



SEC Update

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This is a commercial communication from Hogan Lovells. See note below.

SEC exemptive order permits shorter equity tender offer periods

The SEC's Division of Corporation Finance recently issued an exemptive order under the Exchange Act permitting certain tender offers for equity securities to remain open for a minimum period of ten business days instead of a minimum period of 20 business days as required under the SEC's tender offer rules.

The abbreviated offering periods are available for all-cash third-party and issuer tender offers for equity securities of reporting companies, as well as for all-cash tender offers by non-reporting companies for their own equity securities. To qualify for this relief, the third-party equity tender offer must be made in connection with a negotiated business combination transaction. Parties relying on the exemptive order must comply with conditions specified in the order.

The exemptive order offers acquirors in negotiated M&A transactions involving a "two-step" acquisition process new flexibility to reduce the time to closing. The relief also may enable reporting companies engaged in self-tenders to limit their exposure to market fluctuations during the shortened offering period.

The Division's exemptive order, issued by its Office of Mergers and Acquisitions on April 16, 2026, may be accessed [here](#).

Overview of exemptive order

The exemptive order permits use of an abbreviated offering period for all-cash tender offers for equity securities of reporting and non-reporting companies.

Tender offers for equity securities of reporting companies

The exemptive order applies to the following equity tender offers:

- *third-party tender offers* for equity securities in connection with negotiated business combination

transactions subject to Section 14(d) of the Exchange Act and Regulation 14D thereunder, which apply to tender offers for any class of equity security registered under Section 12 of the Exchange Act by any third party if, after consummation of the offer, such party would, directly or indirectly, be the beneficial owner of more than 5% of the class; and

- *issuer tender offers* subject to Exchange Act Rule 13e-4, which applies to equity tender offers by an issuer with a class of equity security registered under Section 12 of the Exchange Act, whether the offer is for securities of the registered class or for other equity securities of the issuer.

Tender offers for equity securities of reporting companies are also subject to Section 14(e) of the Exchange Act and Regulation 14E thereunder, which apply to tender offers for any security by any person, including the issuer, regardless of whether the security is registered under Section 12 of the Exchange Act. Section 14(e) is a general anti-fraud provision regulating tender offers, under which the SEC has adopted Regulation 14E, which sets forth certain procedural requirements (including the minimum offering period) as well as anti-fraud and anti-manipulation measures.

Issuer tender offers for equity securities of non-reporting companies

The exemptive order also allows use of the shortened offering period for all-cash issuer tender offers for equity securities of non-reporting companies, which are subject only to Exchange Act Section 14(e) and Regulation 14E.

Under the order, such a tender offer must be made by the issuer of the equity securities sought in the tender offer, or by the issuer's wholly-owned subsidiary for the equity securities of the issuer. The exemptive

relief thus does not extend to a tender offer by a third-party bidder for a non-reporting company's equity securities.

A non-reporting company is an issuer that does not have a class of securities registered under Section 12 of the Exchange Act and is not required to file reports pursuant to Section 15(d) of the Exchange Act.

Scope of "equity security"

The Division confirms that the exemptive order is intended to afford relief with respect to tender offers for any class of "equity security" within the meaning of Section 3(a)(11) of the Exchange Act and Exchange Act Rule 3a11-1.

Those provisions define "equity security" broadly to encompass any "stock or similar security" as well as (among other instruments) any security convertible into, and any warrant or other right to subscribe for or purchase, stock or such a similar security. This expansive definition encompasses, in addition to common stock, debt securities convertible into or exchangeable for common stock and stock options and other compensatory awards issued under stock plans.

Shortened tender offer periods

The Division's order grants exemptions from the minimum offering period requirements of Exchange Act Rule 13e-4(f)(1), applicable to issuer equity tender offers by an issuer with a class of equity security registered under Section 12 of the Exchange Act, and Rules 14e-1(a) and (b) of Regulation 14E, applicable to tender offers generally.

Under these rules, the offeror must hold the tender offer open for (i) at least 20 business days from the date when the tender offer is first published or sent or given to security holders and (ii) at least ten business days from the date when the notice of an increase or decrease in the percentage of the class of securities being sought or the consideration offered is first published or sent or given to security holders.

The exemptive order permits the offering period of a covered tender offer for any class of equity security to remain open for a minimum of ten business days rather than the minimum period of 20 business days specified in the rules. The Division underscores that the "offering period" affected by the relief is the "initial offering period" as defined in Exchange Act Rule 14d-1(g)(4). That rule defines "initial offering period" to mean "the period from the time the offer commences until all minimum time periods, including extensions, required by Regulations 14D and 14E have

been satisfied and all conditions to the offer have been satisfied or waived within these time periods."

Conditions for reliance on exemptive order

Third-party bidders and issuers wishing to rely on the exemptive order must comply with the conditions specified in the order, including that the offer consideration must consist only of cash at a fixed price. In addition, the offeror must comply with specified disclosure requirements and notice periods, as well as other conditions discussed below.

Non-qualifying equity tender offers will remain subject to the requirement that the offer be kept open for a minimum of 20 business days.

Tender offers in business combination transactions

The shortening of the minimum offering period under the exemptive order for equity tender offers in connection with negotiated business combination transactions should enhance the existing timing advantage of acquirors' use of a cash tender offer to acquire a U.S. target over a one-step statutory merger transaction, subject to the limitations imposed by conditions of the order.

Negotiated, all-cash tender offers by acquirors of U.S. public companies that otherwise comply with the order's requirements will now be able to be completed in as little as three weeks after signing of the definitive business combination agreement, assuming the parties are able to prepare their tender offer materials and file them with the SEC and satisfy regulatory and other closing conditions on such an expedited schedule.

A third-party tender offer for a reporting company's equity securities subject to Regulation 14D must comply with the following conditions specified in the exemptive order to qualify for the minimum offering period of ten business days:

- (i) the offer must be made pursuant to a negotiated merger agreement or similar business combination agreement, (ii) the offer must be for all outstanding securities of the subject class, and (iii) the subject company must file and disseminate a Schedule 14D-9 (the board recommendation statement) no later than 5:30 p.m., Eastern time, on the first business day following the date of commencement of the tender offer;

- the offer consideration must consist only of cash at a fixed price;
- the offer must not be subject to Exchange Act Rule 13e-3, which governs going-private transactions;
- the offer must not be made in reliance on the cross-border exemption set forth in Exchange Act Rule 14d-1(d) applicable to Tier II cross-border offers;
- the offer may not be made in the context of competing proposals, so that:
 - at the public announcement of the tender offer, the subject securities may not be the subject of a previously announced or pending tender offer by another offeror; and
 - if a competing tender offer for the subject securities is publicly announced following the commencement of the initial offer in reliance on the exemptive relief, the initial offer must be extended such that the offer is open for at least 20 business days from the date the initial offer commenced;
- the offer must be announced in a press release issued through a widely disseminated news or wire service and must include (i) the basic terms of the offer (such as the identity of the offeror, the class of equity security sought to be purchased, the amount of consideration offered, and the expiration date of the offer) and (ii) 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, in each case no later than 10:00 a.m., Eastern time, on the date the offer commences;
- any (i) increase or decrease in the percentage of the subject securities sought in the offer, other than the acceptance for payment of an additional amount of securities not to exceed 2% of the subject securities, or (ii) change in the consideration offered must be communicated in each case by press release or other public announcement that is widely disseminated no later than 9:00 a.m., Eastern time, on the fifth business day before expiration of the offer; and
- any other material change in the terms of the offer must be communicated by press release or other public announcement that is widely disseminated no later than 9:00 a.m., Eastern time, on the second business day before expiration of the offer.

The exemptive order provides acquirors the opportunity to compress further the sign-to-close

timeline for an all-cash, two-step business combination transaction in which a successful tender offer is followed by a statutory merger to acquire any target shares not tendered. Acquirors that consider taking advantage of this new timing flexibility, however, should keep in mind other factors that may affect completion of these transactions.

- *Documentation timetable:* An acquiror seeking the benefits of the compressed timeline will need to ensure that both the acquiror and the target (and each such party's advisers) are planning and executing on the basis of a documentation timetable that contemplates the submission of required SEC and other filings promptly after announcement of the transaction.
- *Antitrust waiting period:* To comply with the 15-calendar day pre-closing waiting period under the Hart-Scott-Rodino Act applicable to all-cash tender offers, the parties will need to make their premerger filings promptly after executing the definitive transaction documents to allow the waiting period to run (and expire) concurrently with the ten-business day offer period.
- *Target board fiduciary duties:* Target company boards of directors may wish to consider, in consultation with financial and legal advisers, whether an abbreviated “window shop” period under the accelerated offering schedule is sufficient to satisfy their fiduciary duties to obtain the best sale price, particularly in circumstances where the transaction is not the result of a confidential pre-signing bid solicitation or other market check process.
- *Competing proposals:* The shortened offering period will not be available if a “topping offer” or other competing proposal is publicly announced during the tender offer period, which would require extension of the initial offering period to remain open for at least 20 business days from the date the initial offer commenced.
- *Target shareholder base:* In certain circumstances, including those in which the target company has a significant retail shareholder base, an acquiror should consider how a tender offer with a shortened offering period can be structured and managed to succeed without a need to extend the period.

Issuer tender offers

The exemptive order extends the conditional relief for a shortened offering period to reporting and non-reporting companies conducting all-cash tender offers for their own equity securities.

Issuer tender offers by reporting companies. The order permits qualifying all-cash tender offers by reporting companies for their own equity securities to remain open for the shortened minimum offering period of ten business days.

Any such tender offers must be conducted in compliance with Exchange Act Rule 13e-4 and, to qualify for the exemptive relief, must be made for less than all outstanding securities of the subject class (and therefore not as part of a going-private transaction). These issuer tender offers must comply with the same conditions that apply to third-party equity tender offers subject to Regulation 14D summarized above (other than the condition summarized at the first bullet above referring to offers in connection with business combinations).

Issuer tender offers by non-reporting companies. Tender offers for equity securities by non-reporting issuers of the securities must be conducted in compliance only with the rules of Regulation 14E, which contain fewer protections for holders of such securities than those provided in a tender offer by a reporting company subject to Rule 13e-4.

Consistent with the difference in regulatory approaches, compared to the conditions applicable to an issuer tender offer subject to Rule 13e-4, the exemptive order specifies fewer and less stringent conditions for a self-tender offer by a non-reporting company. It is a condition of the relief that the tender offer consideration consist only of cash at a fixed price. Other conditions obligate the offeror to provide specified notice to the offerees of certain changes in the percentage of subject securities sought in the offer, of any change in the consideration offered, and of any other material change in the terms of the offer.

Reporting and non-reporting issuers will be able to take advantage of the shorter offering period in buying back employee shares for cash as part of a liquidity program. The all-cash consideration condition, however, will preclude such issuers from relying on the relief for exchange transactions involving compensatory awards issued under stock plans. Issuers will have to continue keeping those

exchange transactions open for a minimum of 20 business days.

Looking ahead

The new exemptive order represents a significant development for public M&A practitioners by making tender offer acquisition structures even more attractive in all-cash transactions where certainty and speed are paramount and regulatory hurdles will not significantly delay the consummation of the tender offer. The relief also offers additional flexibility for reporting issuers to conduct tender offers for their own equity securities on a timetable that should reduce transaction participants' exposure to market fluctuations during the offering period.

The exemptive order represents the latest stage in the Division's long-standing policy to relax the application of the tender offer rules in circumstances where the staff has determined that relief would provide issuers and third parties with greater transactional flexibility without sacrificing investor protection goals. The length of the tender offering period has been the subject of prior relief over the years in the form of no-action letters and exemptive orders addressing certain types of tender offers.

The Division issued the new order on the heels of an announcement by staff members in March 2026 that the Division was considering whether the minimum offering period of 20 business days was still appropriate in light of technological advancements since the rules were adopted in the 1970s and 1980s that have sped up the dissemination of tender offer materials to investors and other transaction participants and otherwise changed how tender offers are currently conducted. The wide-ranging review of many aspects of SEC regulation now being pursued by the Commission and the staff could make the exemptive order a harbinger of further reform in this area.

This SEC Update is a summary for guidance only and should not be relied on as legal advice in relation to a particular transaction or situation. If you have any questions or would like any additional information regarding this matter, please contact your relationship partner at Hogan Lovells or any of the lawyers listed in this update.

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