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Securities Alert

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Summer 2026 Regulatory updates

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SEC updates affect Rule 14a-8 shareholder proposals, crypto asset offerings, and electronic delivery requirements.

What's the impact?

- **Rule 14a-8:** The Division of Corporation Finance will no longer respond to Rule 14a-8 no-action requests, effective immediately, leaving companies and counsel to assess exclusion decisions without SEC staff input.
- **Regulation Crypto Assets:** Proposed rules would exempt from registration certain offerings of covered investment contracts involving crypto assets, including offerings up to $75M and establish a safe harbor from "investment contract" status.
- **Regulation E-Delivery:** Proposed rules would make electronic delivery the default method for dissemination of required stockholder disclosures, replacing paper delivery and decades-old SEC guidance.

This summer, the Securities and Exchange Commission (SEC) announced three significant regulatory developments affecting public companies, crypto asset market participants, and market intermediaries. This alert summarizes the following three developments: (i) changes to the Rule 14a-8 shareholder proposal process; (ii) the newly proposed Regulation Crypto Assets; and (iii) the newly proposed Regulation E-Delivery.

Division of Corporation Finance discontinues Rule 14a-8 No-Action Process

On August 14, 2026, the SEC's Division of Corporation Finance announced that it will discontinue responding to Rule 14a-8 no-action requests, effective immediately. The Division stated that it is taking this step to focus resources on the review of Securities Act and Exchange Act filings, including statutorily required reviews, for the protection of investors and facilitation of capital formation.

This announcement follows the Division's November 2025 statement that for the 2025–2026 proxy season it would not respond to most no-action requests, except for requests to exclude proposals under Rule 14a-8(i)(1). The Division has now extended this approach indefinitely and will no longer respond to notices filed under Rule 14a-8(j) with a letter indicating that it will not object if a company omits a proposal from its proxy materials.

Companies will continue to be required under Rule 14a-8(j) to submit notices to the SEC when they intend to exclude shareholder proposals from their proxy materials. These notices should be submitted using the online Shareholder Proposal Form on the SEC's website. Companies and shareholder proponents should also submit questions or correspondence using the Shareholder Proposal Form. In its announcement, the Division of Corporation Finance stated that the Division of Investment Management will take a substantially similar approach for investment companies.

BACKGROUND ON RULE 14A-8

Rule 14a-8 under the Exchange Act provides a process by which shareholders may submit proposals for inclusion in a company's proxy statement. The rule sets forth procedural requirements that shareholders must satisfy and the substantive basis upon which companies may exclude proposals. For decades, the Division staff engaged in the informal practice of expressing its enforcement position in response to company notices seeking to exclude shareholder proposals. However, the SEC has long recognized that no response or other action is required regarding such communications.

PRACTICAL IMPLICATIONS

With the Division no longer providing no-action relief, companies and their counsel must independently evaluate whether a shareholder proposal may be excluded under Rule 14a-8. Companies should continue to rely on the extensive body of guidance from the SEC, as well as judicial decisions, when determining whether they have a reasonable basis to exclude a proposal. Companies that decide to exclude a proposal will bear the risk of potential SEC enforcement action or shareholder litigation if their exclusion is later determined to be improper.

SEC proposes Regulation Crypto Assets

On August 18 the SEC issued the proposed "Regulation Crypto Assets," a set of new rules that, if adopted, would create a specific securities offering regime for covered investment contracts involving crypto assets. This proposal follows the SEC's March 2026 interpretation clarifying how federal securities laws apply to certain crypto assets. Together, these efforts are intended to address barriers to responsible capital formation and innovation in domestic crypto asset markets, while also ensuring investors are adequately protected and receive appropriate information to make an informed investing decision.

Despite the continuing growth of crypto asset markets over the past decade, the SEC has previously not adopted new rules to address the unique aspects of the crypto asset class. Given that most existing regulatory requirements were adopted well before crypto assets became available in the marketplace, the lack of specific rules and guidance has complicated capital formation and innovation in the crypto asset markets. In response to these regulatory challenges, the SEC believes that Regulation Crypto Assets would help facilitate capital formation and innovation in the domestic crypto asset markets and potentially reduce the number of issuers who have chosen to conduct their crypto asset transactions offshore.

The proposed rules include two exemptions from Securities Act registration requirements. The "startup exemption" would be a one-time exemption to permit issuers to conduct offerings of up to $5 million during a four-year period, if certain conditions are satisfied. The "fundraising exemption" would be a non-exclusive, two-tier exemption that would permit offerings of up to $75 million during each 12-month period, with Tier 1 offerings up to $20 million and Tier 2 offerings up to $75 million. The proposed rules also include a conditional safe harbor under which a crypto asset that is considered a "security" under the federal securities laws because it is the subject of an investment contract would no longer be considered as such. Assets that do not qualify as "securities" are not generally subject to the SEC's registration or disclosure requirements. The proposed rules would also preempt state securities law registration requirements for offers and sales pursuant to these exemptions.

THE STARTUP EXEMPTION

If adopted, the startup exemption would be a one-time, non-exclusive exemption from Securities Act registration requirements. It would permit issuers to conduct offerings of covered investment contracts of up to $5 million during a period of up to four years, if they satisfy certain conditions, including making public filings at the beginning and end of such period as well as making certain principles-based narrative disclosures. Issuers that rely on the exemption would remain subject to the anti-fraud and antimanipulation provisions of the federal securities laws.

THE FUNDRAISING EXEMPTION

The fundraising exemption would be a non-exclusive, two-tier exemption from Securities Act registration requirements, which is partially based on the same model as Regulation A. Under Tier 1, issuers would be permitted to conduct offerings of up to $20 million of covered investment contracts in a 12-month period. Under Tier 2, issuers would be permitted to conduct offerings of up to $75 million of covered investment contracts in a 12-month period. Issuers relying on this exemption would be required to publicly file offering materials consisting of the same principles-based narrative disclosures required under the startup exemption, a discussion of the issuer's financial condition, and financial statements (which, for Tier 2 offerings, would be required to be audited). Issuers also would be subject to ongoing reporting requirements similar to Regulation A.

THE INVESTMENT CONTRACT SAFE HARBOR

The proposed rules also include a conditional safe harbor from the term "investment contract" in the definitions of "security" under the Securities Act and Exchange Act. Under this proposed safe harbor, if the issuer certifies to the SEC that it has ceased or terminated all essential managerial efforts that it promised to undertake under the investment contract and satisfies certain other conditions, the crypto asset would be deemed not to be subject to an investment contract for purposes of the statutory definitions of "security" and, therefore, no longer subject to the authority of the SEC.

SEC proposes Regulation E-Delivery

On July 16, the SEC proposed Regulation E-Delivery, which, if adopted, would expand the ability of issuers, broker-dealers, investment advisers, and others to use electronic delivery to satisfy information delivery requirements under the federal securities laws. Currently, required regulatory information typically is delivered in paper format unless the recipient affirmatively elects otherwise. The proposed rule would permit e-delivery as the default method, generally superseding the SEC's decades-old approach.

The proposal is intended to reduce paper, printing, and postage costs while making required information more accessible and timely. It would build on, and generally supersede, the SEC's existing guidance-based approach to electronic delivery.

KEY ASPECTS OF PROPOSED RULE

Regulation E-Delivery would address the e-delivery of "covered information" by "covered entities" to "covered recipients." Covered information, in general, would be defined as any information required to be delivered to a covered recipient under the federal securities laws. Covered entities would include any person that has an obligation to deliver covered information to a covered recipient under the federal securities laws, such as issuers, investment advisers, and broker-dealers. Covered recipients would include any current or prospective customer, client, investor, security holder, counterparty, or similar recipient of information.

Under the proposal, a covered entity could rely on Regulation E-Delivery where: (1) the covered recipient has provided an electronic address; (2) the covered entity has provided a prominent disclosure that it will send covered information to the electronic address; and (3) the covered recipient has not opted out of e-delivery. The range of deliverable information would be broad, including prospectuses, fund shareholder reports, proxy statements, trade confirmations, and Form ADV brochures.

The proposal provides two permissible methods of e-delivery: direct delivery and delivery of a statement of availability. For information that does not include personal financial information (PFI), a covered entity could deliver information directly to the recipient's electronic address. For information that includes PFI, a covered entity would deliver a statement of availability to the recipient's electronic address with a link to a website where the information can be accessed. The proposal also includes a transition process for recipients currently receiving paper: they would receive two paper notices providing information about the upcoming transition and the ability to opt out.

ADDITIONAL PROTECTIONS

Regulation E-Delivery also would include general requirements for the method, timing, and ability to opt out of e-delivery, the ability to receive a paper version of covered information free of charge upon request, as well as requirements for websites on which covered information is available.

Nixon Peabody's Business and Finance team helps issuers, investors, and market participants navigate SEC regulatory developments. We are ready to help clients assess how these developments may affect their capital markets, crypto assets, proxy, and disclosure strategies.

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