

# How to Write a Comment Letter to the SEC on a Rulemaking

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## How to Write a Comment Letter to the SEC on a Rulemaking

- *by Broc Romanek*

Given the heightened interest in the SEC's proposed rulemaking process lately, it seems timely to share this guide about how to write a comment letter to the SEC about a proposed rule. The first section covers the mechanics; the second section provides eight tips about how to put your best foot forward if you decide to submit a comment letter (as well as addressing whether you should even bother to submit a comment letter).

### A. The Mechanics of Submitting a Comment on a SEC Rule Proposal

When the SEC proposes a rule – or even issues a “concept release” – as required by the Administrative Procedures Act, the general public is invited to submit a letter to express their views on the proposal. Here's the mechanical steps:

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**1. Read the Proposing Release** – You should read the rule proposal before you put pen to paper – go to the SEC's website – and under the “Regulation” tab, you will find “[Proposed Rules](#)” as the second item down. From there, you're looking for the “proposing release” specifically posted for your topic.

[If you're looking for a “concept release” – meaning the SEC hasn't even proposed a specific rule yet, but wants input into writing a proposal – go to that same “Regulation” tab but then look all the way to the list of items that are listed all the way on the left side under “Regulatory Actions” (which is not the same as the drop-down list) and you'll see that “Concept Releases” is the 5th one down.]

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**2. Consider the Proposed Rule Text** – Once you find the proposing release you want, the actual rule text that is proposed will be way at the back – but that's going to be hard to read, hard to decipher, in many cases. However, the actual rule text is the most important part of the proposing release since that will be the determinative law once a final rule is adopted.

If you want changes to a proposed rule, it's helpful for the SEC to submit your proposed changes by redlining the actual rule text. Not many people do this, but if you're looking to be as persuasive as possible, you might consider this.

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**3. The Juicy Stuff is in the First Half of the Proposing Release** – It's best to read the stuff in the first half of the proposing release – specifically the questions that the SEC poses as those are the areas where the SEC really desires input. Don't feel guilty if you don't read the entire proposing release. Few people do – and that's perfectly fine.

**4. The Stuff Nearer the Back Can Be Boring (Except Perhaps the Economic Analysis)** – The stuff at the back about the Paperwork Reduction Act, the Initial Regulatory Flexibility Analysis, is an important exercise for the SEC to go through – like all federal agencies – to ensure the SEC complies with the laws it needs to follow as part of the rulemaking process. That stuff probably isn't worth reading unless you've got time to kill.

An exception is if your concerns about the proposal relate to the economic impact of the proposal. If so, you will be reading sections of the proposing release near the back.

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**5. How to Actually Submit Your Comment Letter Online** – Once you write your letter, submitting it to the SEC is almost too easy – it's as easy as pushing a button.

Beneath the proposing release for which you want to comment upon, you click the link labeled “Submit comments on [the file number assigned by the SEC for this rulemaking]”; then you fill out the form. For example, the file number for the climate disclosure rulemaking was S7-10-22.

You’re allowed to attach up to three documents – maybe your comment letter has two pieces of supporting documentation that you want to submit. In most cases, you will just be submitting your comment letter without anything else in support.

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**6. Options to Submit Comment Letters By Email (and Paper)** – As noted on the SEC’s own page about [“How to Submit Comments,”](#) you do have the option to email comment letters or even send them in by paper. Email is fine – but it’s important to follow their instructions and include the “file number” for the rule in the subject line. There is room for human error when you email comments in, so be mindful of that.

Personally, I would never send in a comment letter by paper and force the Staff to scan what you send in. There is too much room for human error doing it that way.

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**7. Where Your Comment Letter Will Show Up** – The SEC will then post your comment letter on a page containing all the comment letters related to that particular rule proposal. The SEC posts submitted letters in chronological order. Note that the SEC will post nearly anything that it receives – it even will post comment letters that might be considered gibberish. That’s how easy it is.

Typically, it will take a few days for the SEC to post your comment letter, but eventually you can see your letter posted. It will be accessible if you click in the link in the statement – “*Comments received [are available](#) for this proposal*” – which is beneath the proposing release related to your topic.

Some parties that comment on proposed rules want to publicize their comment letters more broadly. If you are looking to make a splash – or plan to put out a press release about the comment letter you’ve submitted – you might consider including a copy of the letter with the press release. Since you won’t know exactly when your letter will show up on the SEC’s site, it might be hard to reference or link to the comment letter on the SEC’s site initially since there is that delay between submitting a letter online to the SEC and it appearing on the SEC’s site.

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**8. Form Comment Letters Are Combined** – Note that the SEC combines “form letters” that it receives – displaying a running tally of how many form letters have been received so far. There may well be multiple form letters for a particular rulemaking.

## **B. How to Put Your Best Foot Forward: 8 Tips to Be Persuasive**

Letters from companies themselves often are helpful to the SEC when they are deciding whether to change what they proposed in a rule. Companies tend to have practical insight into how a proposed rule might impact them that other commenters don’t have.

The tricky thing is that many companies – understandably so – don’t want their name out in the public domain about having taken a position on a particular rulemaking. For example, there are so many stakeholders interested in climate – for good reason – and important ones at that, such as employees, shareholders, customers, suppliers, communities, politicians, you name it. So many companies provided input to their trade associations and other groups – and didn’t comment on that proposed rulemaking under their own name.

Here are 8 tips about how to put your best foot forward when you submit comments to the SEC on a rule proposal:

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**1. Make the Comment Letter “Usable”** – There is no specific format for how your letter should look like. It can look like chicken scratch. It can be 500 pages long. But if you’re truly trying to influence the SEC, you want to write in a way that is persuasive, right?

You want to write clearly, format it in a way so your arguments can be easily understood. You want to be specific and direct about what you want. There’s nothing wrong with organization techniques like bullets, numbering, charts and graphics. And don’t make it 500 pages long – quantity doesn’t beat quality here.

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**2. You Don’t Have to Answer the Proposal’s Questions (But It’s Not a Bad Idea)** – The SEC put those questions in its proposing release for a reason. You certainly don’t have to answer all of the questions – or answer any of them. But if what you want to comment upon actually matches one (or more) of the SEC’s questions, please answer them – and when you do so, be specific and indicate in your letter that you’re answering this particular question found in this section on this page of the proposing release.

Of course, you might not care about the SEC’s questions. You might be submitting a comment letter for other reasons. Maybe you’re flying closer to a 10,000-foot level with your input. Or you’re coming at the rule proposal in a totally different way than the SEC proposed.

It’s totally fine to not address the SEC’s questions directly. Most comment letters don’t do it.

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**3. Be Timely & Even Be Early If You Can** – When the SEC issues a proposing release, it will indicate what the deadline is for comments. If you really know what you want to say – and you think it can be persuasive to other commentators – get your comment letter in early as the SEC posts the comment letters it receives on a rolling basis. Meaning it will get posted soon after you submit it – even if it’s sent to the SEC well before the comment deadline.

Then others submitting comments can consider your arguments and decide whether to join your bandwagon and make similar points. And that’s a good thing – strength in numbers can help persuade the SEC this is something that the people want.

If for some reason you miss the comment letter deadline, send it in anyway as the SEC’s policy is to consider all comments received up until the time it takes action. Some groups are notorious for missing the deadline fairly consistently.

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**4. Submit Your Letter As Part of a Group** – If you’re worried about backlash resulting from being “on the record” – having it out there publicly that you took a certain position on a proposal – give input about a comment letter to a group that your company is a member of. That way, your company’s name won’t be out there for the world to see. This happens a lot with trade associations – they get input from their members and submit comment letters based on that feedback.

On the other hand, if you don’t care about who knows that you took a certain position, you can submit your own letter – even if you’re part of a group and influenced how that group’s comment letter looks.

**5. Draft Actual Rule Text** – It's helpful to the SEC if you want changes to a proposed rule to submit redlined changes to the actual rule text. Not many people do this, but if you're looking to be as persuasive as possible, you might consider this.

If you're part of a group that has staffers that are fairly sophisticated about the SEC's rulemaking process – or perhaps savvy about these kinds of things yourself – you might try your hand at drumming up draft rule text.

An added benefit of this exercise is that it allows you to see what steps are required for the SEC to implement your ideas.

But this can be complex, so few comment letters include draft text changes. There's an art to writing a rule. And doing something like this is completely voluntary – if you don't include draft text, it doesn't mean the SEC won't consider your comment letter.

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**6. Don't Argue About Rules Required by Legislation** – If the SEC is writing a rule because Congress – by enacting legislation – directed them to do so, the SEC is required to act on that statutory directive to adopt a rule. So arguing that you disagree with the legislation is a waste of time. The SEC has no legal authority to change the statute.

**7. Put Your Comments in Writing** – If you get lucky and meet with someone from the SEC Staff – or meet with a SEC Commissioner – about a rulemaking, that's great. The meeting might be in person, it might be on the phone or even on a Zoom call.

But your oral arguments in that meeting don't carry water unless you also reduce those arguments to writing. That's because there is a formal process mandated under the Administrative Procedure Act. It's got to be in writing, submitted in the form of a comment letter that will be posted publicly on the SEC's site along with all the other comment letters received on that rule proposal.

Note that if you do meet with an SEC official, there will be a notation of that posted on the SEC's site on the page where the related comment letters are posted. So be aware that it will be public knowledge who you met with, and when – and then there will be a one-sentence broad description about the topic of discussion.

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**8. Submit More Than One Comment Letter If You Want** – Yes, you can submit more than one comment letter on a particular rule proposal. There is no cap.

But to be productive, don't repeat the stuff you already included in your initial comment letter – just list the new arguments in your supplemental comment letter and reference that first letter.