

U.S. TRIBAR COMMITTEE OPINES ON VALIDITY OF ELECTRONIC SIGNATURES IN NEW COMMENT; SEC RELIEF ON SIGNATURES ON FILINGS DURING COVID-19

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TriBar Committee. Last week the TriBar Opinion Committee issued a new Comment concerning the use of electronic signatures and third-party opinion letters, in response to COVID-19 and its impact on the giving of opinions on the execution of agreements signed electronically. Although virtual closings have been the norm for some time, the Committee observed that COVID-19 has increased focus on giving opinions on the execution of agreements signed electronically. The Comment explains the legal basis for the conclusion underlying those opinions that the electronic signatures on those agreements have the same legal effect as manual signatures, focusing on the UETA and E-SIGN.

SEC Relief. On the same day, and in response to COVID -19, the SEC staff issued a [statement](#), that while compliance with [Rule 302 of Regulation S-T](#) is still expected, they will not recommend enforcement action if:

- the signatory retains a manually signed signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing and provides such document, as promptly as reasonably practicable, to the filer for retention in the ordinary course pursuant to Rule 302(b);
- such document indicates the date and time when the signature was executed; and
- the filer establishes and maintains policies and procedures governing this process.

As one example, the statement notes that if a signatory is teleworking, he or she could execute a hard copy remotely and hold it for delivery to the filer upon his or her return to the place of work. The signatory may also provide to the filer an electronic record (such as a photograph or pdf) of such document when it is signed.

Regulation S-T requires each signatory to manually sign signature pages, with the company required to retain the original signed documents for five years and furnish copies to the SEC upon

request. Despite the relief, the Staff stated they expect filers to maintain procedures to ensure that any typed signature in an electronic filing is affixed with the authority of the signatory.

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