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Securities Regulation & Corporate Governance Update

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SEC Proposes Regulation E-Delivery to Modernize Delivery Requirements for Investor Communications

New proposal would replace the SEC's current guidance-based paper-first framework with a rules-based opt-out e-delivery regime.

On July 16, 2026, the Securities and Exchange Commission (the SEC) proposed Regulation E-Delivery (Reg E-Delivery), a new rule that, if adopted, would permit default electronic delivery (e-delivery) of most required disclosures to recipients who have provided an electronic address without the recipient's affirmative consent. Reg E-Delivery would supersede the current decades-old guidance for e-delivery, under which paper delivery serves as the default method unless investors affirmatively "opt-in" to e-delivery. However, reliance on Reg E-Delivery would be voluntary, not mandatory. Public companies could continue obtaining affirmative consents and default to hardcopy delivery.

The SEC also proposed amendments to the existing rules regarding dissemination of proxy and tender offer materials, including the "notice and access" regime under Rule 14a-16, which amendments are likely to impact the timing and delivery costs for proxy materials.

The Proposing Release is available here and a Fact Sheet is available here. The public comment period will remain open until September 21, 2026.

Background – “Covered Information” by “Covered Entities” to “Covered Recipients”

The proposed rules would replace the SEC’s current three-pronged e-delivery guidance – notice, access, and evidence of delivery – with a new default: “covered entities” may deliver “covered information” to “covered recipients” electronically, without first obtaining affirmative consent from recipients.

Covered Information

The proposed rules define covered information broadly as any information required to be delivered under the federal securities laws, subject to specific exceptions (such as Regulation Crowdfunding or Rule 15c2-11).

This broad definition covers, among other things:

- proxy materials (both relating to annual and special shareholder meetings and business combinations) and information statements;
- Section 10(a) prospectuses under Form S-8 pursuant to Rule 428;[1]
- tender offer materials; and
- reports to indenture security holders under the Trust Indenture Act.[2]

For prospectuses, Reg E-Delivery does not replace the existing “access equals delivery” framework under Rule 172, which already allows many issuers to satisfy prospectus delivery by filing the final prospectus on EDGAR. Rather, Reg E-Delivery supplements Rule 172, giving issuers an additional delivery option — including for offerings that fall outside Rule 172’s coverage, such as Form S-8 offerings to equity plan participants and former employees.

Covered Entities

Covered entities are defined as those that are required to deliver covered information to a covered recipient under the federal securities laws. This includes:

- public companies,
- broker-dealers,
- investment advisers,
- transfer agents,
- dissidents in proxy fights, and
- third-party bidders in a tender offer.

Covered Recipients

The proposed rules define covered recipients as current or prospective customers, clients, investors, security holders (including indenture security holders), counterparties, or similar recipients to whom a covered entity is required to deliver covered information.

Conditions and Methods of E-Delivery

A covered entity can rely on Reg E-Delivery where:

1. The covered recipient has provided (or accepted the use of) an electronic address.
2. The covered entity has provided clear and conspicuous disclosure that covered information will be sent to that address.
3. The covered recipient has not opted out of e-delivery.

Electronic addresses need to be provided to (or accepted for use with) a particular company for the particular purpose of receiving covered information. The proposed rules state that addresses received from affiliates or a third-party (including Non-Objecting Beneficial Owner (NOBO) lists) or collected for another purpose (such as a request for technical support) cannot be used for default e-delivery.

A public company's own delivery obligation runs only to the record holders registered in the company's books. For shares held in street name on behalf of beneficial owners, the intermediary broker, dealer, or bank is the "covered entity." As such, the intermediary is responsible for delivery to the beneficial owner of shares, and the electronic address on file with that intermediary (and not with the company) is the one that matters. The benefit of Reg E-Delivery still flows to the company, however: issuers reimburse intermediaries for proxy distribution at rates set under NYSE Rule 451 and FINRA Rule 2251, and the reimbursement rate for e-delivery is a fraction of the paper rate. As a result, most of the cost savings from Reg E-Delivery will depend on how quickly intermediaries move their own accountholders to default e-delivery.

Reg E-Delivery allows for two methods of e-delivery:

1. *Direct Delivery*, where the information is included in the body of the electronic communication or as an attachment.
2. A *Statement of Availability*, which alerts the covered recipient that the covered information is available at a website set forth in the statement, and which would be the only method of delivery for covered information containing "personal financial information" (PFI).

As proposed, the direct delivery method can only be used when the covered information does not contain PFI. PFI is defined narrowly as information specific to a covered recipient's personal financial matters, such as account numbers or the details of a specific securities transaction.

Importantly, PFI would not include control numbers used for proxy voting, meaning <u>a complete set of proxy materials can be delivered directly to a covered recipient's electronic address</u>.

Changes to Proxy Solicitations and Tender Offers

The proposed rules also make several changes to the rules regarding proxy statements and tender offers to further promote e-delivery as the default for most investor communications.

Notice and Access Regime

The proposed rules amend Rule 14a-16 to provide two choices for delivery of proxy materials: electronic delivery pursuant to Reg E-Delivery (either direct delivery or a statement of availability), or physical delivery of a full set of proxy materials. Public companies would no longer be permitted to mail a paper Notice of Internet Availability (NOIA) in lieu of a full set of printed proxy materials. For issuers currently using notice and access, the proposed rules would increase printing and mailing costs to the extent covered recipients have not provided electronic addresses or have opted out of e-delivery, because those recipients would have to receive a full set of printed materials. Additionally, if issuers elect to e-deliver their proxy materials via either direct delivery or a statement of availability, a copy of that communication would still need to be filed on EDGAR as additional soliciting material no later than the date of its first use.

Eliminating the requirement for a paper NOIA also would eliminate the 40-day notice and access deadline for delivery, meaning that the timing for delivery of proxy materials defaults to the date delivery is otherwise required. For a routine annual shareholder meeting, the deadline will be set by the corporate law of the state of incorporation and the company's charter and bylaws.

The proposed rules also eliminate the current prohibition on the use of notice and access for business combination transactions. The proposed rules would allow public companies to choose between a permissible method of Reg E-Delivery or full set paper delivery of materials in connection with a business combination transaction.

Proxy Contests and Third-Party Tender Offers

Under the proposed rules, shareholder lists furnished under Rule 14a-7 would have to include record holders' electronic addresses where available. The same applies to NOBO lists under Rule 14a-13 and to lists and security position listings under Rule 14d-5(c) in third-party tender offers.

Under proposed notes to Rules 14a-7(b)(2) and 14d-5(c), an issuer may not furnish a partial list. If the issuer cannot or will not provide complete information (for example, because an email address is subject to privacy restrictions or a contractual prohibition), it must distribute the requesting party's materials itself. Public companies should check their contracts with transfer agents or any shareholder agreements to determine whether electronic addresses may be shared with a third party.

Notably, the proposed rules do not require symmetric treatment of the issuer's and the third party's materials. The proposing release indicates that the SEC would expect a third party's materials to be provided electronically to those shareholders that already receive the issuer's materials electronically, but the proposed rules would not require that outcome — leaving open the possibility that an issuer could e-deliver its own materials while continuing to mail paper copies of a dissident's or bidder's materials. The SEC has requested comment on this point.

However, it remains to be seen whether Reg E-Delivery will change proxy contest dynamics in any fundamental way. The proposing release notes that notice and access is rarely used in proxy contests given historically lower response rates, and the parties in a contest may continue to choose to pay for full paper delivery to maximize retail shareholder turnout. While e-delivery would be available to dissidents in a proxy contest and bidders in third-party tender offers, given the one-time nature of those events, the proposing release suggests dissidents and bidders are unlikely to develop their own e-delivery infrastructure. The proposing release further notes that while the proposed rules are designed to allow shareholders to receive proxy materials and tender offer materials in the format they prefer, nothing in the proposed rules would prevent an issuer or third party from supplementing the electronic delivery of proxy materials or tender offer materials with delivery of those materials in paper. Similarly, the proposed rules would allow parties to deliver full sets in paper with supplemental materials e-delivered (directly or through intermediaries).

Timing and Transition Period

We anticipate a final rule in mid-to-late 2027, to be effective 60 days after publication. The proposed rules provide for a two-year interim transition period, during which public companies can rely on either the current opt-in guidance or the final rule, but not both at the same time.

Public companies that wish to transition existing recipients of paper materials to e-delivery would be required to mail up to two paper notices:

1. An initial notice delivered at least 180 days before the transition to default e-delivery; and
2. A follow-up notice delivered at least 30 days before the transition; only necessary if the recipient does not confirm an electronic address after the first notice.

Therefore, the earliest proxy season to be materially affected is likely the 2029 season, although holders who have consented to e-delivery under the current guidance, or who respond to the initial transition notice, can be moved to e-delivery sooner.

Key Takeaways and Action Items for Public Companies

Although some opposition is expected and commenters will likely provide input that could shape the contours of the final rule, Reg E-Delivery is likely to be implemented in some form. Although certain details of the proposed rules have yet to be finalized, public companies can begin preparing for a new opt-out e-delivery regime and keep in mind the following points:

Affirmative Consent is No Longer Required, But New Obligations Replace It. Issuers and intermediaries that currently hold existing broad consents for e-delivery will still face net new obligations, such as website standards, written policies and procedures, and prescribed content for each delivery.

Collect Electronic Addresses Now and Document Their Source. A company's delivery obligations run only to its record holders, so the population it can move to default e-delivery on its own is limited to that group. Because record holder email addresses are almost always collected by the transfer agent rather than by the company, public companies should confirm with their transfer agent how addresses are captured and recorded.[3] An electronic address the company obtains from a purchased list, an affiliate, or a NOBO list will not support default e-delivery; however, the company may still use those addresses for voluntary shareholder communications. Confirm whether there would be any restrictions on your ability to share the electronic addresses on your shareholder list with third parties, as this could impact whether you will need to deliver a third party's materials in a Rule 14a-7 scenario.

Inventory Each Delivery Obligation and Identify Who Will Perform It*.* Start with your proxy service provider, who will communicate with your street name account holders, and ask about their implementation plan. If relevant, also begin conversations with your transfer agent and your equity plan administrators. Note that e-delivery to street name account holders will depend on your intermediaries' internal timelines for adopting default e-delivery.

Review Company-Hosted Website for Covered Information Against Proposed Rules. Proposed Section 303.103 of Reg E-Delivery provides a list of rules and requirements for a website that hosts covered information. An intermediary's compliance with Reg E-Delivery is dependent on the company's website if they refer shareholders there instead of hosting their own site.

Develop and Adopt Failed-Delivery Policies and Procedures*.* Reg E-Delivery requires monitoring of actual delivery failures, not the rate at which information was opened or clicked through.

Review State Law and the Notice Provisions of Your Governing Documents. Once the 40-day deadline for a physical NOIA is eliminated, the charter and bylaws (as well as the state law default) will control the timing of delivery of proxy materials.

Consider Commenting. The SEC is seeking comments on a variety of aspects of the proposed rules. Topics that may need to be addressed in any version of the final rules, and that public companies may wish to consider and comment on, include:

- Whether electronic addresses collected by an issuer's transfer agent or proxy solicitor, or a NOBO list, could be used for default e-delivery;
- The retention of the NOIA process (and related 40-day deadline) as an alternative for proxy statements;
- The extent of an issuer's obligation to identify and remediate e-delivery failures (e.g., bounce backs);
- The definition of PFI, including whether it should exclude addresses and general brokerage information; and
- The creation of a hybrid solution for shareholder lists under Rule 14a-7 so issuers could agree to forward electronic communications from third parties while providing requestors with mailing addresses.

[1] Rule 428 under the Securities Act requires delivery of the Section 10(a) prospectus to participants in a plan registered on Form S-8 as well as copies of all reports, proxy statements and other communications distributed to company security holders generally, provided that such material is sent or delivered no later than the time it is sent to security holders. Reg E-Delivery would replace the 1995 and 1996 guidance companies currently rely on to satisfy that obligation electronically, under which consent may be presumed for employees who routinely use company email but former employees and other service providers must affirmatively consent.

[2] Importantly, Forms 10-K, 10-Q and 8-K, along with Schedules 13D and 13G and Section 16 reports, are not covered by Regulation E-Delivery, as there is no delivery obligation for those

filings.

[3] Whether an electronic address collected *by a transfer agent* supports default e-delivery *by the issuer* is unclear. The proposing release does not address transfer agents in this context, and the proposed rule text does not specify to whom an electronic address must be provided; proposed § 303.102(a) requires only an address "that the covered recipient provides (or accepts to use) to receive covered information." The proposing release states elsewhere that an address a covered entity receives from an affiliate or a third party generally would not satisfy this requirement, but that discussion concerns entities with independent relationships to the recipient rather than an agent acting on behalf of the covered entity. Two aspects of the proposed rules support treating transfer agent-collected addresses as having been provided to the issuer for purposes of default e-delivery: the proposing release confirms that where a covered entity uses an agent to deliver on its behalf, the covered entity remains responsible for compliance; and the definition of "covered recipient receiving paper" turns on whether the covered entity "has an electronic address," without regard to how it was obtained. The SEC's request for comment on affiliate and third-party addresses does not identify transfer agents among the scenarios on which it seeks input.

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Please view additional information on Gibson Dunn's Securities Regulation & Corporate Governance Monitor.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, or any of the following lawyers in the firm's Securities Regulation & Corporate Governance practice group:

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