Patterson Belknap

Cross-Border Capital Markets Alert
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SEC Proposes Regulation E-Delivery: Default Electronic Delivery for Federal Securities Law Communications

Introduction

On July 16, 2026, the U.S. Securities and Exchange Commission (the "SEC" or "Commission") proposed Regulation E-Delivery[1], a new regulatory framework that would permit covered entities to deliver required information to investors and other recipients electronically as the default method, without first obtaining affirmative consent. In an accompanying statement, SEC Chairman Paul S. Atkins characterized the proposal as "an important step toward allowing the financial services industry to harness technology for the benefit of everyday American investors" and "another stride toward a regulatory framework suitable for the modern era."[2]

Proposed Regulation E-Delivery would establish uniform conditions under which the federal securities laws' information delivery requirements are satisfied by electronic delivery. The proposal would generally supersede the Commission's 1995[3] and 1996[4] e-delivery guidance and apply to all SEC-regulated entity types, including public and private issuers (including foreign private issuers), registered investment companies, broker-dealers, investment advisers, transfer agents, and numerous other market participants.

Comments on the proposal are due by September 21, 2026. The Commission proposes a two-year compliance period following any final rule adoption.

This alert provides a comprehensive overview of proposed Regulation E-Delivery—from its foundational concepts and scope to its operational mechanics, to the practical compliance considerations covered entities should begin addressing now.

Overview of the Proposed Framework

Regulation E-Delivery would address only the procedural aspects of electronic delivery and would not otherwise alter substantive rights or liabilities under the federal securities laws. The framework rests on several core concepts described below.

<u>Covered Entities</u>

A "covered entity" would be any person required to deliver covered information to a covered recipient under the federal securities laws. The breadth of this definition encompasses virtually all SEC-regulated participants, including:

- Public and private issuers with delivery obligations under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended;

- Issuers with registered classes of securities or Exchange Act reporting obligations;
- Obligors and trustees under qualified indentures;
- Registered investment companies and business development companies;
- Registered broker-dealers, municipal securities dealers, government securities brokers and dealers;
- Security-based swap dealers and major security-based swap participants, security-based swap execution facilities, and security-based swap data repositories;
- Registered investment advisers;
- Registered transfer agents and funding portals; and
- Third parties such as bidders in third-party tender offers and dissidents in contested proxy solicitations.

Covered Information

"Covered information" would include any information required to be delivered to a covered recipient under the Securities Act of 1933, as amended (the "Securities Act"), the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), the Investment Company Act of 1940, as amended, or the Investment Advisers Act of 1940, as amended. This includes, among other things:

- Prospectuses and offering circulars;
- Annual reports to security holders;
- Proxy and information statements;
- Tender offer and solicitation/recommendation statements;
- Fund shareholder reports;
- Investment adviser brochures, Form CRS, and Regulation Best Interest disclosures;
- Broker-dealer trade confirmations;
- Regulation S-AM disclosures and custody rule notices; and
- Trust Indenture Act bondholder lists and reports.

Covered Recipients

"Covered recipients" include current or prospective customers, clients, investors, security holders, counterparties, and similar recipients to whom covered information must be delivered. The term expressly excludes the SEC, other federal or state regulators, and self-regulatory organizations. Because the SEC is not a covered recipient, Regulation E-Delivery would not apply to filings submitted directly to the SEC, such as Section 16 reports on Forms 3, 4, and 5.

How Electronic Delivery Would Work

Electronic Address and Opt-Out Model

Under proposed Regulation E-Delivery, a covered entity may deliver covered information to an "electronic address"—defined as an email address, mobile phone number, or other electronic identifier capable of receiving information and alerting the recipient—provided by or accepted for use by the covered recipient, so long as the recipient has not affirmatively opted out. Reliance on Regulation E-Delivery would be optional for most covered entities, but those electing to rely on it must satisfy all of its conditions.

Required Pre-Delivery Disclosure

Before relying on Regulation E-Delivery, a covered entity must provide a clear and conspicuous disclosure to the recipient describing: (i) the types of covered information to be delivered electronically; (ii) the electronic address to be used; (iii) the delivery methods; (iv) the recipient's right to opt out; and (v) whether opting out or requesting paper could affect the recipient's relationship with the entity.[5]

Delivery Methods: Statement of Availability vs. Direct Delivery

The proposal establishes two permissible delivery methods:

1. **Statement of Availability.** This method is required for covered information containing Personal Financial Information ("PFI")[6] and is permitted for all other covered information. The statement must alert the recipient, identify the covered entity and information, describe any time-sensitive action items, provide a direct website link, and explain the recipient's rights to paper copies and to opt out.

2. **Direct Delivery.** This method is permitted only for covered information that does not contain PFI. The covered information itself is delivered directly to the electronic address.

PFI—information specific to a recipient's personal financial matters (*e.g.*, account numbers, transaction details)—may only be accessed through a process "reasonably designed to safeguard" the information, such as password protection, multifactor authentication, biometrics, or cryptography.

Paper Copy and Opt-Out Rights

Proposed Regulation E-Delivery preserves robust investor protections:

- Recipients may opt out of electronic delivery at any time and receive printed documents free of charge.

- If a recipient opts out, covered entities must provide one free paper copy of previously delivered covered information upon request, generally within three business days by first-class mail.

- Recipients must be permitted to update their electronic address free of charge.

As Chairman Atkins noted, the proposed framework would "preserve investors' ability to receive paper delivery on request" while "substantially reduc[ing] paper, printing, and postage costs for issuers, intermediaries, and ultimately investors."[7]

Transition, Failed Delivery, and Website Requirements

Failed Delivery Policies and Procedures

Covered entities must adopt and implement written policies and procedures reasonably designed to identify and remediate failed electronic deliveries (*e.g.*, bounced emails), and must promptly take reasonable remediation steps upon identifying a failure, such as obtaining a new electronic address or reverting to paper delivery. The proposed rule is principles-based, requiring "reasonably designed" policies and "prompt" action without mandating specific technical methods, timeframes, or recordkeeping requirements; however, the SEC has requested comment on whether more specific requirements should be adopted.

Website Availability and Retention

Where a statement of availability is used, the covered information must be posted to a website (other than an SEC filing system) no later than the required delivery date. Information containing PFI must remain available for at least three years; information without PFI must remain available for at least one year. The information must be accessible for reading, printing, and permanent retention free of charge.

Transition Process for Existing Paper Recipients

For covered recipients currently receiving printed documents, the proposal requires a two-step notification process to be mailed by the covered entity before transition to e-delivery as the default:

- An initial paper notice at least 180 days prior to the covered entity's transition date.

- A follow-up paper notice at least 30 days prior to the covered entity's transition date.

Both notices must identify the electronic address to be used, describe the covered information and methods, explain paper and opt-out rights, and provide at least a toll-free number and website for opting out or updating addresses. This process is not required for recipients who are already receiving all covered information electronically.

Practical Implementation Considerations for Covered Entities

Although the proposed two-year compliance period provides a generous runway, the required operational build-out is substantial. Covered entities should begin assessing the proposal's impact now, given the breadth of delivery obligations and the coordination required with various service providers. Key operational considerations include:

- *Delivery Obligation Inventory.* Catalog all federal securities law delivery obligations that apply to your organization. Classify each item of covered information, noting whether it contains PFI.

- *Current-State Gap Analysis.* Compare your organization's existing e-delivery practices (including any reliance on the 1995/1996 Guidance or E-SIGN[8] consent) against the proposed Regulation E-Delivery requirements to identify gaps.

- *Account Opening and Onboarding Mechanics.* Review customer and client onboarding disclosures and workflows to ensure compliance with the pre-delivery disclosure requirement. Determine whether existing consent language needs revision or replacement.

- *Opt-Out, Paper Copy, and Address Update Procedures.* Establish or update procedures for recipients to opt out of e-delivery, request paper copies (within three business days), and update their electronic address—all at no charge.

- *Failed Delivery Policies.* Develop or enhance written policies and procedures for identifying and remediating failed deliveries (*e.g.*, bounced emails, undeliverable text messages).

- *Website Availability and Retention.* Confirm that your website infrastructure can meet the availability, retention (one year or three years), access-control, readability, and printability requirements.

- *PFI Safeguards.* For information containing PFI, evaluate whether current access controls (*i.e.*, password, multifactor authentication, biometrics, encryption) meet the "reasonably designed to safeguard" standard.

- *Transition Notice Logistics.* For recipients currently receiving paper, plan the 180-day initial notice and 30-day follow-up notice mailings. Track opt-outs and address updates received in response.

- *Service Provider Agreements.* Review (and renegotiate as needed) agreements with transfer agents, proxy service providers, intermediaries, printers, mailing vendors, portal providers, and cybersecurity vendors to align responsibilities.

- *Proxy Season and Tender Offer Impacts.* Consider how the proposed amendments to Regulations 14A and 14C, Rule 14d-5, and the rescission of Rule 30e-3 would affect your annual meeting, proxy distribution, and any pending or planned tender offers.

Economic Impact

The SEC estimates that approximately 42,000 covered entities would rely on Regulation E-Delivery and that the proposed framework would generate aggregate annual cost savings of approximately $463 million, largely from reduced paper, printing, and mailing expenses. Chairman Atkins emphasized that "[d]efault paper delivery results in a constant source of unnecessary expenses that are paid for by American investors and reduce their investment returns," adding: "[i]n an age of artificial intelligence and blockchain technology, a default to paper delivery should be a relic, not a standard."[9]

Conclusion and Next Steps

If adopted, Regulation E-Delivery would mark a significant shift from the SEC's longstanding opt-in approach to electronic delivery and bring it into closer alignment with how investors and market participants communicate today. Covered entities should begin assessing how Regulation E-Delivery, if adopted, could affect their investor communication practices and compliance operations.

Our Capital Markets team will continue to monitor developments. Please reach out to a member of our team for help assessing how proposed Regulation E-Delivery could affect your company.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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[1] SEC Release Nos. 33-11430; 34-105921; 39-2564; IA-6980; IC-36252; File No. S7-2026-25; RIN 3235-AN57, *Electronic Delivery of Information Under the Federal Securities Laws* (July 16, 2026) (the "Proposing Release"), available at https://www.sec.gov/rules/proposed/2026/33-11430.pdf.

[2] Statement of Chairman Paul S. Atkins, *Statement on Regulation E-Delivery* (July 16, 2026), available at https://www.sec.gov/newsroom/speeches-statements/atkins-statement-regulation-e-delivery-07-16-26.

[3] Use of Electronic Media for Delivery Purposes, Investment Company Act Release No. 21399 (Oct. 6, 1995), 60 FR 53458 (Oct. 13, 1995) ("1995 Guidance").

[4] Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Investment Company Act Release No. 21945 (May 9, 1996), 61 FR 24644 (May 15, 1996) ("1996 Guidance").

[5] This last disclosure requirement is particularly significant for covered entities with e-delivery-only business models that reserve the right to restrict or close the accounts of recipients who request paper delivery. Such entities must clearly disclose any potential consequences, including account restrictions or termination, that may result from a recipient's election to receive paper copies or opt out of e-delivery.

[6] "Personal Financial Information" or "PFI" means information specific to a recipient's personal financial matters, such as account numbers, transaction details, and similar data.

[7] *See* endnote 2, *supra*.

[8] The Electronic Signatures in Global and National Commerce Act, Public Law 106-229 (114 Stat. 464) (2000) ("E-SIGN").

[9] *See* endnote 2, *supra*.