The Credit Roundtable
THE VOICE OF THE BUYSIDE

January 28, 2026

By E-Mail
U.S. Securities and Exchange Commission
Office of Mergers & Acquisitions
Division of Corporation Finance
Attention: Tiffany Posil
100 F Street, N.E.
Washington, D.C. 20549

Cc:

- Cristina Begoña Martin Firvida (Office of the Investor Advocate)
- Marc Oorloff Sharma (Office of the Investor Advocate)
- Charles Kwon (Office of the Investor Advocate)
- Anna Ambramson (Division of Corporation Finance)
- Jessica Ansart (Division of Corporation Finance)

Re: Securities Exchange Act of 1934 - Rules 14e-1(a) and (b)

Dear Ms. Posil,

We write on behalf of The Credit Roundtable, an association of fixed income investors focused on strengthening bondholder rights. As set forth in our mission statement, The Credit Roundtable believes "that enhancing bondholder protections benefits issuers, underwriters and investors alike by laying the foundation for a fair and efficient corporate bond market." These objectives align squarely with the mission of the U.S. Securities and Exchange Commission (the "**Commission**"): investor protection; maintenance of fair, orderly and efficient markets; and facilitation of capital formation.[1]

We greatly appreciated our call with you on January 7, 2026, following our September 25, 2025 letter (the "**September Letter**") regarding the Warner Brothers Discovery, Inc. ("**WBD**") tender offers and consent solicitations (the "**WBD Transactions**"). As explained in the September Letter and discussed on our call, we believe the tactics used by WBD and its advisors in the WBD Transactions ran afoul of the intent and purpose of the Commission's tender offer rules and unfairly coerced investors. We understand from our discussion that the Commission is considering whether no-action or exemptive relief may be appropriate for certain transaction structures that constitute "tender offers"[2] under federal securities laws but do not strictly comply with Regulation 14E under the Securities Exchange of

---

[1] Mission, U.S. Securities and Exchange Commission, https://www.sec.gov/about/mission.

[2] Throughout this letter, we use the term "tender offers" to mean both tender offers for cash consideration and exchange offers for new debt securities, consistent with the Commission's tender offer rules.

1934, as amended (the "**Exchange Act**"). In view of the innovative, and at times exploitative, liability management transactions that issuers have conducted in recent years, we welcome the Commission's initiative to provide greater clarity in the application of tender offer rules.

We submit this letter to share our views on potential accommodations that would increase flexibility and reduce administrative burden for issuers without materially disadvantaging the bondholder community. Before outlining our suggested accommodations, we detail the practical realities of debt tender offers from the perspective of bondholders, focusing on how inadequate time for evaluation can materially disadvantage investors. This concern is critical: if not fully accounted for in any new accommodations to issuers, investors may reasonably perceive a market that permits issuers to exploit structural advantages at investors' expense, thereby weakening investor protections and distorting the balance required for fair and orderly markets. Over time, such imbalance would risk discouraging capital formation and undermining market efficiency, directly frustrating each aspect of the Commission's mission.

As Chairman Paul S. Atkins recently observed, "Our markets prosper when investors have confidence that our rules are fair [and] our processes are predictable."[3] At a high level, this letter seeks to articulate the boundaries of fairness from the investor perspective. In doing so, we affirm our commitment, as representatives of the bondholder community, to constructively engage with the Commission in advancing Chairman Atkins' bold vision to "revitaliz[e] America's markets."[4]

Background

Section 14(e) of the Exchange Act prohibits untrue statements of material fact, omissions of material fact, and fraudulent, deceptive and manipulative acts and practices in connection with tender offers. At the time of the adoption of Section 14(e) as part of the Williams Act amendments of 1968, tender offers were largely unregulated under the federal securities laws. Congress enacted Section 14(e), in part, to impose a requirement of "full and fair disclosure for the benefit of investors."[5] To effectuate the purpose of Section 14(e), the Commission has promulgated rules under Regulation 14E that are applicable to all tender offers, including Rule 14e-1 which specifies timing requirements. As Commissioner John R. Evans explained in 1979, "The minimum time period" for a tender offer "should be long enough to assure that investors can receive information . . . analyze that information, and make an informed decision whether or not to tender . . . "[6]

Rule 14e-1(a) requires a minimum offer period for all tender offers—whether for debt, equity or hybrid securities—of twenty business days. Rule 14e-1(b) requires that a tender offer remain open for at least ten business days after any change in the consideration offered or the amount of securities sought. Consistent with the goal explained by Commissioner Evans, these two rules are designed to afford

---

[3] Remarks at the Investor Advisory Committee meeting, U.S. Securities and Exchange Commission, https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-iac-120425.

[4] Revitalizing America's Markets at 250, U.S. Securities and Exchange Commission, https://www.sec.gov/newsroom/speeches-statements/atkins-120225-revitalizing-americas-markets-250.

[5] S. Rep. No. 550, 90th Cong. 1st Sess. 3 (1967) ("The bill is designed to require full and fair disclosure for the benefit of investors while at the same time providing the offeror and management equal opportunity to fairly present their case.").

[6] John R. Evans, Tender Offers: An SEC Perspective (1979), https://www.sechistorical.org/collection/papers/1970/1979_0622_EvansTender.pdf.

investors sufficient time to decide whether to tender securities. In practice, most tender offers for non-convertible debt securities include a ten-business-day “early tender period” in which holders are entitled to greater consideration. Given the superior economics in the early tender period, the overwhelming majority of tenders are submitted during such period.

Rule 13e-4 under the Exchange Act subjects tender offers by issuers and their affiliates for equity securities and securities that are convertible into equity securities to many additional mandates beyond the requirements of Regulation 14E (the “**Equity Tender Offer Rules**”).[7] The Equity Tender Offer Rules require extensive disclosure under Schedule TO, and include, among other things, an “all-holders” rule and a “best price” rule. These requirements make tender offers subject to the Equity Tender Offer Rules—including most tender offers for convertible bonds—more administratively burdensome for issuers than tender offers for non-convertible debt securities that are subject only to Regulation 14E.[8]

A 2015 SEC no-action letter[9] (“**2015 No-Action Letter**”) provides no-action relief from Rules 14e-1(a) and 14e-1(b) in certain narrow circumstances. The 2015 No-Action Letter permits issuers, their parent companies, or their wholly-owned subsidiaries, to conduct five-business-day tender offers for “any and all” debt securities of a particular class (“**Five Day Tender Offers**”) when certain criteria are met, including but not limited to:

- The “**Non-Convertible Debt Securities Condition**” – The offer is made for a class or series of non-convertible debt securities, regardless of rating;
- The “**No Consent Solicitation Condition**” – The offer is not made in connection with a solicitation of consents to amend the indenture or other document governing the subject debt securities;
- The “**No Default Condition**” – No default or event of default exists under the applicable debt documents or any other indenture or material credit agreement to which the issuer is a party;
- The “**No Restructuring Condition**” – The issuer is not the subject of bankruptcy or insolvency proceedings, the issuer has not commenced solicitation for a pre-packaged bankruptcy and the issuer’s board has not authorized discussions with creditors for a consensual restructuring of debt;
- The “**Consideration Condition**” – The offer is made solely for cash consideration or Qualified Debt Securities (as defined in the 2015 No-Action Letter)[10];

[7] The Equity Tender Offer Rules apply if an issuer has a class of equity securities registered under Section 12 of the Exchange Act or is required to file periodic reports with the Commission pursuant to Section 15(d) of the Exchange Act.

[8] Specifically, issuers and their affiliates conducting tender offers under Rule 13e-4 must file extensive disclosures on Schedule TO, including all pre-commencement written communications, which imposes additional procedural and compliance burdens associated with identifying, monitoring, and timely filing such materials. In addition, the standard practice in non-convertible debt exchange offers to make the offer only to accredited investors and non-U.S. persons (to secure exemptions from registration under Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”), and Regulation S under the Securities Act) is inconsistent with the “all-holders” rule. Finally, the “best-price” rule prevents the use of a ten-business-day “early tender period” with superior economics.

[9] SEC No-Action Letter, “Abbreviated Tender or Exchange Offers for Non-Convertible Debt Securities,” http://www.sec.gov/divisions/corpfin/cf-noaction/2015/abbreviated-offers-debt-securities012315-sec14.pdf.

[10] “Qualified Debt Securities” means “non-convertible debt securities that are identical in all material respects (including but not limited to the issuer(s), guarantor(s), collateral, lien priority, covenants and other

- The "**No Senior Indebtedness Financing Condition**" – The offer is not financed with the proceeds of any Senior Indebtedness (as defined in the 2015 No-Action Letter)[11];
- The "**Guaranteed Delivery Procedure Condition**" – The offer permits tenders prior to the expiration of the offer 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 the delivery of such securities will be made no later than the close of business on the second business day after the expiration of the offer; and
- The "**No Extraordinary Transactions Condition**" – The offer is not made in connection with a change of control, merger, significant asset sale or other extraordinary transactions or in response to another tender offer.

In effect, the 2015 No-Action Letter allows shorter tender offer periods for debt securities in circumstances where coercive features are not present and investors can evaluate the merits of the offer primarily based on the fairness of the offer price.

Discussion

I. Shortening tender offer periods

In our view, tender offer periods in Five Day Tender Offers and early tender periods in other debt tender offers cannot be compressed without significant harm to investors. Procedural and operational constraints make it impractical to shorten any type of tender offer to fewer than five business days. In addition, tender offers that do not meet key conditions of the 2015 No-Action Letter require additional time for analysis and discussion that cannot reasonably be completed within a Five Day Tender Offer. We submit that, although some decisions to tender may appear capable of being made quickly on a purely financial basis, in practice bondholders encounter procedural and informational constraints that materially limit the time available to assess and respond to a tender offer.

Procedural constraints inherent in virtually all debt tender offers include the following:

- *Notification*. The notification process after a tender offer is announced is often delayed. Portfolio managers and other investment professionals tasked with the decision of whether to tender frequently do not receive notice of the corporate action until both custodial banks and internal corporate-action teams have processed the offer materials and tender options in The Depository Trust Company's Automated Tender Offer Program ("**ATOP**").

---

terms) to the debt securities that are the subject of the tender offer except for the maturity date, interest payment and record dates, redemption provisions and interest rate; provided that Qualified Debt Securities must have (i) all interest payable only in cash and (ii) a weighted average life to maturity that is longer than the debt securities that are the subject of the offer."

[11] "Senior Indebtedness" means "indebtedness that is incurred to finance all or a portion of the consideration in the Five Day Tender Offer (excluding indebtedness or borrowings under any credit or debt facility existing prior to the commencement of the offer) if such indebtedness (i) has obligors, guarantors or collateral (or a higher priority with respect to collateral) that the subject debt securities do not have; (ii) has a weighted average life to maturity less than that of the subject debt securities; or (iii) is otherwise senior in right of payment to the subject debt securities."

- *Response Deadlines*. Custodial banks impose response deadlines in advance of the deadlines set by issuers, which may be as early as several days before the stated early tender deadline or expiration date, as applicable. Internal corporate-action teams necessarily set deadlines even earlier, so they have time to process instructions from decisionmakers and submit them to custodians.

- *Multiple Custodians*. For institutions with accounts across multiple custodians, the above constraints are compounded, with corporate-action teams typically setting internal deadlines before the earliest custodial deadline.

The effect of these procedural constraints is that bondholders have extremely limited time to decide whether to tender, which may be as short as one or two business days in a Five Day Tender Offer.

Bondholders also face informational constraints as the decision to tender is sometimes contingent, in part, on information and expectations regarding the participation of other bondholders in the tender offer. In tender offers that do not meet the criteria for a Five Day Tender Offer—for example, a tender offer paired with a consent solicitation to amend or remove covenants, or a transaction that involves "layering" of nonparticipants with Senior Indebtedness, additional time to consider the offer is critical to gather information and assess the impact of the transaction in coordination with outside advisors and other investors. In short, the typical approach of including an "early tender period" in most debt tender offers that are not eligible for a Five Day Tender Offer already puts considerable time pressure on investment managers as they seek to make decisions in the best interest of the clients to whom they have a fiduciary obligation.

In more complex tender offers, these issues are exacerbated. For example, the WBD Transactions included an elaborate structure with multiple pools, priority levels, tender caps and tender subcaps across the WBD debt capital stack. Layered on top of this structure was a multi-stage consent and tender election process that created the potential for significantly different outcomes among participating holders and meaningful downside risk for bondholders that did not participate. Furthermore, the consideration to be received was impacted in part by other bondholders' decisions on whether to participate, and a complete analysis of such a structure would have taken significantly longer than the time allotted. Taken together, this combination of tactics from the issuer and its advisors exploited the procedural constraints investors already faced and left bondholders with insufficient time to evaluate the offer. While disclosure may be "full" in form, it is not "fair" in substance when investors lack sufficient time to evaluate the information and exercise informed judgment, frustrating Congress's purpose in enacting Section 14(e).[12]

In the adopting release for Rule 14e-1, the Commission explained, "There are several purposes to be served by Rule 14e-1(a). Tender offers which do not stay open for a reasonable length of time increase the likelihood of hasty, ill-considered decision making on the basis of inadequate or incomplete information as well as the possibility for fraudulent, deceptive or manipulative acts or practices by a bidder and others."[13] We agree with the Commission's stated concerns. In the spirit of the anti-

---

[12] S. Rep. No. 550, 90th Cong. 1st Sess. 3 (1967) ("The bill is designed to require full and fair disclosure for the benefit of investors while at the same time providing the offeror and management equal opportunity to fairly present their case.").

[13] Securities and Exchange Commission - 17 CFR Parts 230 and 240 [Releases Nos. 33-6158 and 34-16384, IC-109581] https://www.sec.gov/files/corpfin/34-16384.pdf.

manipulation mandate of Section 14(e), we submit that shortening the period for transactions meeting the criteria in the 2015 No Action Letter, or the customary ten-business-day early tender period for transactions that do not meet such criteria, would create a meaningful risk that issuers would further weaponize the clock. Given the operational and analytical demands inherent to debt tender offers, shorter periods would hinder investors' ability to make informed tender decisions and ultimately lead to unfair and inefficient markets.

II. Other options to enhance issuer flexibility in connection with tender offers

Notwithstanding the above concerns regarding shortening Five Day Tender Offers and early tender periods, we believe the Commission has several options to provide additional flexibility to issuers without materially disadvantaging bondholders.

First, for debt tender offers that do not meet the criteria for a Five Day Tender Offer, the Commission may consider allowing ten-business-day tender offers at a single price. As discussed above, debt tender offers frequently provide that bondholders tendering within a ten-business-day early tender period receive additional consideration. If the offer is a partial offer rather than "any and all," early tenders also often have priority over late tenders. The effect of this customary approach is that bondholders almost exclusively tender during the early tender period. However, settlement may not occur until after the late tender period expires, meaning the bonds are effectively locked up for two additional weeks with no benefit to bondholders or the issuer. This accommodation would also support more efficient and informed decision making by streamlining the available tender options. In effect, permitting issuers to forgo the late tender period would simplify tender offers by alleviating the administrative burden of managing multiple tender periods and amounts of consideration, while not materially harming bondholders that would otherwise tender during the early period even if a twenty-business-day tender offer were required.

Second, the Guaranteed Delivery Procedure Condition requirement for Five Day Tender Offers may be eliminated. Modern tender mechanics such as ATOP are available for the overwhelming majority of corporate bonds and establish beneficial ownership and intent to tender without the need for a delayed delivery procedure. Although guaranteed deliveries might still be theoretically helpful in connection with trades close to the expiration date of the tender offer, this issue has become increasingly rare since the release of the 2015 No Action Letter given the adoption of T+2 settlement in 2017 and T+1 settlement in 2024. Removing the Guaranteed Delivery Procedure Condition would reduce the administrative burden on issuers to provide documentation and coordination with dealer managers and information agents. Furthermore, elimination of this procedure would alleviate settlement uncertainty as issuers currently need to account for the amount of bonds subject to guaranteed deliveries when determining the size of any new financing for funds needed at settlement. When purported bondholders submit a notice of guaranteed delivery, but do not actually deliver bonds, issuers may be left with additional unneeded funds. In sum, elimination of this condition would simplify Five Day Tender Offers for issuers with minimal downside for investors.

Finally, the Commission could consider introducing a narrow, targeted exception to the Equity Tender Offer Rules with respect to certain convertible bonds that effectively function as debt securities. Specifically, for convertible bonds in which the equity conversion feature is deeply out of the money, the Commission could provide relief from the Equity Tender Offer Rules, and, with respect to tender offers meeting the other conditions of the 2015 No Action Letter, the Non-Convertible Debt Securities Condition as well. When an issuer's equity trades well below the conversion price, the economic value of the convertible bond is driven almost exclusively by its interest rate, maturity date, fundamental change put rights, liquidity and the issuer's credit quality, much like a non-convertible bond, rather than by the conversion feature. In these circumstances, applying Regulation 14E only, rather than the more onerous Equity Tender Offer Rules, would allow issuers to more easily repurchase or exchange outstanding debt. This accommodation would better align regulatory treatment with economic reality and reduce unnecessary administrative burdens associated with the Equity Tender Offer Rules.

Conclusion

The minimum time periods currently applicable to tender offers are a critical feature to protect investors. Notwithstanding advances in technology since the adoption of federal tender offer rules, procedural and informational constraints continue to limit bondholders' ability to make fully informed decisions within applicable time periods. When bondholders confront complex decisions that implicate fiduciary obligations, they must take time to gather information, assess alternatives, and exercise judgment—steps that technology cannot meaningfully compress. Furthermore, the criteria to qualify for the Five Day Tender Offer, such as the No Consent Solicitation Condition, Consideration Condition, No Senior Indebtedness Financing Condition, No Restructuring Condition, No Default Condition and No Extraordinary Transactions Condition, have served as robust protection to investors, effectively serving the core anti-fraud principles of Section 14(e).

The proposals outlined in this letter reflect targeted, carefully calibrated adjustments that would provide additional flexibility for issuers without materially disadvantaging bondholders. In our view, maintaining a regulatory framework that appropriately balances transactional efficiency for issuers with investor protection is essential to preserving confidence in the credit markets. If investor confidence in Regulation 14E protections erodes, the market will price that risk accordingly, to the detriment of both issuers and investors.

Should the Commission elect to provide additional accommodations for debt tender offers, we would suggest that relief be framed as a response to recent transactions that departed from the purpose and spirit of Regulation 14E. By offering authoritative guidance on new accommodations for issuers, the Commission can guide issuers toward relying on a defined regulatory framework rather than pushing the boundaries through aggressive and coercive structures.

We thank the Commission for their consideration of these views and would welcome the opportunity to engage further or provide additional information as the Commission evaluates these issues. Please direct any questions to Kelly Skarupa of The Credit Roundtable at kskarupa@taminc.com or (914) 332-0042.

Sincerely,

Members of The Credit Roundtable