Cross-Border Capital Markets Alert
August 6, 2026

Part 2 of a 3-Part Series

SEC Proposes Regulation E-Delivery: How Will E-Delivery Work?

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 Part 1 of this 3-Part series, we provided an overview of proposed Regulation E-Delivery and defined its key concepts, including covered entities, covered information, and covered recipients. In this Part 2, we provide a high-level overview of how electronic delivery as proposed under Regulation E-Delivery is expected to function. In Part 3, we will address the practical implications Regulation E-Delivery is expected to have on covered entities.

How Electronic Delivery is Expected to Work

Electronic Address and Opt-Out Model

Under proposed Regulation E-Delivery, a covered entity[2] may deliver covered information[3] 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 (described below); (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[4].

Delivery Methods: Statement of Availability vs. Direct Delivery

The proposal establishes two permissible delivery methods:

1. **Statement of Availability.** This method of delivery is required for covered information containing personal financial information ("PFI") (described below) 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 opt-out.

2. **Direct Delivery.** This method of delivery 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

It should be noted that 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 of electronic delivery, 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."[5]

Failed Delivery and Website Availability

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.

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[6] 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 option:

- 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/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.

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

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] A "covered entity" would be any person required to deliver covered information to a covered recipient under the federal securities laws.

[3] "Covered information" would include any information required to be delivered to a covered recipient under the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, as amended, the Investment Company Act of 1940, as amended, or the Investment Advisers Act of 1940, as amended.

[4] 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.

[5] 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

[6] "Covered recipients" include current or prospective customers, clients, investors, security holders, counterparties, and similar recipients to whom covered information must be delivered.