

The 10-Day Tender Offer: SEC Issues Exemptive Relief

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PRACTICES Capital Markets and Securities, Corporate, Employee Benefits and Executive Compensation

On April 16, 2026, the Securities and Exchange Commission (SEC) issued an [exemptive order \(Order\)](#) reducing the minimum tender offer period from 20 business days to just 10 for qualifying equity offers. The Order applies to tender offers for equity securities of both reporting and non-reporting companies, each subject to its own set of conditions summarized below.

Reporting Companies

For tender offers involving reporting companies (i.e., companies that file periodic reports with the SEC), the Order grants exemptions from Rules 13e-4(f)(1) and 14e-1(a) and (b) of the Securities Exchange Act of 1934 (Exchange Act), which generally require tender offers to remain open for at least 20 business days, subject to the following conditions:

1. *Nature of the Transaction.* If the tender offer is subject to Regulation 14D (i.e., third-party tender offers), it (i) must be made pursuant to a negotiated merger agreement (or similar business combination agreement) between the subject company and the offeror, (ii) must be for all outstanding securities of the subject class and (iii) the subject company must file and disseminate its Schedule 14D-9 no later than 5:30 p.m. Eastern time on the first business day following commencement of the tender offer. If the tender offer is instead subject to Rule 13e-4 (i.e., an issuer tender offer), it must be for less than all outstanding securities of the subject class.
2. *All-Cash Consideration.* The consideration offered must consist solely of cash at a fixed price.
3. *Exclusions.* The tender offer cannot be subject to Rule 13e-3 (the SEC's going-private rule) or rely on the cross-border exemptions set forth in Rule 14d-1(d) or Rule 13e-4(i).
4. *Competing Bid Extension Trigger.* At public announcement of the tender offer, the subject securities must not be subject to a pending competing offer. If a competing offer emerges afterward, the initial offer must be extended to at least 20 business days.
5. *Announcement and Disclosure Requirements.* The tender offer must be announced by 10 a.m. Eastern time on the commencement date through a widely disseminated press release containing the basic terms of the offer and an active hyperlink to tender offer materials.
6. *Material Change Notice Windows.* Any change in the percentage of securities sought (beyond a 2 percent *de minimis* increase), or in the consideration offered must be communicated by press release or other widely disseminated public announcement no later than 9 a.m. Eastern time on the fifth business day before expiration. Any other material change must be communicated no later than 9 a.m. Eastern time on the second business day before expiration.

Non-Reporting Companies

The Order also permits a 10-business-day minimum for tender offers involving non-reporting companies (i.e., issuers that do not have a class of securities registered under Section 12 of the

Exchange Act and are not required to file reports pursuant to Section 15(d) of the Exchange Act). To qualify, the offer must be made by the issuer (or its wholly owned subsidiary) and consideration must be all-cash at a fixed price. The same material change notice requirements discussed above also apply.

Implications for Equity Award Tender Offers

The Order also impacts equity compensation. Cash buybacks of employee stock options and other equity awards can trigger tender offer rules, which previously required a 20-business-day window. Now, qualifying cash self-tenders can close in just 10 business days — shortening the process and reducing the risk that a lengthy offering period disqualifies options intended to be incentive stock options. The relief is narrow, though: It does not cover option exchanges, repricings or other award modifications, which typically involve non-cash consideration and fall outside the Order's cash-only requirement.

Practical Implications

For qualifying all-cash tender offers in negotiated transactions, this Order effectively compresses deal timelines by 10 business days, thereby reducing market risk and accelerating closing. Therefore, two-step cash mergers (i.e., a cash tender offer followed by a merger under Section 251(h) of the Delaware General Corporation Law), could be completed in a much shorter time frame. However, reliance requires strict compliance with the Order.

For further information about tender offers generally, please contact a member of the [Haynes Boone Capital Markets and Securities Practice Group](#). For further information about tender offers for equity awards, please contact a member of the [Haynes Boone Employee Benefits and Executive Compensation Practice Group](#).