligible Exchange Offer Participants” has been expanded to include Institutional Accredited Investors (IAs) under Securities Act Rule 163B(c)(2), alongside QIBs and non-U.S. persons.
- **Elimination of the Retail Cash Option:** The 2015 Letter required issuers to provide a concurrent cash option for holders who were not Eligible Exchange Offer Participants and, therefore, could not receive the new securities. This restriction has been eliminated. Offerors can now conduct abbreviated exchange offers solely to Eligible Exchange Offer Participants, without the need to extend a concurrent cash option to all holders.

5. More Flexible “Qualified Debt Securities” Rules

The definition of what constitutes a “Qualified Debt Security” in an exchange offer has been relaxed:

- **No Maturity Duration Minimum:** The 2026 Exemptive Order removes the requirement that the newly issued debt must have a longer weighted average life to maturity than the old debt. Offerors can now use 5-business-day exchange offers to shorten maturities or roll long-term debt into shorter-term notes.
- **Pari Passu Comparison Permitted:** The new securities no longer need to be identical in all material respects to the target debt; instead, the new securities may also be substantially similar in all material respects to the issuer’s most recent issuance of debt securities that are pari passu to the subject securities.

6. Elimination of Financing Restrictions

The 2015 Letter’s prohibition against funding the tender offer with “Senior Indebtedness” has been eliminated.

Offerors are not subject to restrictions under the new framework regarding how they source or structure the capital used to fund the transaction.

7. Shorter Windows for Material Amendments

The 2026 Exemptive Order accelerates the timeline required to communicate changes to investors before the offer expires:

- **Consideration / Percentage Changes:** Any change in consideration or percentage of securities sought (beyond a standard 2% acceptance buffer) must be announced by 9:00 a.m., Eastern Time, at least **three business days** prior to the expiration of the offer. Under the 2015 Letter, offers had to remain open for a full five business days after the announcement.
- **Other Material Changes:** Any other material modification must be announced by 9:00 a.m., Eastern Time, at least **two business days** prior to the expiration of the offer (down from three business days under the 2015 Letter requirement).

8. Elimination of Mandatory Guaranteed Delivery and Form 8-K Noon Deadline

The 2026 Exemptive Order removes the 2015 Letter requirements to provide a 2-day guaranteed delivery option and to file a Current Report on Form 8-K by 12:00 noon, Eastern Time, on the first day of the offer. Instead, commencement is conditioned on issuance of a widely disseminated press release by 10:00 a.m., Eastern Time, that contains certain required information about the offer and an active hyperlink to a website hosting all tender materials.

9. Extended Intraday Pricing Window

For formula-based or spread-based pricing models linked to benchmarks (e.g., UST, SOFR), the 2015 Letter rules forced offerors to lock in the final price and interest rate by 2:00 p.m., Eastern Time, on the expiration day. The 2026 Exemptive Order eliminates this cliff, allowing the final exact consideration and interest rate to be fixed no later than the time the offer expires.

10. Clearer Restrictive Windows

The 2015 Letter restricted abbreviated offers from being “made in anticipation of or in response to, or concurrently with” a change of control or certain other extraordinary corporate events involving the issuer. The 2026 Exemptive Order replaces this ambiguous standard with a much clearer rule: an abbreviated offer cannot be “commenced within ten 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 the issuer’s assets.

Comparison Table: 2015 Framework and 2026 Framework

Feature / Condition	2015 No-Action Letter Framework	New 2026 Exemptive Order Framework
Legal Nature of Relief	Non-binding Staff No-Action Position	Binding Commission Exemptive Order
Offer Volume Scope	Strict “Any and All” requirement	Permits Partial Offers (with mandatory pro-rata allocation)
Consent Solicitations	Broadly Prohibited	Permitted (if amendment requires approval of a simple majority of the outstanding principal amount)
Exchange Offer Pool	Restricted to QIBs and Non-U.S. Persons	Expanded to include Institutional Accredited Investors (IAIs)
Retail Cash Option Proviso	Mandatory for non-eligible exchange holders	Eliminated (exchange offer made to only institutional holders allowed)

Weighted Average Life	New debt <i>must</i> have longer term to maturity than target debt	Eliminated (new debt can have shorter term maturity than target debt)
Qualified Debt Basis	Must be identical in all material respects to subject debt	Can be substantially similar in all material respects to subject debt <i>or</i> recent <i>pari passu</i> debt
Financing Restrictions	Prohibited from using “Senior Indebtedness”	Eliminated (no restrictions on capital sourcing)
Consideration Change Extension	Requires at least 5 business days from announcement	Shortened to 3 business days (notice by 9:00 a.m., Eastern Time)
Other Material Change Extension	Requires at least 3 business days from announcement	Shortened to 2 business days (notice by 9:00 a.m., Eastern Time)
Guaranteed Delivery Mandate	Required (2-business-day look-forward)	Eliminated (at offeror’s option)
Announcement	Requires hyperlinked press release by 10:00 a.m., Eastern Time, on commencement date	Expanded to include procedures for proration, if applicable (notice by 10:00 a.m., Eastern Time, on commencement date)
SEC Filing Mandates	Form 8-K required before 12:00 noon, Eastern Time, on commencement day	Eliminated (Form 8-K no longer required); 10 a.m., Eastern Time, hyperlinked press release required
Intraday Pricing Lock	Strict deadline of 2:00 p.m., Eastern Time, on Expiration Day	Flexible up to the exact Expiration Time of the offer
M&A / Corporate Blackout	Vague “in anticipation of / concurrent with” test	10-business-day restriction post-commencement of a deal

Practical Implications for Issuers and Market Participants

- **Strategic Liability Management:** The inclusion of partial offers and simple-majority consent solicitations fundamentally shifts how corporate treasurers will approach refinancing. Issuers can now execute highly targeted, capped buybacks or quick covenant-clearing exercises over a single calendar week, drastically lowering execution risk in highly volatile interest rate environments.
- **Unlocking Accelerated Exchange Offers:** By removing the requirement to provide a concurrent retail cash option and eliminating the rule that new debt must have a longer maturity than the target debt, the SEC has facilitated a path forward for institutional debt swaps. Companies can now opportunistically shorten their debt maturities or swap into *pari passu* tranches on an abbreviated five-day

- **Operational Compliance Adjustments:** While the removal of the rigid noon, Eastern Time, Form 8-K deadline and the 2:00 p.m., Eastern Time, pricing lock simplifies logistics, practitioners must ensure careful technological coordination. The press release required to be issued by 10:00 a.m., Eastern Time, on the commencement day must contain an **active, working hyperlink** directly to the offering materials. Infrastructure and website staging must be verified prior to the 10:00 a.m., Eastern Time, wire launch to maintain compliance with the 2026 Exemptive Order.

Key Takeaways and Client Action Items

- **Review Outstanding Debt Portfolios:** Evaluate your current capital structure for opportunities to execute partial repurchases or debt-for-debt swaps that were previously economically unfeasible due to the 20-business-day rule or the 2015 Letter “any-and-all” restriction.
- **Utilize Accelerated Consent Solicitations:** Consider matching minor or operational indenture modifications with abbreviated tender offers to incentivize holder participation without triggering long solicitation windows.
- **Coordinate Closely with Dealer Managers and Information Agents:** Ensure that your transaction team is prepared to adhere to the strict 9:00 a.m., Eastern Time, windows for potential pricing or material modifications, keeping in mind the newly compressed three-day and two-day minimum periods that the changed offer must remain open before expiration.
- **Implement Strict 10-Business-Day Deal Blackouts:** Ensure that any planned liability management transaction does not accidentally launch within 10 business days of a material acquisition, asset sale, or merger announcement or consummation.

Gibson Dunn attorneys remain available to assist with any questions you may have regarding the interpretation and application of the 2026 Exemptive Order.

[1] [SEC Division of Corporation Finance, Exemptive Order for Tender or Exchange Offers for Non-Convertible Debt Securities \(Jun. 30, 2026\)](#).

[2] See [SEC No-Action Letter, Cahill Gordon & Reindel LLP \(Jan. 23, 2015\)](#).

[3] See [17 C.F.R. § 240.14e-1\(a\)](#) and [17 C.F.R. § 240.14e-1\(b\)](#).

[4] See SEC No-Action Letter, Goldman, Sachs & Co. (Mar. 26, 1986); SEC No-Action Letter, Salomon Brothers Inc. (Mar. 12, 1986); SEC No-Action Letter, Salomon Brothers Inc. (Oct. 1, 1990); [SEC No-Action Letter, Cahill Gordon & Reindel LLP \(Jan. 23, 2015\)](#).

[5] See Gibson Dunn Client Alert, [SEC Staff Issues Exemptive Relief Allowing 10-Business Day Equity Tender Offers](#).

[6] See James Moloney, Sean Sullivan, Todd Trattner, [Five Day Tender Offers: Conditions and Timelines](#), Deal Lawyers (March-April 2015).

The following Gibson Dunn lawyers prepared this update: [Mellissa Campbell Duru](#), [Andrew L. Fabens](#), [Hillary H. Holmes](#), [Sebastian L. Fain](#), [Alisa Babitz](#), and [Rodrigo Surcan](#).

Please view this and additional information on Gibson Dunn's [Securities Regulation & Corporate Governance Monitor](#).

Gibson Dunn's lawyers are available to assist with any questions you may have regarding the SEC's announcement, or federal securities laws and regulations more generally. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's [Capital Markets](#) or [Securities Regulation & Corporate Governance](#) practice groups:

Capital Markets:

[Andrew L. Fabens](#) – New York (+1 212.351.4034, afabens@gibsondunn.com)

[Hillary H. Holmes](#) – Houston (+1 346.718.6602, hholmes@gibsondunn.com)

[Stewart L. McDowell](#) – San Francisco (+1 415.393.8322, smcdowell@gibsondunn.com)

[Peter W. Wardle](#) – Los Angeles (+1 213.229.7242, pwardle@gibsondunn.com)

Securities Regulation & Corporate Governance:

[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)

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

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm, please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists, please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit our [website](#).