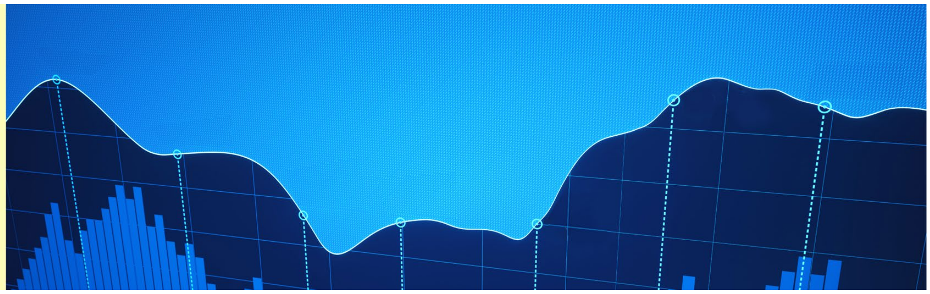

Securities Quarterly Update

September 2026 | Fall Edition

Welcome to the fall edition of Securities Quarterly Update*, a publication that provides updates and guidance on securities regulatory and compliance issues. In this edition, we review SEC rulemaking activity, including the proposed rulemaking that would impact the annual shareholder meetings and proxy statements; considerations for proxy season preparation; recent SEC enforcement actions; and recent SEC, stock exchange, and FINRA updates.*

SEC Rulemaking

On September 1, 2026, the Securities and Exchange Commission (SEC) submitted three rulemaking proposals to the White House Office of Information and Regulatory Affairs (OIRA) with action targeted for October 2026:

- Executive Compensation Disclosure Reform
- Proxy Solicitation Modernization
- Shareholder Proposal Modernization

On September 16, 2026, the SEC formally proposed two of these items: modernizing proxy solicitation and rescinding Rule 14a-8.

The SEC is also advancing rule-making proposals on e-delivery and transfer agent regulations.

Executive Compensation Disclosure Reform

The proposed amendments to Item 402 of Regulation S-K would refocus executive compensation disclosure on information material to investors and eliminate immaterial disclosure requirements.

Proxy Solicitation Modernization

On September 16, 2026, the SEC proposed amendments to streamline proxy solicitation. Key changes include eliminating the separate annual report delivery requirement (filing a company's latest Form 10-K on EDGAR would suffice), removing the 20-business-day delivery window for documents incorporated by reference into a proxy statement, eliminating Notices of Exempt Solicitations (PX14A6G filings), and reducing the minimum broker search period from 20 to 5 business days.

Shareholder Proposal Modernization

On September 16, 2026, the SEC proposed to rescind Rule 14a-8 in its entirety, concluding that the rule exceeds its statutory authority under Section 14(a) of the Exchange Act by intruding into matters governed by state corporate law. If adopted, the role of shareholder proposals would be left to state law and company governing documents. The proposal follows the SEC's August 14, 2026 announcement that it would no longer respond to no-action requests to exclude shareholder proposals under Rule 14a-8.

Separately, the proposal would amend the proxy rules so that a company's receipt of shareholder proposals outside the 14a-8 process would not trigger a preliminary proxy filing absent a "solicitation in opposition" by the shareholder proponent. The SEC also proposed amendments to Rule 14a-4(c) to provide companies with broader discretionary voting authority over shareholder proposals submitted outside of Rule 14a-8, while allowing shareholders to opt out with respect to their own shares.

The comment period for both proposals is 60 days.

Companies should expect state law developments in the shareholder proposal area as well as additional shareholder "proxy access" proposals.

Regulation E-Delivery

On July 16, 2026, the SEC proposed Regulation E-Delivery (Reg E-Delivery), which would make electronic delivery the default method for satisfying delivery requirements under federal securities laws, without first obtaining affirmative consent from recipients.

Reg E-Delivery would cover a broad range of materials including prospectuses, proxy statements, and annual reports. Covered entities, including public company issuers, would need to obtain a valid electronic address for each recipient, provide advance notice of electronic delivery, and not have received an opt-out request from recipients. If adopted, Reg E-Delivery would eliminate the paper Notice of Internet Availability as a standalone delivery method and the 40-day advance mailing deadline for proxy materials.

Transfer Agent Regulation

On September 1, 2026, the SEC proposed the first substantive overhaul of registered transfer agent rules since the late 1970s. The proposal would update registration and reporting requirements (Forms TA-1 and TA-2), address technological developments such as blockchain-based recordkeeping and uncertificated securities, and establish new requirements for turnaround, risk management, inactive securityholders, compliance programs and restrictive legends. Notably, proposed Rule 17ad-31 would require transfer agents to establish a reasonable basis for removing restrictive legends and would provide a safe harbor based on either independent diligence or an opinion of counsel.

Looking Ahead – Year-End Reminders and 2027 Annual Shareholder Meetings

SEC Filer Status

In preparation for the annual reporting cycle, companies should confirm their SEC filer status for the upcoming fiscal year by calculating their non-affiliate public float as of the last business day of the second fiscal quarter. Filer status is relevant in determining filing deadlines for annual and quarterly reports and the scope of required disclosures. Companies should also consider whether the company remains a well-known seasoned issuer (WKSI), smaller reporting company, and/or an emerging growth company, as applicable.

Proxy Disclosures

To kick off annual meeting and proxy season preparation, consider reviewing and updating director and officer questionnaires, benchmarking risk factor disclosures, preparing initial drafts of compensation discussion and analysis and other executive compensation disclosures, and confirming related party transaction approvals, director attendance at board and board committee meetings (ensuring all directors attended at least 75% of meetings), and any untimely Section 16 filings requiring disclosure in the proxy statement.

Proxy Proposals

For annual meeting proposals, companies should revisit annually whether say-on-pay and/or say-on-pay frequency proposals are needed, whether sufficient shares remain available under the company's equity plans or if any such plans are expiring, whether the company has sufficient authorized shares under its certificate of incorporation (particularly if stock is intended for acquisitions or securities offerings), whether any reverse stock split or forward stock split proposals are needed, and whether the company's corporate governance documents should be updated (such as for officer exculpation, if desired and not already completed).

Workforce and Sustainability Disclosures

Companies should revisit any diversity, equity, and inclusion (DEI) and sustainability programs and disclosures and consider whether revisions or additional disclosures are needed in response to the regulatory environment, last year's say-on-pay results, shareholder feedback, or any ISS and Glass Lewis reports.

SEC Subpoena of ISS

On September 4, 2026, the SEC filed action in the Eastern District of Pennsylvania to enforce an investigative subpoena against proxy advisory firm Institutional Shareholder Services, Inc., seeking documents about its proxy recommendations and voting activities. ISS challenged the subpoena. The action could test the limit of the SEC's enforcement reach over proxy advisory firms.

SEC Updates

Form S-1 Incorporation by Reference

On September 4, 2026, the SEC's Division of Corporation Finance (Corp Fin) issued four new CFIs (Questions 113.09–113.12) confirming that an issuer ineligible for forward incorporation by reference at initial filing of Form S-1 may begin incorporating by reference through a pre- or post-effective amendment once eligibility requirements are met. Issuers must still determine whether the Form S-1 contains all required disclosures and whether supplemental filings are needed.

Filings Fee Offset Clarification

Also on September 4, 2026, Corp Fin issued a new CFI (Question 240.18) confirming that fee offsets under Rule 457(b) apply only to a single transaction and cannot be applied across unrelated filings. The interpretation arose after a filer sought to offset merger-related Schedule 14C fees against a new Securities Act registration. Companies seeking to recoup unused fees should look instead to Rule 457(p), which permits carry-forwards from unsold securities in certain circumstances.

Fee Rate Change

Effective October 1, 2026, SEC registration fees will drop 37%, from $138.10 to $87.00 per million dollars. The reduced rate applies to securities registration under Section 6(b) of the Securities Act, share repurchases under Section 13(e), and proxy solicitations and tender offers under Section 14(g) of the Exchange Act.

Tokenized Securities Venues

On September 17, 2026, the SEC issued a temporary conditional exemptive order (Release No. 34-106402) permitting Tokenized Securities Venues (TSVs) to facilitate permissioned trading of tokenized exchange-listed U.S. stocks through automated market makers and liquidity pools on public blockchains. The order exempts qualifying TSVs from the Exchange Act's definition of "exchange" and certain liquidity providers from the definition of "dealer" for a five-year period while the SEC considers permanent rulemaking. Under the order, an unaffiliated third party may tokenize and trade a public company's stock on a TSV, with the same governance rights intact, subject to a 30-day notice-and-objection window.

Prediction Markets

As reported in our Summer 2026 edition, federal regulators brought the first insider trading cases involving prediction markets. Since then, the regulatory landscape has evolved rapidly: In June 2026, the Commodity Futures Trading Commission (CFTC) proposed amendments to Rule 40.11 that would establish the most comprehensive federal framework for prediction markets to date, and the SEC and CFTC jointly sought comment on whether certain prediction market instruments should be classified as securities. With total trading volume growing from under $1 billion in mid-2024 to nearly $24 billion by April 2026, companies should review their insider trading policies and confidentiality agreements to ensure they expressly address prediction market activity.

Stock Exchange and SRO Updates

NYSE and NYSE American Stock Price Listing Standards

On August 14, 2026, the SEC approved New York Stock Exchange (NYSE) and NYSE American rule changes raising the minimum continued listing price threshold from $0.10 to $0.25, effective July 1, 2027. A closing price below the threshold on any trading day triggers immediate suspension and delisting proceedings. The amendments also formalize exchange authority to delist securities that have experienced a "precipitous decline," regardless of whether they have breached the $0.25 floor.

Nasdaq $5 Million MVLS Requirement

On July 22, 2026, the SEC approved Nasdaq's $5 million Market Value of Listed Securities (MVLS) continued listing requirement. Under the rule, if a company's MVLS falls below $5 million for 30 consecutive business days, Nasdaq will issue a Staff Delisting Determination, immediately suspend trading, and commence delisting proceedings, without a cure period. A company may appeal to a Nasdaq Hearings

Panel, but the appeal does not stay the suspension; securities would trade over-the-counter while the appeal is pending. To resume trading, a company must demonstrate compliance with all applicable initial listing requirements, rather than merely restoring MVLS above $5 million. The rule was automatically stayed on July 29, 2026, and formally stayed by the SEC on August 6, 2026, pending full SEC review. On September 11, 2026, the SEC granted the petitions for review and opened a public comment period on the rule, with the existing stay to remain in effect pending further action.

Although this rulemaking has been delayed, companies should monitor the market value of their securities and consider if any remedial actions should be taken in the meantime.

FINRA 5110 – Tail Free Amendments

The SEC approved amendments to FINRA Rule 5110 that impose new conditions on tail fees in underwriting engagements. Key requirements include a for-cause termination right eliminating any tail fee obligation, reasonable fees relative to contemplated services, and payment of tail fees only if a transaction closes within two years of termination.

FOR MORE INFORMATION

For more information, please contact:

Jurgita Ashley
216.566.8928
Jurgita.Ashley@ThompsonHine.com

Julia Miller
216.566.5831
Julia.Miller@ThompsonHine.com

Kellie Tomin
216.566.5673
Kellie.Tomin@thompsonhine.com

Edson Hernandez
212.908.3991
Edson.Hernandez@ThompsonHine.com

or another member of our Securities, Capital Markets & Corporate Governance team.

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Previous Editions of Securities Quarterly Update

- Summer 2026
- Spring 2026
- Winter 2026
- Fall 2025