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BLOG

SEC Grants Exemptive Relief for Shortened Equity Tender Offers

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On April 16, 2026, the Securities and Exchange Commission's (the SEC) Office of Mergers and Acquisitions in the Division of Corporation Finance (the Division) issued an exemptive order (the Order) permitting certain tender offers for equity securities to remain open for a minimum of 10 business days rather than the standard 20 business days, subject to strict conditions designed to preserve investor protections. The Order is a significant development for deal teams that are structuring cash acquisitions and issuer tender offers.

OVERVIEW OF THE EXEMPTIVE ORDER

The Division, acting on behalf of the SEC pursuant to delegated authority, granted conditional exemptions from Rules 13e-4(f)(1)(i) and 14e-1(a) under the Securities Exchange Act of 1934, as amended (the Exchange Act), which requires a tender offer to remain open for at least 20 business days in order to give investors adequate time to evaluate and respond to the offer.

Over the years, the Division has issued numerous exemptive orders and no-action letters permitting abbreviated offering periods, mainly in the context of debt securities. The Order provides the flexibility to shorten the 20-business-day minimum offering period for certain equity tender offers to 10 business days in order to address market inefficiencies, better reflect technological advancements, and reduce exposure to market fluctuations for eligible tender offers.

SCOPE AND ELIGIBILITY

The Order covers equity tender offers for all-cash consideration at a fixed price for two categories:

1. **Reporting Companies.** The offer must be subject to the general tender offer rules of Regulation 14D or the issuer self-tender rules of Rule 13e-4 under the Exchange Act, with additional conditions depending on the type of offer.
2. **Non-Reporting Companies.** The offer must be made by the issuer or its wholly owned subsidiary for the issuer's own equity securities, and the issuer cannot have any class of securities registered under Section 12 of the Exchange Act or be a Section 15(d) reporting company.

The 20-business-day minimum offering period still applies to offers that do not comply with the Order's conditions. It is important that deal teams comply with the eligibility requirements for the exemption to ensure access to the shorter offering period.

ADDITIONAL CONDITIONS

Reporting Company Offers

For Regulation 14D offers (third-party bids), the Order requires:

- The offer must be pursuant to a negotiated merger or similar business combination agreement.
- The offer must be for all outstanding securities of the subject class.
- The target must file and disseminate its Schedule 14D-9 by 5:30 p.m. Eastern time on the first business day after commencement.

Non-Reporting Company Offers

For Rule 13e-4 offers by issuers for their own equity securities, the offer must be for **less than all** outstanding securities of the subject class.

TIMING REQUIREMENTS

The Order imposes strict information dissemination requirements to ensure timely distribution in connection with the shorter offer timeline:

Event	Deadline
Offeror press release upon commencement of tender offer (with basic terms and active hyperlink to offer materials)	10:00 a.m. Eastern time on the date of the offer's commencement
Target company Schedule 14D-9 filing and dissemination (Regulation 14D deals only)	5:30 p.m. Eastern time on the first business day after the offer's commencement
Notice of changes to percentage of equity securities sought or consideration offered	9:00 a.m. Eastern time on the fifth business day before the offer's expiration
Notice of any other material changes	9:00 a.m. Eastern time on the second business day before the offer's expiration

For reporting company tender offers, the notices of changes must be communicated by press release or other public announcement that is widely disseminated. For non-reporting company tender offers, the notices of changes must be communicated directly to the holders.

EXCLUSIONS

The Order also has several important exclusions from its application:

- The tender offer cannot be a going-private transaction subject to Rule 13e-3.

- The tender offer cannot rely on the cross-border exemptions under Rules 14d-1(d) or 13e-4(i).
- At the time of the public announcement, the target equity securities cannot be the subject of a previously announced or pending tender offer by another offeror. If a competing offer surfaces after the offer's commencement, the initial offer's offering period must be extended to remain open in compliance with the standard minimum 20-business-day requirement.

KEY IMPLICATIONS FOR DEAL TEAMS

1. **Faster execution in friendly deals.** Friendly, all-cash, negotiated acquisitions that are structured as tender offers can now close meaningfully faster, reducing exposure to market volatility and deal uncertainty.
2. **Structuring implications.** The cash-only, fixed-price requirement means that parties seeking to take advantage of the timing benefits of the Order must forgo mixed or all-stock consideration and floating offer prices.
3. **Competitive dynamics matter.** The exemption is not available if a competing bid is pending at announcement, and the offer period reverts to a minimum of 20 business days if a competing bid arises after launch. Accordingly, deal teams will need to assess the competitive landscape carefully for potential competing bids before relying on the shortened timeline.
4. **Day-one readiness is critical.** Taking advantage of the shortened offering period will require that announcements of information relating to the tender offer also be on an abbreviated timeline. The requirement of a 10:00 a.m. press release with a live hyperlink to all offer documents means all materials must be finalized before the market opens on the commencement date. For Regulation 14D offers, the target company's Schedule 14D-9 must follow within one business day.
5. **Private company opportunities.** Non-reporting issuers and their wholly owned subsidiaries can use the shortened timeline for issuer tender offers, opening the door to faster liquidity events and restructurings.

Winston's *Capital Markets and Securities Law Watch* will continue to monitor SEC guidance, rulemaking, and enforcement developments and will post additional updates as they become available. For more information, or if you have any questions, please contact the authors of this blog post or your regular Winston contacts.

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Authors

Michael J. Blankenship

David A. Sakowitz

Sey-Hyo Lee

Ben D. Smolij

Pete Staviski

Mary Grace Teske

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Michael J. Blankenship

David A. Sakowitz

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