

From the Governance, Securities & Reporting Group of Weil, Gotshal & Manges LLP

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SEC Cuts Minimum Tender Offer Period to 10 Business Days for Certain Equity Tender Offers

Regulatory Interplay and Deal-Structuring Implications to Consider

On April 16, 2026, the Office of Mergers and Acquisitions of the SEC’s Division of Corporation Finance (the “Division”) issued an [exemptive order](#) (the “Order”) reducing the minimum tender offer period from 20 to 10 business days for qualifying equity tender offers. The Order covers three categories of offers: (1) third-party tender offers in negotiated M&A transactions, (2) issuer partial self-tenders, and (3) tender offers for equity securities of non-reporting companies by the issuer or its wholly-owned subsidiary. All qualifying offers must be all-cash at a fixed price. The Order is effective immediately.

This Alert provides practical guidance on the Order’s conditions, limitations, and regulatory and deal-structuring implications for public and private companies and their advisors.

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BACKGROUND: THE 20-BUSINESS DAY RULE

Under Exchange Act Rules 14e-1(a) and 13e-4(f)(1)(i), a tender offer must remain open for at least 20 business days from commencement. This requirement—in place since 1979—has been the primary timing constraint for front-end tender offers in two-step acquisition structures. In practice, the 20-business day minimum means the front-end of a two-step cash merger (tender offer followed by a back-end merger under DGCL § 251(h)) takes approximately four calendar weeks at a minimum.

The Division has previously provided abbreviated offering period relief for certain types of debt tender offers, most notably through the 2015 Cahill Gordon no-action letter establishing a five-business day minimum for certain investment-grade debt offers. The Order represents the first broad-based, standing relief for *equity* securities and does not require individual applications. The Division cited the need to “address market inefficiencies, better reflect technological advancements, and reduce exposure to market fluctuations.”

THE EXEMPTIVE ORDER: THREE CATEGORIES OF RELIEF

Third-Party Tender Offers for Equity Securities of Reporting Companies (Regulation 14D)

The Order permits a third-party tender offer subject to Regulation 14D to remain open for a minimum of 10 business days, provided *all* of the following conditions are satisfied:

- **Negotiated deal.** The offer is made pursuant to a negotiated merger agreement or similar business combination agreement between the subject company and the offeror.
- **All outstanding shares.** The offer is for all outstanding securities of the subject class.
- **Rapid 14D-9 filing.** The subject company files and disseminates a Schedule 14D-9 no later than 5:30 p.m. Eastern time on the first business day following commencement.
- **Cash-only, fixed price.** The consideration consists solely of cash at a fixed price (i.e., no formula pricing or securities-based consideration).
- **No going-private transactions.** The offer is not subject to Rule 13e-3 under the Exchange Act.
- **No cross-border exemptions.** The offer does not rely on the Tier II cross-border exemptions under Rule 14d-1(d) or Rule 13e-4(i).
- **No pending competing offer.** At the time of public announcement, the subject securities are not subject to a previously announced or pending tender offer by another offeror.
- **Competing bid snapback.** If a competing tender offer is publicly announced after commencement, the initial offer must be extended to at least 20 business days from its original commencement date.
- **Day-one press release.** The offer is announced by press release through a widely disseminated news or wire service by 10:00 a.m. Eastern time on the commencement date, including the basic terms and an active hyperlink to the tender offer materials.
- **Price/percentage change notice.** Any increase or decrease in the percentage of securities sought (other than acceptance of up to an additional 2%) or change in consideration must be communicated by press release no later than 9:00 a.m. Eastern time on the fifth business day before expiration.
- **Other material change notice.** Any other material change must be communicated by press release no later than 9:00 a.m. Eastern time on the second business day before expiration.

The cumulative effect is that the 10-business day offering period is available only for **friendly, all-cash, fixed-price acquisitions of U.S. reporting companies**. Hostile bids, exchange offers, going-private transactions, and cross-border offers are excluded.

Self-Tender Offers for Equity Securities of Reporting Companies (Rule 13e-4)

The Order permits an issuer self-tender subject to Rule 13e-4 to remain open for a minimum of 10 business days, provided that:

- **Partial offers only.** The offer is for less than all outstanding securities of the subject class.
- **Cash-only, fixed price.** The consideration consists solely of cash at a fixed price.
- **No going-private / no cross-border.** The same exclusions for Rule 13e-3 and cross-border offers apply.
- **Same dissemination and notice conditions.** The same press release, timing, and material change requirements apply as for Regulation 14D offers.

Key limitation: A modified Dutch auction self-tender, in which shareholders tender at prices within a stated range, would not qualify because the consideration is not at a “fixed price.” The relief is most directly applicable to fixed-price issuer tender offers for a specified number of shares and to odd-lot programs structured as tender offers.

C. Tender Offers Equity Securities of Non-Reporting Companies (Regulation 14E-only)

The Order separately grants relief from Rule 14e-1(a) and (b) for tender offers for equity securities of non-reporting companies – i.e., companies that do not have a class of securities registered under Section 12 of the Exchange Act and is not required to file reports under Section 15(d) of the Exchange Act – permitting a 10-business day minimum, subject to the following conditions:

- **Issuer or wholly-owned subsidiary.** The offer is made by the issuer itself or its wholly-owned subsidiary.
- Cash-only, fixed price. Same as above.
- **Notice to holders.** The same material change communication conditions apply, with notice to holders rather than a press release.

This relief is most relevant for pre-IPO companies and other private issuers conducting tender offers to provide liquidity to employees, founders, or early-stage investors.

3. PRACTICAL IMPLICATIONS FOR DEAL STRUCTURING

What to Consider Now:

- **Accelerated Two-Step Cash Acquisitions.** The front-end tender offer minimum drops from approximately 28 calendar days to approximately 14 calendar days, potentially compressing the announcement-to-closing timeline by two weeks or more. For acquirers, this reduces market risk exposure and narrows the window for potential interlopers. For financial sponsors, the shortened timeline reduces the carrying cost of committed financing.
- **Target Board Process and the 14D-9 Timeline.** The 14D-9 must be substantially prepared *before* the public announcement. Targets, their legal counsel, and financial advisors will need to finalize the board’s recommendation, prepare the 14D-9 disclosure, and arrange for the fairness opinion delivery in advance of signing. Board advisors should also consider the implications for fiduciary out provisions: the window for a competing acquirer to emerge and submit a superior proposal is significantly compressed. Additionally, boards considering a tender offer to retail securityholders should be aware that the shorter timeline may increase scrutiny from potential plaintiffs, potentially increasing litigation risk.
- **Matching Rights and Fiduciary Outs.** The typical 3–5 business day matching right now consumes a disproportionate share of a 10-business day offer period. Merger agreements should be drafted with attention to whether matching rights, notice periods, and information rights provisions remain workable in a compressed timeframe.
- **Issuer Share Repurchase Programs.** Issuers that have historically used modified Dutch auction tender offers will not benefit from this relief. However, issuers willing to conduct a fixed-price self-tender—or that conduct odd-lot programs—will benefit from the reduced timeline, which lowers market risk and exposure to intervening events.
- **Private Company Tender Offers.** Late-stage private companies conducting structured liquidity programs can now complete these offers in half the previously required time, reducing administrative burden and valuation fluctuation risk. Greater flexibility to conduct tender offers may help companies stay below the 2,000-securityholder threshold that would trigger public reporting obligations, while also reducing the number of unaccredited holders and positioning the company as a more attractive target for a future private acquisition.

4. REGULATORY AND STRUCTURAL INTERPLAY

What to Consider Now:

- **HSR Act Timing.** The HSR waiting period for a cash tender offer is 15 calendar days. Ten business days equates to approximately 14 calendar days, meaning the SEC minimum and the HSR waiting period are now nearly aligned. For transactions where early termination is granted (early termination was restored in March 2025), the HSR waiting period may no longer be the binding constraint. Where a Second Request is issued, the extended waiting period (10 additional days for cash tender offers) will require the offer to be extended. Acquirers should coordinate early with antitrust counsel.
- **Delaware Section 251(h) and Back-End Mergers.** Section 251(h) permits a back-end merger without a stockholder vote following a qualifying tender offer. The compressed front-end makes it more important that offerors achieve the § 251(h) threshold in the initial offering period, heightening the importance of top-up options and subsequent offering periods.
- **Financing Considerations.** The cash-only requirement means financing must be committed and certain at commencement. Commitment letters should provide for funding consistent with a 10-business day offering period, and conditions to funding should be aligned with the conditions to the offer.
- **Subsequent Offering Periods.** The 10-business day minimum applies only to the initial offering period. A subsequent offering period under Rule 14d-11 (3–20 business days) remains available and may become more important as a path to the § 251(h) threshold.
- **Competing Bids and the 20-Business Day Snapback.** If another tender offer is publicly announced after commencement, the initial offer must be extended to 20 business days. The snapback appears triggered only by a competing *tender offer*, not by an unsolicited merger proposal—a meaningful distinction for merger agreement drafting.
- **Top-Up Options.** With less time for shareholders to tender, the risk of closing below the § 251(h) threshold is heightened. A well-drafted top-up option with adequate headroom under authorized but unissued shares is even more critical.
- **Appraisal Rights.** The Order does not affect state-law appraisal rights. In Delaware, appraisal rights are triggered by the back-end merger. Acquirers should ensure the compressed front-end does not create complications with back-end merger notice requirements under DGCL § 262.

5. WHAT THE ORDER DOES NOT COVER

The Order is deliberately narrow. The following types of tender offers are *not* eligible for the 10-business day minimum:

- Hostile or unsolicited tender offers (the Regulation 14D relief requires a negotiated merger agreement).
- Exchange offers or offers with non-cash consideration, including stock-for-stock, mixed consideration, and offers with contingent value rights or earnouts.
- Going-private transactions subject to Rule 13e-3.
- Cross-border tender offers relying on the Tier II exemption.
- Issuer self-tenders for all outstanding securities (Rule 13e-4 relief applies only to partial offers).
- Modified Dutch auction self-tenders (price range, not a “fixed price”).
- Third-party tender offers for non-reporting company securities.
- Offers where a competing tender offer is already pending at announcement.

6. LOOKING AHEAD

The Order is a significant, carefully bounded step toward modernizing the U.S. tender offer regime. Its most immediate impact will be in negotiated, all-cash acquisitions structured as two-step mergers. Several open questions remain, including whether the relief may eventually extend to exchange offers with a fixed exchange ratio, whether the “fixed price” requirement could be relaxed for modified Dutch auctions, and how the snapback provision interacts with non-tender offer competing proposals.

Companies, financial sponsors, and their advisors contemplating cash acquisitions or issuer self-tenders should evaluate whether pending or prospective transactions can be structured to satisfy the Order’s conditions and should update transaction playbooks and timetable assumptions accordingly.

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