



SEC Adopts Amendments to Permit the Use of Electronic Signatures

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On November 17, 2020, the U.S. Securities and Exchange Commission (the "SEC") adopted amendments to Rule 302(b) of Regulation S-T that will permit a signatory to an electronic filing to sign a signature page or other document (an "authentication document") with an electronic signature provided prescribed requirements are satisfied. This amendment will provide additional flexibility in complying with the authentication document requirement by providing signatories with the option of signing either manually or electronically in a manner consistent with the evidentiary purposes of the authentication document.

Prior to these amendments, each signatory to an electronic filing was required to sign an authentication document manually before or at the time of the electronic filing to authenticate, acknowledge or otherwise adopt the signature that appeared in typed form within the electronic filing. Under new Rule 302(b), a signatory has the option to use an electronic signature. This means that reporting companies will be able to file periodic and current reports and registration statements that have been signed electronically by appropriate parties, CEOs and CFOs will be able sign the certifications required to be filed with Forms 10-K and 10-Q electronically, and filers of Schedules 13D/G and Section 16 reports (Forms 3, 4 and 5) will be able to do so as well. The signing process for the electronic signature must:

1. Require the signatory to present a physical, logical or digital credential that authenticates the signatory's individual identity;
2. Reasonably provide for non-repudiation of the signature;
3. Provide that the signature be attached, affixed or otherwise logically associated with the signature page or document being signed; and
4. Include a timestamp to record the date and time of the signature.

The existing requirements under Rule 302(b) will be otherwise unchanged, including the requirements that an electronic filer retain the authentication document for a period of five years and furnish a copy of the authentication document upon request to the SEC.

In addition, under new Rule 302(b)(2), before a signatory initially uses an electronic signature to sign an authentication document, the signatory must manually sign a document attesting that the signatory agrees that the use of an electronic signature in any authentication document constitutes the legal equivalent of such individual's manual signature for purposes of authenticating the signature to any filing for which it is provided. SEC filers who have provided

others with signature authority through powers of attorney may want to execute an addendum granting such electronic signature authority, and reporting companies and others may want to revise their form power of attorney to include this attestation. An electronic filer must retain this manually signed 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. Upon request, the electronic filer must furnish a copy of the manual signature to the SEC.

The SEC also amended the EDGAR Filing Manual and certain rules and forms under the Securities Act, Exchange Act and Investment Company Act to permit the use of electronic signatures in authentication documents, rather than manual signatures. These amended rules and forms require filers to satisfy the same conditions listed above under Rule 302(b) for electronically signed authentication documents.

Although these amendments will become effective upon publication in the Federal Register, in a public **announcement** on November, 20, 2020, the SEC Staff indicated that it will not recommend the SEC take enforcement action with respect to the requirements of Rule 302(b) in advance of the effective time provided that a signatory complies with all of the requirements of amended Rule 302(b).