

SEC broadens five-business-day debt tender and exchange offer framework

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On June 30, 2026, the SEC's Division of Corporation Finance issued an exemptive order permitting qualifying tender and exchange offers for non-convertible debt securities to remain open for as few as five business days. The order substantially expands the number of offers that can utilize the SEC's previously approved five-business-day process, while making several important changes that meaningfully expand the usefulness of abbreviated debt offers in liability management transactions.

Most notably, the [order](#) permits partial tender offers, narrows the prior prohibition on consent solicitations, broadens the definition of Qualified Debt Securities and the universe of eligible exchange-offer participants, and removes several procedural conditions from the [2015 framework](#). As a result, abbreviated debt tender and exchange offers will now be available in a wider range of refinancing, debt repurchase and capital structure management transactions. Convertible additional tier 1 (AT1) securities do not benefit from the relief granted in the order.

Key takeaways

- The SEC has replaced the 2015 no-action framework that permitted certain five-business-day tender offers with a formal exemptive order permitting qualifying debt tender and exchange offers to remain open for as few as five business days
- Partial tender offers are now permitted, subject to proration
- Certain consent solicitations are now compatible with the abbreviated framework
- Exchange offers are more flexible because Qualified Debt Securities need only be substantially similar in all material respects, the eligible investor universe has expanded and a concurrent cash option is no longer required
- Core investor-protection features remain, including prompt dissemination, withdrawal rights and no early settlement
- Tenders that do not qualify under the new exemptive order remain subject to a minimum tender offer period of 20 business days

What the SEC changed

The order retains the basic structure of the 2015 framework. An issuer, its wholly owned subsidiary or its 100% parent may conduct a qualifying tender or exchange offer for non-convertible debt securities, regardless of rating, on a five-business-day timeline, subject to specified conditions. At the same time, the order introduces several changes that should make the framework materially more useful in practice.

Partial tender offers now permitted

Under the 2015 no-action framework, abbreviated relief was available only for “any and all” offers for all outstanding securities of the subject class or series. The new order eliminates that limitation and permits partial offers, subject to proration and the order’s other conditions.

If securities are tendered in excess of the amount sought, the offeror must accept securities on a *pro rata* basis and use commercially reasonable efforts to announce the proration factor by 10 a.m. Eastern time on the next business day after expiration.

This is the most significant practical expansion in the new framework. It will allow issuers to conduct capped tender offers and other targeted liability management transactions on a five-business-day timeline.

Consent solicitations no longer categorically barred

The 2015 framework prohibited abbreviated offers conducted in connection with any consent solicitation. The new order replaces that blanket restriction with a narrower limitation. Abbreviated relief is unavailable only if the related amendment requires consent from more than a simple majority of the outstanding principal amount of the subject securities – which typically would only be the case in indentures governing secured notes where the standard is typically 66% required for approval.

As a result, abbreviated offers may now be paired with consent solicitations for amendments requiring only simple-majority approval, provided the order’s other conditions are met. This change should allow most common combined tender-and-consent transactions to be conducted on an abbreviated basis.

Broader definition of Qualified Debt Securities

The order significantly increases flexibility in exchange offers by relaxing several requirements applicable under the prior framework. In particular:

- Qualified Debt Securities now need only be **substantially similar in all material respects** to the subject securities, rather than **identical in all material respects**
- The new securities may be based on the terms of **either** the subject securities **or the most recent issuance of debt securities that rank *pari passu*** with the subject securities, rather than only the subject securities themselves
- The prior requirement that the new securities have a **longer weighted average life to maturity** than the subject securities has been eliminated

The order also continues to require that all interest on Qualified Debt Securities be payable only in cash. As under the prior framework, an offer of Qualified Debt Securities must announce a minimum acceptance amount at commencement.

These changes should make five-business-day exchange offers more practical for refinancing, benchmark reopening and maturity-management transactions. While the new relief does not expressly permit exchanges involving subject securities that include additional obligors or guarantors relative to the subject securities, such terms are now subject to the requirement that they must be substantially similar (rather than identical) in all material respects which provides some potential flexibility relative to the prior framework.

Revised pricing mechanics

The order generally preserves the pricing framework from the 2015 no-action letter. If the interest rate or spread for Qualified Debt Securities is not fixed and announced at commencement, it must still be announced at commencement as a range of not more than 50 basis points, with the final interest rate or spread announced by 9 a.m. Eastern time on the business day before expiration.

The principal timing change is that the exact amount of consideration and interest rate now must be fixed no later than the expiration time of the offer, rather than by 2 p.m. Eastern time on the last business day of the offer. The order also modernizes the benchmark formulation by referring to SOFR rather than LIBOR, while continuing to include U.S. Treasury rates, swap rates and certain non-U.S. sovereign or swap rates.

This revised timing gives offerors somewhat greater flexibility while updating the benchmark framework.

Expanded eligible participants in exchange offers

The prior framework limited exchange offer participation to qualified institutional buyers and eligible non-U.S. persons in a transaction exempt from Securities Act registration. The new order adds a third category: institutions that qualify as accredited investors under Rule 163B(c)(2).

This change modestly expands the investor universe for abbreviated exchange offers and may improve execution flexibility in some cases.

Concurrent cash option no longer required

Under the 2015 framework, holders that were not eligible to receive Qualified Debt Securities had to be offered a concurrent cash option designed to approximate the value of the exchange consideration. The new order eliminates that requirement as a condition to abbreviated relief.

This removes a significant structural complication from exchange offers and may reduce execution burden.

Standalone senior debt financing restriction removed

The 2015 no-action letter prohibited financing an abbreviated offer with proceeds of certain “Senior Indebtedness.” The new order does not retain that standalone condition. It does, however, preserve a related limitation by continuing to bar certain concurrent tender offers for another class or series that would improve that other class or series through added obligors, guarantors, collateral or lien priority.

This change may provide additional financing flexibility by allowing concurrent refinancing even if the new debt incurred to refinance the subject securities has different obligors or collateral than the subject securities, or ranks senior relative to the subject securities with respect to any collateral or in right of payment.

Process and timing changes

The order keeps the core launch-and-dissemination discipline of the 2015 framework, but removes several procedural overlays and shortens certain announcement timelines.

Launch and dissemination

As under the prior framework, the offer must be launched by press release through a widely disseminated news or wire service by 10 a.m. Eastern time on the first business day. The announcement must include the basic terms of the offer, including the offeror, the class or series of securities sought, the type and amount of consideration and the expiration date. Offer materials must also be made available online through a hyperlink or internet address.

For this purpose, a business day generally excludes Saturdays, Sundays and federal holidays. Launch-day credit requires announcement by 10 a.m. Eastern time, and the final day counts only if expiration occurs on or after 5 p.m. Eastern time. The order also contemplates a press release promptly after consummation setting forth the results of the offer.

Shorter announcement periods for changes

The prior framework required changes in consideration to be announced at least five business days before expiration and other material changes at least three business days before expiration. The new order shortens those timelines.

- Changes in consideration or the percentage of securities sought must be announced no later than 9 a.m. Eastern time on the third business day before expiration
- Other material changes must be announced no later than 9 a.m. Eastern time on the second business day before expiration

In addition, an increase or decrease in acceptance that does not exceed 2% of the outstanding class or series is not treated as a change in the percentage sought. That gives offerors some operational flexibility at expiration.

No Form 8-K launch filing condition

The prior framework required Exchange Act reporting companies, including voluntary filers, to furnish the launch press release on Form 8-K before 12 p.m. Eastern time on the first business day of the offer, and later guidance extended a similar concept to foreign private issuers on Form 6-K. The new order does not include this as a condition of relief.

Reporting companies should still evaluate any independent disclosure obligations under the federal securities laws and applicable exchange rules, but a separate Form 8-K or Form 6-K filing is no longer a condition to using the abbreviated framework.

Guaranteed delivery no longer mandated

The 2015 framework required the use of a guaranteed delivery procedure. The new order does not carry forward that requirement as a condition of five-business-day relief.

Market participants should still consider whether guaranteed delivery is appropriate for a particular transaction in light of custodial mechanics and settlement timing, but it is no longer mandatory.

What remains unchanged

Several core features of the prior framework remain intact. The relief continues to be limited to issuer-group offers for non-convertible debt securities, regardless of rating, with consideration consisting solely of cash and/or Qualified Debt Securities. The order also remains unavailable in anticipation of or in response to certain competing tender offers. Similarly, the order remains unavailable in connection with extraordinary transactions and material acquisitions or dispositions, but the prior language is revised to make clear this restriction only applies for 10 business days following the first public announcement or consummation of any such transaction.

In addition, prompt and broad dissemination, withdrawal rights and no early settlement remain central conditions of the relief.

Practical implications

The new order should make the abbreviated debt tender framework meaningfully more useful in practice.

More liability management transactions may fit within the framework

Because partial offers are now permitted, issuers will be able to execute capped repurchases and other targeted debt buybacks on an abbreviated timeline. This is likely to be the most important practical effect of the order.

Exchange offers should be easier to structure

The broader definition of Qualified Debt Securities, the expanded investor eligibility rules and the elimination of the concurrent cash option requirement should make abbreviated exchange offers more workable for refinancing and maturity extension transactions.

Combined tender-and-consent structures now available in some cases

Transactions involving amendments that require only simple-majority consent may now be compatible with abbreviated timing. This may create useful flexibility for issuers seeking to combine liability management and covenant amendment objectives.

Offerors have somewhat greater execution flexibility

Shorter announcement lead times for pricing or size changes, together with the 2% buffer for changes in size and the elimination of certain procedural conditions, should help reduce market exposure during the offer period and simplify

execution.

Conclusion

The SEC's order formalizes and meaningfully expands the abbreviated debt tender and exchange offer regime first established in 2015. While the core investor-protection conditions remain intact, the new flexibility should make five-business-day tender and exchange offers a more practical tool in a broader range of liability management, refinancing and maturity-management transactions.

Issuers, dealer managers and their advisors should continue to assess carefully whether a proposed transaction satisfies the order's conditions and remains compatible with other applicable tender offer, disclosure, financing and securities law considerations.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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