

SEC to Permit Use of Electronic Signatures

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Securities and Capital Markets

On November 17, 2020, the Securities and Exchange Commission (the “SEC”) took long-awaited action to modernize its electronic filing requirements to permit the use of electronic signatures in SEC filings. The [rule amendments](#) will become effective immediately upon their publication in the Federal Register.

We expect that public companies and other filing persons will welcome these amendments to promote efficiency in the electronic filing process, particularly in light of challenges associated with the COVID-19 pandemic and technological developments that have led to the widespread acceptance of electronic signatures for other purposes.

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Background

Currently, Rule 302(b) of Regulation S-T requires each signatory to an electronic filing to manually sign a signature page or other document (an “authentication document”) before or at the time of an electronic filing to authenticate, acknowledge, or otherwise adopt the conforming signature that appears in the electronic filing.¹ This process frequently causes logistical headaches for public companies collecting signatures for SEC filings as well as inconvenience for signatories. The electronic filer must retain the authentication document with respect to each signatory to the electronic filing for a period of five years and must furnish a copy of it to the SEC or its staff upon request.

The COVID-19 pandemic has further complicated the process of obtaining manual signatures for SEC filings. In March 2020, the SEC staff provided certain interpretive relief regarding Rule 302(b) in light of the pandemic, but did not change the rule’s requirement that registrants collect and retain manual signatures.² Shortly thereafter, a number of law firms submitted a rulemaking petition requesting that the SEC modernize Rule 302(b). The petition promptly received support from representatives of nearly 100 public companies (most of whom signed electronically).³

¹ See 17 CFR § 232.302(b).

² See Staff Statement Regarding Rule 302(b) of Regulation S-T in Light of COVID-19 Concerns (Mar. 24, 2020), [available at www.sec.gov/corpfin/announcement/rule-302b-regulation-s-t-covid-19-update](http://www.sec.gov/corpfin/announcement/rule-302b-regulation-s-t-covid-19-update).

³ See [Petition for Rulemaking re: Use of Electronic Signatures Under Regulation S-T](#) (April 15, 2020); [Comment Letter from Richard Blake, et al.](#) (June 4, 2020).

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Updated Rules for Electronic Signatures

New Rule 302(b) provides signatories with the option of signing authentication documents either manually or electronically. To sign electronically, the filer's electronic signing process must meet conditions described in the amended EDGAR Filer Manual to ensure consistency with the evidentiary purposes of the authentication document. More specifically, the signing process must:

- require the signatory to present a physical, logical, or digital credential that authenticates the signatory's identity;
- reasonably provide for non-repudiation of the signature (*i.e.*, an assurance that the signatory cannot falsely deny having signed the document);
- provide that the signature be attached, affixed, or otherwise logically associated with the signature page or document being signed, which provides the signatory notice of the substance of the document, an opportunity to review the document before signing it and an opportunity for later confirmation that the signatory signed the signature page or document; and
- include a timestamp to record the date and time of the signature.

These criteria are intended to be technologically neutral and to allow for different types and forms of electronic signatures using existing technology as well as methods that may be developed in the future. Although the SEC did not endorse the use of any particular electronic signature program, software applications such as DocuSign, Adobe Sign, and HelloSign appear to be capable of satisfying the conditions for electronic signatures set forth in the amended Edgar Filer Manual.

Filers also may continue to obtain manual signatures in accordance with existing practice.

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A Manual Signature is Still Required – At Least Once

Prior to using an electronic signature on an authentication document, a filing person will be required to manually sign a document agreeing to the use of his or her electronic signatures in authentication documents under Rule 302(b). In the manually signed document, the filing person must attest that his or her electronic signature is legally equivalent to a manual signature for purposes of authenticating his or her signature to any electronic filing. An electronic filer will be required to retain this document for as long as the signatory may use an electronic signature to sign an authentication document, and for a minimum period of seven years after the date of the most recent electronically signed authentication document. The electronic filer must also furnish a copy of such document to the SEC or its staff upon request. We recommend obtaining such a manually signed document from all directors and officers who may wish to use an electronic signature in connection with future SEC filings.

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