Frequently Asked Questions: SEC's Proposed Reg E-Delivery

1. What is Reg E-Delivery?
Reg E-Delivery is a proposed SEC rule that would establish a framework for the e-delivery of information required under the federal securities laws. If adopted, the rule would shift e-delivery from the current opt-in model to an opt-out model and would permit issuers, broker-dealers, investment advisers, registered funds, and other market participants to satisfy many delivery obligations electronically without first obtaining a recipient's affirmative consent.

2. Would Reg E-Delivery eliminate paper delivery?
No. Reg E-Delivery would make e-delivery the default for many required communications, but recipients would retain the ability to opt out at any time and receive all or a subset of covered information in paper form, free of charge. Covered entities also would be required to provide paper copies free of charge upon request. Covered entities may also elect to deliver information in paper format in lieu of e-delivery.

3. Does Reg E-Delivery change what we have to disclose?
No. Reg E-Delivery changes how required information may be delivered—not what information must be disclosed. Existing disclosure obligations and the deadlines for such disclosures under the federal securities laws generally would remain unchanged.

4. How does the proposing release address the E-SIGN Act?
Section 101(c) of the E-SIGN Act provides that information required to be delivered "in writing" may be provided electronically only if the consumer has affirmatively consented to e-delivery. The proposing release would exempt covered information from these consent requirements, pursuant to the SEC's authority under Section 104(d)(1) of the E-SIGN Act.

5. Who would be affected?
Reg E-Delivery has broad application and would affect a wide range of market participants, including:

- Public companies
- Registered investment companies
- Investment advisers
- Broker-dealers
- Transfer agents
- Proxy service providers
- Other entities with information delivery obligations under the federal securities laws

6. Will every document be sent directly via email or other electronic method?
Not necessarily. Reg E-Delivery establishes two delivery methods depending on the nature of the information being delivered. Information containing PFI generally would be delivered using a secure statement of availability approach rather than being transmitted directly. In addition, under the proposed rule, covered entities would not be required to adopt Reg E-Delivery and may also elect to only send certain information to certain recipients via e-delivery and may elect to use the statement of availability method for all covered information.

7. Can we simply begin emailing required disclosures if the rule is adopted?
No. Before relying on Reg E-Delivery, companies generally would need to satisfy several conditions, including having a valid electronic address for covered recipients, providing required disclosures regarding e-delivery, and complying with recipients' opt-out elections.

8. We already have investors' email addresses which we use for shareholder communications. Isn't that enough?
Not necessarily. Many companies have collected email addresses over the years for marketing, account administration, or other operational purposes. Further, many companies may not monitor the extent to which information is successfully delivered to such email addresses. Companies should evaluate whether existing electronic addresses satisfy the proposed e-delivery requirements, which specify that the address must have been provided by the recipient (or accepted to use) to receive covered information. Additional outreach or updated account documentation may be appropriate before relying on the rule. Reg E-Delivery also requires covered entities to have policies and procedures in place which are reasonably designed to identify and remediate failed electronic deliveries.

9. What should companies begin doing now?
Although Reg E-Delivery has not been adopted, companies may wish to begin:

- Reviewing current e-delivery practices.
- Reviewing onboarding and account-opening procedures.
- Evaluating websites, client portals, and document management systems.
- Assessing vendor relationships.
- Reviewing policies and procedures for monitoring and remediating delivery failures, paper requests, and opt-out elections.
- Confirming valid electronic addresses are on file for all investors or clients.
- Verifying how those addresses were obtained.
- Identifying the responsible group or persons within the company with responsibility for e-delivery implementation and compliance.

Early planning will facilitate implementation if Reg E-Delivery is adopted substantially as proposed.

10. Why is the SEC proposing this rule now? Does this supersede all prior SEC guidance on e-delivery?
The current framework for e-delivery was developed when paper delivery was the primary method of communicating with investors. The Commission believes electronic communications have become preferred for many investors and that a uniform framework could reduce costs while improving accessibility and timeliness of disclosures. If Reg E-Delivery is adopted, the proposing release indicates that the 1995 Guidance and 1996 Guidance would be superseded in their entirety over a transition period. However, it is anticipated that the majority of the 2000 Guidance would be retained, with only certain sections and examples being superseded.

11. Does this affect registered funds?
Yes. The proposing release contemplates rescinding Rule 30e-3 under the Investment Company

Act, which currently provides an alternative notice-and-access framework for shareholder reports. If adopted, registered investment companies would look to Reg E-Delivery as the primary framework for satisfying shareholder report delivery obligations.

12. Does this affect proxy statements or tender offers?
Yes. The proposing release includes conforming amendments affecting proxy materials, information statements, and tender offer materials such that those delivery obligations may generally be satisfied under the new framework.

13. Will companies need to use e-delivery for all covered information if they elect to use Reg E-Delivery?
No. The proposing release notes that Reg E-Delivery would establish conditions under which the Commission would consider delivery requirements under the federal securities laws to be satisfied through e-delivery. However, Reg E-Delivery would permit covered entities to choose when and whether to use e-delivery to meet covered information delivery requirements and to elect to use e-delivery only for certain covered information to certain covered recipients (e.g., non-PFI information to institutional investors).

14. Will companies be limited to using only the e-delivery methods prescribed under Reg E-Delivery?
No. The proposing release notes that Reg E-Delivery methods would not be the exclusive methods by which a covered entity could deliver covered information to a covered recipient, unless a rule or statute requires otherwise. If a covered entity uses a method of e-delivery that differs from the methods contemplated by Reg E-Delivery but provides assurances comparable to paper delivery that the required information will be delivered, such a method *could* be used to satisfy the covered entity's delivery requirements under the federal securities laws. However, complying with Reg E-Delivery methods *would* provide assurances that the covered entity *will* have satisfied its requirements to deliver covered information under the federal securities laws.