

GOOD NEWS: SEC ALLOWS ELECTRONIC SIGNATURES IN AUTHENTICATION DOCUMENTS

Nov 24, 2020

The SEC recently approved amendments to Rule 302(b) of Regulation S-T, which governs the signing of “authentication documents” relating to typewritten signatures included in documents that are filed with the SEC electronically via EDGAR. Current Rule 302(b) requires that, prior to or at the time of such a filing, each signatory *manually* sign a signature page (or other document) “authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing.” Rule 302(b), as amended, will for the first time allow a signatory to use an electronic signature (as an alternative to a manual signature) on any such authentication document, *provided* certain requirements are met, as described below.

Effective Date. The amendments will become effective upon publication in the Federal Register. Following approval of the amendments, however, the SEC staff issued a statement indicating that, in light of COVID-19 concerns, early reliance on and compliance with amended Rule 302(b) is permitted.

Attestation Document (New). Before using an electronic signature in an authentication document for the first time, a signatory will be required to *manually* sign a document attesting that he or she agrees that the use of an electronic signature in any authentication document will be the legal equivalent of such individual’s manual signature.

Electronic Signature Procedures. In connection with the amendments, the SEC updated the EDGAR Filer Manual to set out the procedures that are required to be followed before an electronic signature may be used in an authentication document. The electronic signing process must, at a minimum:

- require that the signatory present a physical, logical, or digital credential that authenticates the signatory’s individual identity;
- reasonably provide for the non-repudiation of the signature;
- provide that the signature will be attached, affixed, or otherwise logically associated with the signature page or document being signed; and

- include a time stamp that will record the date and time of the electronic signature.

Retention Requirements. Rule 302(b) currently requires that manually signed authentication documents be retained for five years, and that a copy be provided to the SEC or its staff upon request. Authentication documents that are electronically signed will be subject to the same requirements. Any attestation document will be required to be retained for as long as the signatory uses an electronic signature and for a minimum of seven years after the date of the most recent electronically signed document. Any such document must also be furnished to the SEC or its staff upon request.

Corresponding Rule and Form Amendments. The SEC is also making corresponding changes to certain rules and forms under the Securities Act of 1933, the Exchange Act of 1934, and the Investment Company Act of 1940 to permit the use of electronic signatures in authentication documents relating to certain filings. As a result, the filings for which electronic signatures may be used in authentication documents include, among others, quarterly reports on Form 10-Q, annual reports on Form 10-K, current reports on Form 8-K, Section 16 filings, and certain registration statements.

RELATED PRACTICE AREAS

- Securities & Corporate Governance

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