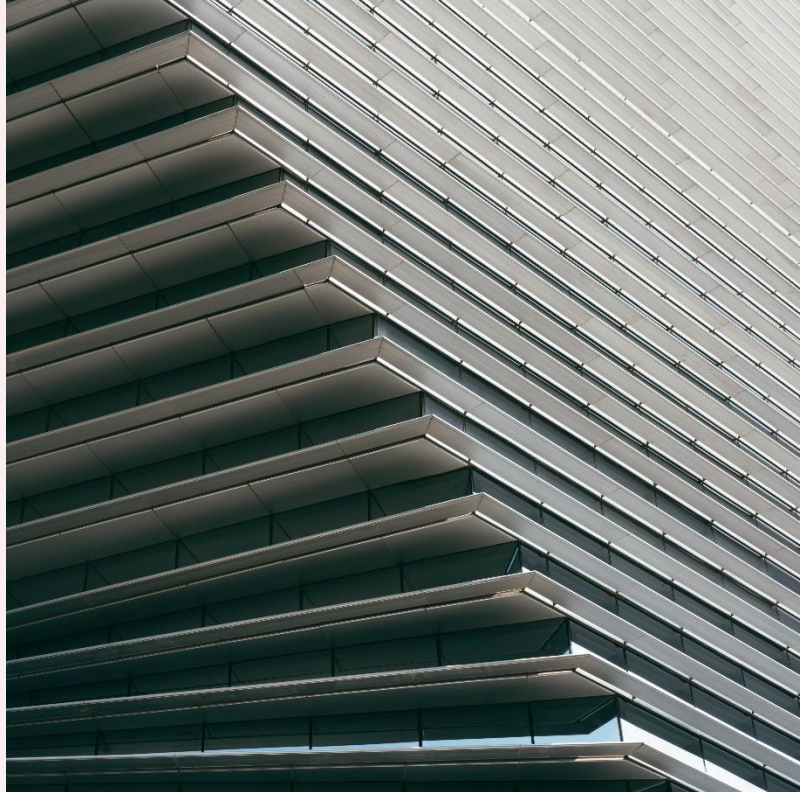


SEC Exemptive Order Grants Enhanced Flexibility to Issuers Conducting Abbreviated Debt Tender Offers

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Key Points

The new SEC exemptive order provides greater regulatory certainty and relaxes or eliminates several prior restrictions on the use of five-business day debt tender or exchange offers, now permitting:

- capped offers;
- simple majority consent solicitations; and
- greater flexibility for abbreviated exchange offers.

This new exemptive relief enhances the usability of tender offers as a liability management tool in the U.S. market.

On June 30, 2026, the SEC's Division of Corporation Finance issued an exemptive order (the "**Abbreviated Offers Order**," [available here](#)) permitting qualifying issuer tender and exchange offers for non-convertible debt securities to remain open for a minimum of five business days, rather than the 20 business days otherwise required by Rule 14e-1(a) under the U.S. Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), subject to specified conditions. A key advantage of shortened offer periods is reduced exposure to market and interest rate volatility. The Abbreviated Offers Order supersedes the SEC staff position stated in a no-action letter dated January 23, 2015 (the "**2015 Letter**," [available here](#)).

This is a significant development for issuers that have a substantial amount of outstanding bonds held by U.S. investors because it provides greater flexibility by relaxing or eliminating several of the conditions included in the 2015 Letter. This substantially enhances the attractiveness and usability of tender offers as a liability management tool in the U.S. market. Most notably, the order permits capped offers and certain simple-majority consent solicitations, removes the prior restriction on financing sources for cash consideration, eliminates the guaranteed delivery requirement, and provides additional flexibility for abbreviated exchange offers. This briefing explains these changes and related potential impacts. A chart providing a comparison of the conditions of the Abbreviated Offers Order to the conditions of the 2015 Letter and the otherwise applicable requirements of U.S. federal securities law is provided as an appendix to this briefing.

Background

Rule 14e-1(a) requires that any tender or exchange offer for outstanding securities be held open for at least 20 business days from the date the offer is first sent to holders. If the offeror changes the consideration to be paid or the percentage of securities being sought, Rule 14e-1(b) requires the offer to be held open for at least 10 business days from the date the change is announced.

Regulatory relief permitting abbreviated non-convertible debt tender offers has developed based on SEC staff recognition that these transactions typically involve sophisticated investors who make credit and pricing decisions based on information obtained through established trading markets. As early as 1986, the SEC staff granted limited no-action relief from the requirements of Rule 14e-1(a) and (b) for investment grade debt. In 2015, the SEC staff expanded its no-action position to also apply to debt that was not rated investment grade, subject to a set of restrictive conditions. The Abbreviated Offers Order modifies or eliminates a number of these restrictive conditions. Importantly, unlike a no-action letter, which states only that staff would not recommend enforcement action and which could in principle be withdrawn or modified without notice, the Abbreviated Offers Order provides offerors increased regulatory certainty.

What has changed?

- **Capped tender offers now permitted.** The 2015 Letter only applied to offers made for any and all of a class or series of debt securities. The Abbreviated Offers Order does not impose an equivalent limitation. As a result, an abbreviated offer for less than all of the outstanding class or series of non-convertible debt securities may be made. The public announcement of an abbreviated capped tender or exchange offer should include the amount of securities being sought by the offeror and the procedures for proration. If the securities tendered in an abbreviated capped offer exceed the capped amount, the offeror must accept tendered securities on a pro rata basis (disregarding fractions) according to the amount of securities tendered by each security holder during the offering period. When accepting tenders on a prorated basis, the offeror should use commercially reasonable efforts to publicly announce the proration factor by 10:00 a.m., Eastern time, on the next business day after the expiration date of the offer (or as soon thereafter as practicable). Offerors should also note that any increase in the amount of securities sought of more than 2% of the outstanding class, or any decrease in the amount sought, must be announced by 9:00 a.m., Eastern time, on the third business day before expiration.
- **Simple majority consent solicitations now permitted.** The 2015 Letter did not apply to any offers made in connection with any solicitation of consents to amend the indenture, notes or other governing agreement relating to the subject debt securities. The Abbreviated Offers Order modifies this limitation. It permits a consent solicitation in connection with an abbreviated tender or exchange

offer provided that the proposed amendment requires only the consent of a simple majority of the outstanding principal amount of the subject securities. For issuers that have used relatively standard New York law indentures for their bonds, simple majority (50%+) consent thresholds generally will apply to amendments that do not impact payment obligations or bond maturity. Where a proposed amendment falls within this threshold, issuers can now combine an abbreviated tender offer with a concurrent consent solicitation. This is a material upgrade to the toolkit available for general liability management exercises and covenant relief, although the Abbreviated Offers Order's disqualification conditions will need to be assessed carefully in the context of distressed debt.

- **No restriction on funding sources.** The 2015 Letter restricted the funding sources for any cash consideration offered to holders of the subject debt securities in an abbreviated tender offer. The Abbreviated Offers Order does not include any similar restriction.
- **Enhanced flexibility on the terms of new debt securities that may be offered in an abbreviated exchange offer.** The 2015 Letter required the terms of new debt securities offered in an abbreviated exchange offer to be *identical* in all material respects to the terms of the subject debt securities except for changes to the maturity date, interest payment and record dates, redemption provisions and interest rate and required that the new debt securities have a weighted average life to maturity longer than the subject debt securities. The Abbreviated Offers Order allows greater flexibility in two respects: (1) it requires the terms of the new debt securities to be *substantially similar* in all material respects to either the subject debt securities or the most recent issuance of debt securities that are *pari passu* to the subject debt securities; and (2) it eliminates the weighted average life requirement, meaning issuers may offer new notes with a shorter tenor than the notes being repurchased.
- **Institutions that are accredited investors now eligible to participate in abbreviated exchange offers.** The 2015 Letter restricted participation in abbreviated exchange offers to only qualified institutional buyers (as defined in Rule 144A) and non-U.S. persons (within the meaning of Regulation S). The Abbreviated Offers Order modifies this restriction to also permit institutions that are accredited investors (within the meaning of Rule 163B(c)(2)) to participate in an abbreviated exchange offer, provided the transaction is exempt from the registration requirements of U.S. federal securities law.
- **More flexibility to announce consideration and interest rate at the expiration of an abbreviated exchange offer.** The 2015 Letter specified that the exact amount of consideration and the interest rate for any new debt securities offered in an abbreviated exchange offer would be fixed no later than 2:00 p.m., Eastern time, on the last business day of the offer. The Abbreviated Offers Order grants offerors more flexibility for announcing this information by referencing the expiration time of the offer, which is set by the offeror, as the relevant deadline.

- **No requirement to offer cash to non-eligible holders in connection with an abbreviated exchange offer.** The 2015 Letter required offerors to offer a cash consideration option to any holders not eligible to participate in an abbreviated exchange offer. The Abbreviated Offers Order does not impose an equivalent requirement.
- **Shorter minimum offer periods in connection with announcements of material changes.** Under the 2015 Letter, a change in the consideration offered required the offer to remain open for at least five business days from the date of the announcement of the change. Any other material change requires the offer to remain open for at least three business days. Any such changes had to be announced by 10:00 a.m., Eastern Time, five business days and three business days respectively, before the expiration of the offer. The Abbreviated Offers Order gives offerors more flexibility to respond to market conditions later in the offer period by shortening these minimum periods. For changes in consideration, as well as an increase or decrease in the amount of tendered securities sought in the offer (beyond a 2% buffer), must be announced by 9:00 a.m., Eastern time, on the third business day before expiration. Any other material changes must be announced by 9:00 a.m., Eastern time, on the second business day before expiration.
- **No requirement to offer a guaranteed delivery procedure.** The 2015 Letter required offerors to permit tenders prior to expiration through guaranteed delivery procedures. These procedures had been designed for a pre-electronic settlement environment and had historically allowed holders to tender securities after the expiration deadline by submitting a notice of guaranteed delivery, with actual delivery of securities to follow within a short window. The Abbreviated Offers Order does not include this requirement, which removes a layer of added complexity and cost. The elimination of this requirement reduces administrative burden on issuers, trustees, and information agents, and should modestly reduce execution costs.
- **No Form 8-K filing conditions.** The 2015 Letter listed a series of notification obligations that included Form 8-K filing conditions for companies that had Exchange Act reporting obligations. The eligibility conditions specified in the Abbreviated Offers Order do not include any references to Form 8-K filings. Whether a company that is subject to Exchange Act reporting requirements must make any Form 8-K (or Form 6-K) filings in connection with an abbreviated tender or exchange offer will depend on whether relevant facts and circumstances trigger a Form 8-K (or Form 6-K) filing obligation.
- **A more precise eligibility condition related to extraordinary transactions involving the issuer.** The 2015 Letter excludes from its scope any offers that are "made in anticipation of or in response to" certain extraordinary transactions involving the issuer, such as a merger or change of control transaction. The Abbreviated Offers Order provides more precise and objective exclusion criteria for this context, which enhances regulatory certainty for offerors. Now, an abbreviated offer may not be commenced within ten business days after the first public

announcement or the consummation of a change of control or other extraordinary transaction involving the issuer.

What remains unchanged?

- **Minimum offering period:** Five business days.
- **Core eligibility conditions.** The following criteria for exemptive relief eligibility remain unchanged:
 - An abbreviated offer may only be made by the issuer of the subject securities, a direct or indirect wholly owned subsidiary of the issuer, or a 100% parent company.
 - The subject securities of an abbreviated offer may be any class or series of non-convertible debt securities, regardless of rating.
 - The abbreviated offer must be announced in a press release issued through a widely disseminated news or wire service, which includes the basic terms of the offer and contains an active hyperlink to a website address where security holders may access the tender offer materials, letter of transmittal (if any), and any other documents relating to the offer, by 10:00 a.m., Eastern time, on the date that the tender offer commences.
 - For abbreviated exchange offers, a minimum acceptance amount must be announced at the commencement of the offer.
 - The abbreviated offer must provide that the offeror will not pay the consideration until promptly after the expiration of the offer.
 - The offeror should issue a press release promptly after the consummation of the offer setting forth the results of the offer.
 - An abbreviated offer must provide for withdrawal rights that are exercisable at least until the earlier of (1) the expiration date of the offer and (2) in the event that the offer is extended, the 10th business day after commencement, and at any time after the 60th business day after commencement if for any reason the offer has not been consummated by then.
- **Disqualification criteria.** To protect investors, the Abbreviated Offers Order continues to provide that an abbreviated offer may not be made when:
 - when a default or event of default exists under the relevant indenture or trust deed, or any material credit agreement;
 - when the issuer is subject to bankruptcy or insolvency proceedings, a pre-packaged bankruptcy consent solicitation, or where the board has authorized creditor discussions for a consensual restructuring;
 - in anticipation of or response to any other tender offers for the issuer's securities;
 - concurrently with a tender offer for any other class or series of the issuer's securities made by the issuer (or any subsidiary or parent

company of the issuer) if the effect of such offer, if consummated, would be to add obligors, guarantors, or collateral (or increase the priority of liens securing such other class or series); or

- within ten business days after the first public announcement or the consummation of the purchase, sale, or transfer by the issuer or any of its subsidiaries of a material business or amount of assets that would require the furnishing of pro forma financial information with respect to such transaction pursuant to Article 11 of Regulation S-X.

Practical considerations for non-U.S. issuers

Non-U.S. issuers accessing the U.S. capital markets typically do so through a combined Regulation S and Rule 144A offering structure, with U.S. investors holding Rule 144A notes and non-U.S. investors (including Asian and European accounts) holding Regulation S notes. The following considerations are particularly relevant to issuers in this position.

- **Settlement and DTC mechanics.** Rule 144A notes are typically held through DTC (Depository Trust Company), with Regulation S notes often times held separately through Euroclear and/or Clearstream. For the purposes of the five-business day timeline, issuers should engage their information agent and depository early to confirm settlement mechanics, particularly where the same underlying series is held across multiple clearing systems. The elimination of the guaranteed delivery procedure means that beneficial holders will need to ensure their instructions reach DTC (or the relevant clearing system) by the expiration time. Issuers should factor this into communication and timing planning.
- **Time zone issues.** The timing requirements set out in the Abbreviated Offers Order refer to Eastern time, the time zone in which New York is located. For many non-U.S. issuers and their investor base, this can create significant time zone differences that need to be taken into account when setting the expiration time and making offer-related public announcements.
- **Other authorities may impose additional requirements.** The Abbreviated Offers Order provides exemptive relief from the requirements imposed by Rule 14e-1(a) and (b) under the Exchange Act. It does not address any requirements that may be imposed under local law in any other jurisdiction or by the listing requirements of any applicable securities exchange. Any of these sources of additional obligations will need to be considered as part of transaction planning, particularly given that the five-business day execution window leaves little room for regulatory contingencies once the offer has launched.

Next steps

Issuers that have a substantial amount of their bonds held by U.S. investors will want to consider whether the new U.S. exemptive framework opens up liability management options that were previously unavailable or unattractive. In particular, issuers facing near-term maturities, refinancing opportunities, or indenture or trust deed amendment requirements may now be able to execute transactions without exposure to the 20-business day offer period otherwise imposed by U.S. federal securities law.

Please contact your usual adviser in the Clifford Chance Capital Markets practice if you would like to discuss the implications of the Abbreviated Offers Order for any planned or prospective liability management transaction involving your capital structure.

APPENDIX: Tender Offer Regulation and Exemptive Relief Comparison

	New Exemptive Order	Prior SEC No-Action Relief	Rule 14e-1(a) & (b)
Scope	<ul style="list-style-type: none"> Issuer tender offers and exchange offers for securities of a particular class or series of non-convertible debt securities (exemption from Rule 14e-1(a) and (b)) 	<ul style="list-style-type: none"> Issuer tender offers and exchange offers for any and all securities of a particular class or series of non-convertible debt securities (no-action relief with respect to Rule 14e-1(a) and (b)) 	<ul style="list-style-type: none"> Third-party & issuer cash tender offers Third-party & issuer exchange offers
Consideration	<ul style="list-style-type: none"> Cash or Qualified Debt Securities (more broadly defined to require terms to be <i>substantially similar</i> in all material respects to either the subject debt securities or the most recent issuance of debt securities that are <i>pari passu</i> to the subject debt securities) Can be fixed or spread to benchmark 	<ul style="list-style-type: none"> Cash or Qualified Debt Securities (narrowly defined to require terms to be <i>identical</i> in all material respects, except for maturity date, interest payment and record dates, redemption provisions and interest rate) Can be fixed or spread to benchmark Cannot be financed with new Senior Debt 	<ul style="list-style-type: none"> Cash or other securities Can be fixed or spread to benchmark
Minimum Offer Period	<ul style="list-style-type: none"> Must remain open for at least 5 business days Must remain open for at least 3 business days following a change in the consideration offered Must remain open for at least 2 business days following any other material change 	<ul style="list-style-type: none"> Must remain open for at least 5 business days Must remain open for at least 5 business days following a change in the consideration offered Must remain open for at least 3 business days following any other material change 	<ul style="list-style-type: none"> Must remain open for at least 20 business days Must remain open for at least 10 business days following a change in consideration offered or a material change in number of securities sought
Partial/Capped Tender Offers	<ul style="list-style-type: none"> Permitted 	<ul style="list-style-type: none"> Not permitted 	<ul style="list-style-type: none"> Permitted
Concurrent Consent Solicitation	<ul style="list-style-type: none"> Permits seeking consent to simple majority amendments only 	<ul style="list-style-type: none"> Not permitted 	<ul style="list-style-type: none"> Permits seeking consent to any type of amendment
Withdrawal Rights	<ul style="list-style-type: none"> Minimum specified withdrawal rights must be provided 	<ul style="list-style-type: none"> Minimum specified withdrawal rights must be provided 	<ul style="list-style-type: none"> No equivalent requirement
Early Settlement	<ul style="list-style-type: none"> No early settlement mechanics permitted 	<ul style="list-style-type: none"> No early settlement mechanics permitted 	<ul style="list-style-type: none"> No equivalent prohibition

	New Exemptive Order	Prior SEC No-Action Relief	Rule 14e-1(a) & (b)
Guaranteed delivery procedure	<ul style="list-style-type: none"> Not required 	<ul style="list-style-type: none"> Required 	<ul style="list-style-type: none"> No equivalent requirement
Notice Requirements	<ul style="list-style-type: none"> Must be announced by “Immediate Widespread Dissemination” 	<ul style="list-style-type: none"> Must be announced by “Immediate Widespread Dissemination” 	<ul style="list-style-type: none"> No equivalent requirement
Form 8-K filing	<ul style="list-style-type: none"> Condition not included 	<ul style="list-style-type: none"> Required for offerors subject to Exchange Act reporting obligations 	<ul style="list-style-type: none"> No equivalent requirement
Eligible Exchange Offer Participants	<ul style="list-style-type: none"> QIBs, non-U.S. persons and institutional accredited investors 	<ul style="list-style-type: none"> QIBs and non-U.S. persons 	<ul style="list-style-type: none"> No equivalent restriction (any exchange offer must be registered or qualify for an exemption)
Exemption Exclusions	<ul style="list-style-type: none"> Not made in anticipation of, or response to, any other tender offers for the issuer’s securities Not made within ten business days after the first public announcement or consummation of a change of control or other similar extraordinary corporate transaction Not made within ten business days after the first public announcement or consummation of a transaction that would require the furnishing of pro forma financial information Not made if a default exists 	<ul style="list-style-type: none"> Not made in anticipation of, or response to, any other tender offers for the issuer’s securities Not made in anticipation of, or in response to, or concurrently with a change of control or other similar extraordinary corporate transaction Not made within ten business days after the first public announcement or consummation of a transaction that would require the furnishing of pro forma financial information Not made if a default exists 	<ul style="list-style-type: none"> Not applicable

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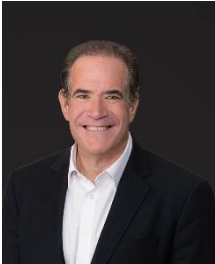
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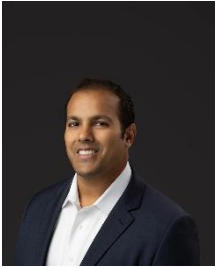
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