

SEC CHANGES ITS RULES TO FACILITATE USE OF ELECTRONIC SIGNATURES FOR EDGAR FILINGS

On November 17, 2020, the U.S. Securities and Exchange Commission (the “SEC”) adopted rule changes in response to a petition that called for allowing the use of electronic signatures in connection with EDGAR filings. The related SEC rulemaking release is available [here](#). These rule changes will become effective immediately upon publication of the SEC’s release in the Federal Register, which we expect will occur in the near future.

BACKGROUND

The SEC has historically required signatories to sign the signature page for any EDGAR filing or submission manually. Specifically, Rule 302 of Regulation S-T has required that each signatory to an electronic filing manually sign a signature page or other document (an “**authentication document**”) before or at the time of the electronic filing to authenticate the signature that appears in typed form within the electronic filing. Furthermore, these signature requirements were not updated in connection with the adoption of the Electronic Signatures in Global and National Commerce Act (“**E-SIGN Act**”) in 2000.¹ The SEC takes the position that these authentication documents are records generated principally for governmental purposes (rather than in connection with a business, consumer or commercial transaction) and therefore do not fall within the scope of the E-SIGN Act.²

Conditions for using electronic signatures for SEC filings

To facilitate the use of electronic signatures for documents filed (or otherwise submitted) to the SEC in electronic form, the SEC is amending Rule 302 of Regulation S-T to specify the conditions under which electronic signatures may be used.

Initial consent document for each signatory. Before a person may apply an electronic signature to an authentication document for an SEC filing or submission,

¹ The E-SIGN Act is a federal law that was adopted to facilitate the use of electronic records and electronic signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.

² *Application of the Electronic Signatures in Global and National Commerce Act to Record Retention Requirements Pertaining to Issuers under the Securities Act of 1933, Securities Exchange Act of 1934 and Regulation S-T*, Release No. 33-7985, 66 FR 33175 (June 14, 2001).

amended Rule 302(b) will require that the signatory manually sign a separate document pursuant to which the filer agrees that the use of an electronic signature constitutes the legal equivalent of its manual signature for purposes of authenticating the signature to any filing for which the electronic signature is provided. This initial consent document must be retained by the filer in its records for so long as the signatory may use an electronic signature to execute authentication documents in connection with SEC filings and for a minimum period of seven years after the date of the most recent SEC filing signed electronically by that signatory.

Qualified electronic signature process. Amended Rule 302(b) will require electronic signatures to authentication documents to comply with additional process requirements provided in the EDGAR Filer Manual. The EDGAR Filer Manual, Volume II: "EDGAR Filing" (Version 55) (Nov. 2020) will require electronic signatures to be created using a process that:

1. requires the signatory to present a physical, logical, or digital credential (exclusively possessed and controlled by the signatory) that authenticates the signatory's individual identity;
2. reasonably provides assurance that the signatory cannot falsely deny having performed the particular action that creates the electronic signature;
3. provides that the electronic signature be attached, affixed, or otherwise logically associated with the signature page or document being signed; and
4. includes a timestamp to record the date and time of the signature.

For purposes of these process requirements, the term "electronic signature" is defined as an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Notably, no particular technology, service or method is specified as preferred or required. This approach allows for flexibility as technology related to electronic signature evolves.

As with manually signed authentication documents for EDGAR filings or submissions, electronically signed authentication document must be:

- executed before or at the time the EDGAR filing or submission is made; and
- retained in the records of the filer for five years.

The amendments adopted in this rulemaking do not apply to requirements that call for notarized signatures, such as requests for EDGAR access (Form ID) pursuant to the requirements of Rule 10(b) of Regulation S-T.

Early adoption permitted

Although these amendments to Rule 302 of Regulation S-T and the EDGAR Filer Manual will not be effective until publication of the adopting release in the Federal Register, the SEC staff has announced that it will not recommend any enforcement action be taken if a filer uses electronic signatures in full compliance with these amendments.

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