

SEC RELIEF ON TENDER OR EXCHANGE OFFERS FOR NON-CONVERTIBLE DEBT SECURITIES

Requirement / Topic	January 2015 No-Action Letter	June 2026 Exemptive Order	Comparison
Subject Securities	Offer is made for a class or series of non-convertible debt securities, regardless of any particular rating assigned by any nationally recognized statistical rating organization	Offer is made for a class or series of non-convertible debt securities, regardless of any particular rating assigned by any nationally recognized statistical rating organization	No change
Offeror	Offer is made by Issuer of subject debt securities, a direct or indirect wholly owned subsidiary of issuer, or a parent company that owns 100% of capital stock (other than directors' qualifying shares) of such issuer	Offer is made by Issuer of subject non-convertible debt securities, a direct or indirect wholly owned subsidiary of issuer, or a parent company that owns 100% of capital stock (other than directors' qualifying shares) of such issuer	No change
"Any and All" Requirement vs. Partial Offers	Offer must be made for "any and all" of a class or series of non-convertible debt securities	Eliminates the "any and all" requirement. Partial tender offers or partial exchange offers are now permitted.	2026 Exemptive Order eliminates the "any and all" requirement and allows for partial or capped offers.
Proration and Announcement of Proration Factor	Required "any and all" offers, so no mention or application of proration or announcement of proration factor	If offer is for less than all of a class, and tenders received are greater than amount offeror seeks, then take up and pay for securities as nearly as may be pro rata, disregarding fractions. Offeror to use commercially reasonable efforts to announce proration factor by press release or public announcement by 10 am ET on next business day after expiration date or soon thereafter.	2026 Exemptive Order allows for proration and requires offeror to announce pro ration factor by immediate widespread dissemination.

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Consideration	Offer must be made solely for cash consideration and/or consideration consisting of Qualified Debt Securities (“QDS”)	Offer must be made solely for cash consideration and/or consideration consisting of QDS	No change, but the 2026 Exemptive Order amends the QDS definition. See the next three rows below.
Qualified Debt Securities: “Identical” vs. “Substantially Similar” Terms	To qualify as QDS, the non-convertible debt securities exchanged must be <i>identical</i> in all material respects (including as to issuer, guarantor, collateral, lien priority, covenants, etc.) to debt securities subject to the tender offer (except for maturity date, interest and record dates etc.)	To qualify as QDS, the non-convertible debt securities exchanged must be <i>substantially similar</i> in all material respects (including as to issuer, guarantor, collateral, lien priority, covenants, etc.) to <i>either of (1) debt securities subject to the tender offer or (2) the most recent issuance of debt securities that are pari passu to the debt securities subject to the tender offer (except, in either case, for maturity date, interest and record dates etc.)</i>	2026 Exemptive Order now counts as QDS, non-convertible securities that are substantially similar in all material respects to either the subject debt securities or the issuer’s most recently issued <i>pari passu</i> debt securities.
Qualified Debt Securities: Weighted Average Life to Maturity Requirement	To qualify as QDS, the non-convertible debt securities exchanged must have interest payable in cash and must have a weighted average life to maturity that is longer than the debt securities subject of the offer.	Retains the cash-pay interest requirement. But eliminates the “weighted average life to maturity” requirement.	2026 Exemptive Order eliminates the requirement that QDS have a weighted average life to maturity longer than the debt securities subject of the offer.
Qualified Debt Securities: Final Pricing	Requires the exact amount of consideration and interest rate on any QDS to be fixed no later than 2:00 pm ET on the last business day of the offer.	Requires the exact amount of consideration and interest rate on any QDS to be fixed no later than the expiration time of the offer.	2026 Exemptive Order requires final pricing on QDS to be fixed no later than the expiration time, instead of 2 pm ET of the last business day of the offer.

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Offerees; Eligible Exchange Offer Participants; Exchange Offer with Concurrent Cash Offer	<p>Offer must be open to all record and beneficial holders of debt securities.</p> <p>Exchange offers for QDS allowed if: (1) offer is restricted to Qualified Institutional Buyers (QIBs) under Rule 144A or to non-US Persons under Regulation S ("<i>Eligible Exchange Offer Participants</i>") and (2) if there are holders who are not Eligible Exchange Offer Participants, such holders must be given a concurrent option to be paid in cash approximating the QRS value ("<i>concurrent cash offer requirement</i>").</p>	<p>Eliminates the requirement that the offer be open to all record and beneficial holders of debt securities.</p> <p>Exchange offers for QDS are allowed if the offer is restricted to QIBs under Rule 144A or to non-US Persons under Regulation S or to <i>accredited institutional investors</i> within meaning of Rule 163B(c) of Securities Act ("<i>Eligible Exchange Offer Participants</i>").</p> <p>Eliminates the concurrent cash offer requirement.</p>	<p>2026 Exemptive Order eliminates requirement that the offer be open to all record and beneficial holders of debt securities.</p> <p>2026 Exemptive Order expands Eligible Exchange Offer Participants to now include institutional accredited investors, in addition to QIBs under Rule 144A and non-US persons under Regulation S.</p> <p>2026 Exemptive Order eliminates requirement to offer concurrent cash option to holders who are not Eligible Exchange Offer Participants.</p>
Concurrent Offer and Consent Solicitation	<p>Offer must not be made in connection with a solicitation of consents to amend the indenture, form of security or note or other agreement governing the subject debt securities (collectively, the "Indenture").</p>	<p>Offer must not be made in connection with a solicitation of consents to amend the Indenture <i>where such amendment requires the consent of the holders of more than a simple majority of the outstanding principal amount of the subject securities.</i></p>	<p>2026 Exemptive Order now permits a concurrent offer and consent solicitation, as long as the proposed amendment does not require the consent of more than a simple majority of the principal amount of the subject debt securities.</p>
No Default or Event of Default	<p>Offer cannot be made if a default or event of default exists under the Indenture or any other indenture or material credit agreement to which the issuer is a party.</p>	<p>Offer cannot be made if a default or event of default exists under the Indenture or any other indenture or material credit agreement to which the issuer is a party.</p>	<p>No change</p>

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No Bankruptcy Proceeding	Offer cannot be made if at the time of the offer the issuer is the subject of bankruptcy or insolvency proceedings or has commenced a solicitation of consents for a “pre-packaged” bankruptcy proceeding or if the board of directors of the issuer has authorized discussions with creditors of the issuer to effect a consensual restructuring of the issuer’s outstanding indebtedness.	Offer is not made at a time when the issuer is the subject of bankruptcy or insolvency proceedings or has commenced a solicitation of consents for a “pre-packaged” bankruptcy proceeding or if the board of directors of the issuer has authorized discussions with issuer’s creditors to effect a consensual restructuring of the issuer’s outstanding indebtedness	No change.
Financing by Proceeds of Senior Indebtedness	Offer must not be financed with the proceeds of any “Senior Indebtedness” (“Senior Indebtedness Financing Restriction”) “Senior Indebtedness” means indebtedness incurred to finance all or portion of consideration in Five Business Day Tender Offer (excluding indebtedness under any credit or debt facility existing prior to offer commencement) if such indebtedness (i) has obligors, guarantors or collateral (or a higher priority with respect to collateral) that subject debt securities do not have; (ii) has a weighted average life to maturity less than that of subject debt securities; or (iii) is senior in right of payment to subject debt securities.	Eliminates the Senior Indebtedness Financing Restriction	2026 Exemptive Order eliminates the requirement that the offer not be financed with the proceeds of any “Senior Indebtedness.”

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Guaranteed Delivery Procedures	Offer must permit tenders prior to offer expiration through a guaranteed delivery procedure by means of a certification by or on behalf of a holder that such holder is tendering securities beneficially owned by it and that delivery of such securities will be made no later than the close of business on second business day after offer's expiration.	Eliminates the Guaranteed Delivery Procedures requirement	2026 Exemptive Order eliminates the Guaranteed Delivery Procedures requirement.
Immediate Widespread Dissemination Requirement	Offer must be announced via a press release through a widely disseminated news or wire service disclosing offer's basic terms (including identity of offeror, class of securities sought to be purchased, type and amount of consideration offered and expiration date), and containing an active hyperlink to, or Internet address at which a record or beneficial holder could obtain, copies of offer to purchase and letter of transmittal (if any) and other instructions or documents (including a form of guaranteed delivery instructions) relating to tender, in each case at or prior to 10 a.m. ET on first business day of five business day period	Offer must be announced in a press release issued through a widely disseminated news or wire service, which includes the basic terms of offer (such as identity of the offeror, class or series of non-convertible debt securities sought to be purchased, type and amount of consideration offered, and expiration date), <i>the procedures for proration</i> (if applicable), 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., ET, on the date that the tender offer commences.	Substantially similar. Announcement must now include proration procedures (if applicable) for partial offers and eliminates need to access a form of guaranteed delivery procedures.
8-K Requirement	If issuer or offeror is a reporting company under Exchange Act (including "voluntary filers"), it must furnish the press release announcing the offer in a Current Report on Form 8-K filed with the SEC prior to 12:00 noon, ET, on first business day of offer (the "Form 8-K Requirement").	Eliminates the Form 8-K Requirement	The 2026 Exemptive Order eliminates the Form 8-K Requirement.

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Additional Notice for Post-Commencement Changes to Percentage of Securities Sought or Consideration Offered in the Offer	Offer must provide for communication by Immediate Widespread Dissemination at least <i>five business days</i> prior to expiration of offer of <i>any change in the consideration being offered</i> in the offer, at or prior to 10:00 a.m., ET, on the first day of such five business day period; and, if issuer or offeror is a reporting company under the Exchange Act (including a “voluntary filer”), describe any change in consideration being offered in a Current Report on Form 8-K filed with the SEC prior to 12:00 noon, ET, on first day of the five business day period.	Any (i) <i>increase or decrease in percentage</i> of subject non-convertible debt securities sought in tender offer, <i>other than the acceptance for payment of an additional amount of securities not to exceed two percent</i> of class or series of securities that is the subject of tender offer, calculated in accordance with Section 14(d)(3) of the Exchange Act, or (ii) <i>change in the consideration offered</i> , is communicated in each case by press release or other public announcement that is widely disseminated no later than 9:00 a.m., ET, on <i>third business day</i> before the expiration date of offer.	<i>Change in consideration offered: announce by 9 am ET on third business day before expiration (previously 10 am on fifth business day before expiration).</i> <i>Change in percentage of securities sought: announce by 9 am ET on third business day before expiration (previously inapplicable because the 2015 No-Action letter only applied to offers made for “any and all” subject securities).</i>
Additional Notice for Other Material Post-Commencement Changes	Offer must provide for communication by Immediate Widespread Dissemination at least <i>three business days</i> prior to expiration of offer of <i>any other material change</i> to the offer, at or prior to 10:00 a.m., ET, on first day of such three business day period.	<i>Any other material change</i> in the terms of the offer is communicated by press release or other public announcement that is widely disseminated no later than 9:00 a.m., Eastern time, on the <i>second business day</i> before the expiration date of the offer.	<i>All other material changes: announce by 9 am ET on second business day before expiration (previously 10 am on the third business day before expiration).</i>
Withdrawal Rights	Offer to provide withdrawal rights exercisable (i) at least until earlier of (x) offer expiration date and (y) in event offer is extended, the tenth business day after commencement, and (ii) at any time after 60th business day after commencement if for any reason offer has not been consummated within 60 business days after commencement.	Offer provides for withdrawal rights exercisable (i) at least until earlier of (x) offer expiration date and (y) in event offer is extended, the tenth business day after commencement, and (ii) at any time after 60th business day after commencement if for any reason offer has not been consummated within 60 business days after commencement.	No change.

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No Early Payment	Offer provides offeror will not pay consideration in offer until promptly after expiration of offer pursuant to Rule 14e-1(c) of Exchange Act.	Offer provides offeror will not pay consideration in offer until promptly after expiration of offer pursuant to Rule 14e-1(c) of Exchange Act.	No change
Disqualifying Events: Change of Control and Extraordinary Transactions; Anticipatory Tender or Exchange Offers; Certain Concurrent Tender Offers	Offer must not be (i) <i>made in anticipation of or in response to, or concurrently with, a change of control or other type of extraordinary transaction involving issuer, such as merger (or similar business combination), reorganization or liquidation or sale of all or substantially all of its consolidated assets;</i> (ii) <i>made in anticipation of or in response to other tender offers for issuer’s securities;</i> (iii) <i>made concurrently with a tender offer for any other series of issuer’s securities made by issuer (or any subsidiary or parent company of issuer) if effect of such offer, if consummated, would be to add obligors, guarantors or collateral (or increase priority of liens securing such other series) or shorten the weighted average life to maturity of such other series;</i> or (iv) <i>commenced within ten business days after first public announcement or consummation of purchase, sale or transfer by issuer or any subsidiary of a material business or amount of assets that would require furnishing pro forma financial information pursuant to Article 11 of Reg S-X.</i>	Offer is not (i) <i>commenced within ten business days after the first public announcement or the consummation of a change of control or other type of extraordinary transaction involving issuer, such as merger (or similar business combination), reorganization or liquidation, or sale of all or substantially all of its consolidated assets;</i> (ii) <i>made in anticipation of or in response to other tender offers for issuer’s securities;</i> (iii) <i>made concurrently with a tender offer for any other class or series of issuer’s securities made by the issuer (or any subsidiary or parent company of the issuer) if effect of such offer, if consummated, would be to add obligors, guarantors, or collateral (or increase priority of liens securing such other class or series);</i> or (iv) <i>commenced within ten business days after first public announcement or consummation of purchase, sale, or transfer by the issuer or any subsidiary 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 Reg S-X.</i>	<p>The 2015 No-Action Letter <i>broadly disallowed</i> offers made in anticipation of or in response to, or concurrently with, a change of control or other type of extraordinary transaction of an issuer, such as a mergers, business combinations or sales of all or substantially all of its consolidated assets. In contrast, the 2026 Exemptive Order provides a <i>restriction</i> i.e., the offer cannot be commenced within ten business days after the first public announcement or consummation of such change of control or extraordinary transaction.</p> <p>The 2015 No-Action Letter also disallowed certain concurrent tender offers i.e. the offer cannot be made concurrently with issuer’s other series of securities if the effect of such offer is to shorten the weighted average life to maturity of such other series. In contrast, the 2026 Exemptive Order eliminates such weighted average life to maturity restriction in a concurrent tender offer.</p>