Proskauer

Public Targets

U.S. regulation of cross-border business combinations

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U.S. federal securities laws are designed to protect U.S. investors and are therefore broadly applicable extra-territorially, including with respect to transactions involving exclusively non-U.S. entities.

In this ongoing series, we discuss tender offers for the securities of target companies that are incorporated or listed outside of the United States. There are certain exemptions to the U.S. rules that apply in the case of companies with a limited number of U.S. shareholders.

- **US Implications of Tender Offers: Beyond the Takeover Code** explains the U.S. rules that apply to tender offers for equity securities of UK companies that are not eligible for Tier I or Tier II.
- **Cash Tender Offer in Compliance with Regulation 14E** outlines the requirements under the U.S. federal securities laws applicable in the following situation: the offer is a cash tender offer for the equity securities of a target company that is a foreign private issuer; the target company's shares are not listed in the United States, but the target company has U.S. shareholders; and the bidder is not eligible to use, or chooses not to rely on, certain exemptions available under the U.S. cross-border tender offer rules.
- **Tier I Cash Tender Offer** outlines the requirements under the U.S. federal securities laws applicable in the following situation: the bidder is a non-U.S. company; the transaction is a cash tender offer for the equity securities of a target company that is a foreign private issuer; the target company's shares are not listed in the United States, but it has U.S. shareholders; the target company is not an investment company; and fewer than 10% of the target company's shares are held by U.S. residents.
- **Tier II Cash Tender Offer** outlines the requirements under the U.S. federal securities laws applicable in the following situation: the bidder is a non-U.S.

company; the offer is a cash tender offer for the equity securities of a target company that is a foreign private issuer; the target company's shares are not listed in the United States, but it has U.S. shareholders; the target company is not an investment company; more than 10% but fewer than 40% of the target company's shares are held by U.S. residents.

- **Tier I Exchange Offer** outlines the requirements under the U.S. federal securities laws applicable in the following situation: the bidder is a foreign private issuer; the bidder's shares are not listed in the United States; the bidder is not an investment company; the offer is an exchange offer for the equity securities of a target company that is a foreign private issuer; the target company's shares are not listed in the United States, but it has U.S. shareholders; the target company is not an investment company; fewer than 10% of the target company's shares are held by U.S. residents.
- **Tier I exchange offer without using Rule 802** outlines the requirements under the U.S. federal securities laws applicable in the following situation: the bidder is a foreign private issuer; the bidder is not an investment company; the offer is an exchange offer for the shares of a target company that is a foreign private issuer; the target company's shares are not listed in the United States, but it has U.S. shareholders; the target company is not an investment company, less than 10% of the target company's shares are held by U.S. shareholders; the bidder cannot or chooses not to offer the target company's U.S. shareholders cash consideration instead of equity securities; the bidder cannot or chooses not to rely on the exemption under Rule 802 of the U.S. Securities Act of 1933, as amended, to issue securities to the target company's shareholders.
- **Tender or exchange offer avoiding U.S. jurisdictional means** outlines the requirements under the U.S. federal securities laws applicable in the following situation: the bidder is a foreign private issuer; the bidder is conducting a tender offer or exchange offer for the shares of a target company that is also a foreign private issuer; the target company's shares are not listed in the United States, but it has U.S. shareholders; the bidder cannot or chooses not to extend the offer to the shareholders of the target company in the United States.

On October 17, 2018, the SEC published new and updated compliance and disclosure interpretations on the cross-border exemptions available under the U.S. federal securities laws, which are available **here**.

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