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From Opt In to Opt Out: SEC Proposes Electronic Delivery as Default for Required Disclosures

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On July 16, 2026, the Securities and Exchange Commission (SEC) voted to propose Regulation E-Delivery, a sweeping new framework that would make electronic delivery the default method for satisfying required disclosure delivery obligations under the federal securities laws. Under the proposal, covered entities, including issuers, broker-dealers, investment advisers, investment companies and other market participants, could deliver regulatory documents electronically without first obtaining each recipient's affirmative consent. This marks a fundamental shift from the current framework, which has required investors and other recipients to opt in for electronic delivery and has otherwise defaulted to paper.

New default electronic delivery framework

The proposal would replace the SEC's decades-old, guidance-based approach with a uniform rule establishing clear conditions for default electronic delivery. A covered entity could rely on Regulation E-Delivery where:

1. The recipient has provided an electronic address.
2. The entity has given the recipient prominent advance disclosure that covered information will be sent electronically.
3. The recipient has not opted out.

Importantly, Regulation E-Delivery is not a blanket rule. It would permit but not require electronic delivery. A covered entity may rely on it only where those conditions are satisfied, and it does not permit a blanket shift of all investors and other recipients to electronic delivery regardless of circumstances.

Methods of electronic delivery

The proposal provides two permissible methods of electronic delivery. For covered information that does not include personal financial information, a covered entity may deliver materials directly to the recipient's electronic address; for example, as an email attachment or embedded document. For covered information that does include personal financial information, however, direct delivery is not permitted; instead, the covered entity must send a statement of availability directing the recipient to a secure website where the materials can be accessed. Covered entities may also elect to use the statement of availability method for materials that do not contain personal financial information.

Key investor protections

Covered recipients would retain the right to receive paper copies free of charge at any time. Investors currently receiving paper communications would receive two paper transition notices before being moved to electronic delivery, an initial notice at least 180 days before the transition and a follow-up notice approximately 30 days before.

If adopted, the rule's effective date would be 60 days after publication of the final rule in the Federal Register, with a two-year transition period before the current guidance-based framework is rescinded. The comment period will be open for 60 days following publication of the proposing release in the Federal Register, with comments due on or before September 21, 2026. The SEC has invited comment on several implementation aspects of the proposal, including the transition timeline, the mechanics of paper notice requirements and the framework's treatment of recipients who prefer to continue receiving paper materials.

Impact on proxy season

For public companies, the proposal's most immediate practical impact falls on the annual proxy process. Transitions to default electronic delivery of proxy statements and annual meeting materials could meaningfully reduce printing and mailing costs and lessen the administrative burden associated with annual meeting preparation.

Current delivery framework

Currently, issuers may satisfy proxy delivery obligations either by mailing a full set of proxy materials (on paper or electronically, for shareholders who previously opted in) or by using the SEC's notice-and-access model, under which shareholders receive a paper Notice of Internet Availability directing them to proxy materials posted online.

Replacing the paper notice

The proposal would eliminate the paper Notice of Internet Availability as a stand-alone delivery method. In its place, shareholders with an electronic address who have not opted out would receive an electronic statement of availability, delivered to their electronic address and including a direct link to the proxy materials posted online. Shareholders would retain the right to opt out and receive a full paper set of materials at any time.

Related amendments to Exchange Act Rule 14a-16

The proposed changes to Rule 14a-16 under the Securities Exchange Act of 1934, as amended (Exchange Act), would also eliminate the long-standing 40-calendar-day e-proxy deadline. Because that deadline was specifically designed to give shareholders sufficient time to receive the paper notice, request paper copies of the materials, if desired, and review the proxy materials prior to executing a proxy, its removal follows naturally from the elimination of the paper notice itself. The proposal would also extend the electronic delivery framework to business combination proxy solicitations, which have historically required delivery of a full paper set of materials.

Additional amendments

In addition to establishing the new default delivery framework, the proposal would rescind Rule 30e-3 under the Investment Company Act, which currently provides registered investment companies with an alternative means to satisfy shareholder report transmission requirements. The proposal would also amend the rules governing the dissemination of tender offer materials in Rule 14d-5 under the Exchange Act. The SEC has noted that the proposal is intended to reduce unnecessary printing and mailing costs while providing investors with more timely, accessible and interactive disclosures that better reflect current communication practices.

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Regulation E-Delivery is part of a broader pattern in the SEC's current regulatory agenda: revisiting existing rules and guidance to give issuers and market participants greater flexibility to disclose and disseminate material information in real time, while maintaining the investor protection principles that underpin the existing federal securities framework.[1]

Cooley's corporate governance and securities regulation attorneys are available to discuss these issues with you.

Notes

1. This approach is further illustrated by two Corporation Finance Interpretations issued by the SEC's Division of Corporation Finance in July 2026 (CFIs 104.03 and 131.04), which expanded the methods available to bidders for disseminating tender offer materials at commencement. Under the updated guidance, bidders in all-cash and exempt securities issuer and third-party tender offers that are not going-private transactions may satisfy the commencement dissemination requirement by issuing a press release through a widely disseminated news or wire service that contains a hyperlink to the full offer materials, in lieu of a summary newspaper advertisement or a mailing to shareholders. A bidder relying on this method must still mail by first-class mail, or otherwise furnish with reasonable promptness, its offer materials to any shareholder who requests them.

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