

SEC's New Abbreviated Debt Tender Offer Relief Allows Partial Offers

July 2026



New relief supersedes 2015 no-action letter

On June 30, 2026, the U.S. Securities and Exchange Commission (the “SEC”) issued **conditional exemptive relief** (the “2026 Exemptive Order”) that makes it easier to conduct abbreviated debt tender offers, particularly for issuers seeking to conduct partial repurchases or exchange offers involving a wider category of institutional holders. The 2026 Exemptive Order supersedes the SEC’s **2015 no-action letter** (the “2015 No-Action Letter”) on abbreviated tender offers.

Background

Tender offers are regulated by the U.S. Securities Exchange Act of 1934 (the “Exchange Act”), which mandates a minimum offering period of at least 20 business days for tender offers under Rule 14e-1(a). Since 1986, the SEC staff had issued a series of no-action letters providing relief from this requirement for certain non-convertible debt tender offers. In January 2015, the SEC staff superseded those earlier letters with the 2015 No-Action Letter, which confirmed that the staff would not recommend enforcement action if an offeror conducted a tender offer for non-convertible debt securities held open for at least five business days, subject to certain conditions. The 2026 Exemptive Order is issued by the Division of Corporation Finance acting for the SEC pursuant to delegated authority.

Key differences from 2015 No-Action Letter

While the 2026 Exemptive Order retains the overall five-business-day framework established by the 2015 No-Action Letter, it makes several significant changes, including:

- > **Partial/capped offers now permitted** — The 2015 No-Action Letter only covered “any and all” offers, while the 2026 Exemptive Order expressly permits offers for less than all of the outstanding class or series of non-convertible debt securities, subject to pro-rata take-up and proration announcement requirements.
- > **Expanded definition of “Qualified Debt Securities”** — Both condition relief on cash consideration and/or consideration consisting of “Qualified Debt Securities” (as defined further below in footnote 1). Under the 2015 No-Action Letter, Qualified Debt Securities had to be “identical” in all material respects to the debt securities subject to the offer and have a weighted average life to maturity longer than the subject securities. Under the 2026 order, Qualified Debt Securities only need to be “substantially

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similar” in all material respects to either (1) the debt securities that are the subject of the tender offer or (2) the most recent issuance of debt securities that are pari passu to the debt securities subject to the offer. Further, there is no requirement that the Qualified Debt Securities have a weighted average life to maturity that is longer than the debt securities subject to the offer.

- > **Additional eligible exchange offer participants** — The 2015 No-Action Letter restricted exchange offers of Qualified Debt Securities to qualified institutional buyers (“QIBs”) (as defined by Rule 144A under the Securities Act of 1933 (the “Securities Act”)) and/or non-U.S. persons (within the meaning of Regulation S under the Securities Act). The 2026 Exemptive Order adds a third category: institutions that are accredited investors under Rule 163B(c)(2) of the Securities Act. In addition, the 2015 No-Action Letter required offerors to provide a concurrent cash option to holders who were not eligible exchange offer participants, while the 2026 Exemptive Order removes this requirement.
- > **Loosened consent solicitation restriction** — The 2015 No-Action Letter prohibited any concurrent consent solicitation to amend the indenture governing the debt securities. The 2026 Exemptive Order softens this, stating that the offer may not be made in connection with a consent solicitation where the amendment requires the consent of the holders of more than a simple majority of the outstanding principal amount of the subject securities. This means that majority-consent amendments can now accompany an abbreviated tender offer.¹
- > **No guaranteed delivery procedures required** — The 2015 No-Action Letter required the offeror to provide holders with the opportunity to submit their instructions via “guaranteed delivery” procedures up to the second business day after the expiration of the tender offer. No such condition is included in the 2026 Exemptive Order.

Please see the comparison chart at the end of this briefing for further details regarding the differences between the 2026 Exemptive Order and the 2015 No-Action Letter.

Conditions for a five-business day tender offer

The 2026 Exemptive Order grants an exemption from Exchange Act Rules 14e-1(a) and (b) to permit a tender or exchange offer for any class or series of non-convertible debt securities to remain open for a minimum offering period of five business days, if the following conditions are met:

- > **Eligible offerors** — the offer is made by the issuer of the subject non-convertible debt securities, a direct or indirect wholly owned subsidiary of such issuer, or a parent company that directly or indirectly owns 100% of the capital stock (other than directors' qualifying shares) of such issuer;

¹ The SEC did not address the different consent thresholds and voting mechanics in English-law governed instruments, where consents to amendments are typically passed at a noteholder meeting. For covenant amendments (where New York indentures require a simple majority consent), a typical English law trust deed would require a quorum of a majority of holders, and an affirmative vote or 75% (sometimes 66 2/3%) of noteholders present at such quorate meeting. It remains to be seen how the market will approach this issue.

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- > **Eligible securities** — the offer is made for a class or series of non-convertible debt securities, regardless of any particular rating assigned by any nationally recognized statistical rating organization;
- > **Consideration** — the offer is made solely for cash and/or Qualified Debt Securities²;
- > **Partial offers permitted** — if the offer is for less than all of the outstanding class or series of non-convertible debt securities and a greater amount is tendered than the offeror is willing to take up, securities must be taken up pro rata, disregarding fractions, according to the amount tendered by each holder;
- > **Eligible participants** — if the offer is an exchange offer in which Qualified Debt Securities are offered, the offer must be restricted to Eligible Exchange Offer Participants (i.e., QIBs, non-U.S. persons, and/or institutional accredited investors) in a transaction exempt from Securities Act registration;
- > **Consent solicitation restriction** — the offer is not made in connection with a solicitation of consents to amend the indenture or other governing agreement of the subject debt securities where the amendment requires the consent of the holders of more than a simple majority of the outstanding principal amount;
- > **No default** — the offer is not made when a default or event of default exists under the indenture governing the subject debt securities or any other indenture or material credit agreement to which the issuer is a party;
- > **No bankruptcy or restructuring** — the offer is not made at a time when the issuer is the subject of bankruptcy or insolvency proceedings, has commenced a pre-packaged bankruptcy consent solicitation, or when the board of directors has authorized discussions with creditors to effect a consensual restructuring of the issuer's outstanding indebtedness;
- > **Press release** — the offer is announced in a press release issued through a widely disseminated news or wire service, disclosing the basic terms of the offer (including the identity of the offeror, the class or series of non-convertible debt securities sought, the type and amount of consideration, the expiration date, and proration procedures if applicable), with an active hyperlink to a website where holders may access the tender offer materials, by 10:00 a.m. Eastern time on the date the tender offer commences;
- > **Changes to consideration or amount sought** — any (i) increase or decrease in the percentage of the subject debt securities sought (other than an acceptance for payment of an additional amount not exceeding two percent of the class or series, calculated in accordance with Exchange Act Section 14(d)(3)), or (ii) change in the consideration offered, is

² "Qualified Debt Securities" are defined as non-convertible debt securities that are substantially similar in all material respects (including the issuer(s), guarantor(s), collateral, lien priority, covenants, and other terms) to either (1) the debt securities that are the subject of the tender offer or (2) the most recent issuance of debt securities that are pari passu to the debt securities subject to the offer, in either case except for the maturity date, interest payment and record dates, redemption provisions, and interest rate. Qualified Debt Securities must have all interest payable only in cash.

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communicated by press release or other widely disseminated public announcement no later than 9:00 a.m. Eastern time on the third business day before the expiration date;

- > **Other material changes** — any other material change in the terms of the offer is communicated by press release or other widely disseminated public announcement no later than 9:00 a.m. Eastern time on the second business day before the expiration date;
- > **Withdrawal rights** — the offer must provide withdrawal rights exercisable (i) at least until the earlier of the expiration date or the tenth business day after commencement (if the offer is extended), and (ii) at any time after the 60th business day after commencement if the offer has not been consummated;
- > **Proration announcement** — 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 press release by 10:00 a.m. Eastern time on the next business day after the expiration date, or as soon as practicable thereafter;
- > **Payment** — the offeror will not pay the consideration until promptly after expiration of the offer, in accordance with Rule 14e-1(c); and
- > **Restrictions on concurrent transactions** — the offer may not be (i) commenced within ten business days after the first public announcement or consummation of a change of control or other extraordinary transaction (such as a merger, reorganisation, liquidation, or sale of all or substantially all consolidated assets) involving the issuer; (ii) made in anticipation of or in response to other tender offers for the issuer's securities; (iii) made concurrently with a tender offer for any other class or series of the issuer's securities by the issuer or any subsidiary or parent if the effect of that other offer would be to add obligors, guarantors, or collateral (or increase the priority of liens securing such other class or series); or (iv) commenced within ten business days after the first public announcement or consummation of a material asset transaction by the issuer or any subsidiary requiring Article 11 of Regulation S-X pro forma financial information.

As with the 2015 No-Action Letter, the 2026 Exemptive Order only addresses the length of the offering period. It does not provide relief with respect to the adequacy of disclosure, 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), or the applicability of any other federal or state laws to the tender offer.

* * *

We expect that issuers considering conducting liability management exercises will welcome these changes, which meaningfully loosen the conditions set by the 2015 no-action letter.

We will continue to monitor developments in this area and welcome any queries you may have.

Comparison of 2015 No-Action Letter and 2026 Exemptive Order

Conditions	2015 No-Action Letter	2026 Exemptive Order
Securities covered	Non-convertible debt securities (any rating)	Non-convertible debt securities (any rating)
Eligible offerors	Issuer, direct/indirect wholly owned subsidiary, or 100% parent	Issuer, direct/indirect wholly owned subsidiary, or 100% parent
Scope of transactions	Any-and-all only (i.e., offer must be for all securities of the class or series)	Any-and-all or partial offers permitted (partial offers subject to pro-rata take-up)
Consideration permitted	Cash and/or Qualified Debt Securities	Cash and/or Qualified Debt Securities
Definition of Qualified Debt Securities	“Identical” in all material respects to subject debt securities (except maturity, interest/record dates, redemption, interest rate) and longer weighted average life (“WAL”) to maturity than subject securities	“Substantially similar” in all material respects to either (1) subject debt securities or (2) most recent pari passu issuance (except maturity, interest/record dates, redemption, interest rate); no WAL requirement
Eligible exchange offer participants	QIBs and non-U.S. persons only; cash alternative required for non-eligible holders	QIBs, non-U.S. persons, and institutional accredited investors; no cash alternative mechanism required
Consent solicitation restriction	No concurrent consent solicitation to amend the indenture permitted	Permitted if amendment requires only a simple majority of outstanding principal amount; prohibited if supermajority consent required
Guaranteed delivery	Holders must be provided with the opportunity to submit their instructions via “guaranteed delivery” procedures up to the second business day after the expiration of the tender offer	No guaranteed delivery requirement
Default / event of default restriction	Prohibited if default / event of default exists under the Indenture or any material credit agreement	Same condition retained
Bankruptcy / restructuring restriction	Prohibited if issuer is subject to bankruptcy/insolvency proceedings, pre-packaged bankruptcy solicitation, or board-authorized creditor restructuring discussions	Same condition retained
Financing with senior indebtedness	Offer may not be financed with the proceeds of senior indebtedness	Removed - no restriction
Notice for change in consideration	Offer must remain open for at least 5 business days after announcement of change in consideration or amount sought	Fixed deadline: 9:00 a.m. ET, at least 3 business days before expiration date

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Conditions	2015 No-Action Letter	2026 Exemptive Order
Notice for other material changes	Offer must remain open for at least 3 business days after announcement of other material change	Fixed deadline: 9:00 a.m. ET, at least 2 business days before expiration date
De minimis % change carve-out	None	≤ 2% of class or series (per Exchange Act Section 14(d)(3)) exempt from notice requirement
Concurrent transaction restrictions	Prohibited: (i) in connection with M&A/extraordinary transaction; (ii) in response to other tender offers; (iii) concurrent debt offer that shortens WAL or adds obligors/guarantors/collateral; (iv) within 10 business days of material asset transaction requiring Article 11 pro forma financials	Same as 2015, except: (i) M&A prohibition recast as within 10 business days of announcement/consummation of change of control; (iii) WAL-shortening restriction removed; (ii) and (iv) retained
Withdrawal rights	Expressly set out: exercisable until earlier of expiration date or 10th business day after commencement (if extended); and after 60th business day if not consummated	Same express withdrawal rights retained
Proration (partial offers)	Not applicable (only any-and-all offers)	Pro-rata take-up required; proration must be announced by 10AM ET the next business day after expiration (or as soon as practicable)
Form 8-K filing requirement	Exchange Act-reporting issuers must issue press release on Form 8-K by 12pm ET on first business day; further 8-K for change in consideration	Removed – press release/public announcement dissemination only
Launch press release content	Identity of offeror, class of securities, type/amount of consideration, expiration date; hyperlink to offer materials	Same, plus proration procedures (if applicable)
Payment of consideration	Offeror will not pay the consideration in the offer until promptly after expiration of the offer	Same

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