

SEC Allows Electronic Signatures

On November 17, 2020, the United States Securities and Exchange Commission (SEC) adopted amendments to Rule 302(b) of Regulation S-T and the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) Filer Manual (EDGAR Filer Manual) to permit the use of electronic signatures (e-signatures) when executing authentication documents related to electronic filings made on EDGAR. The SEC also adopted corresponding revisions to certain other rules and forms under the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, and the Investment Company Act of 1940, as amended, to allow the use of e-signatures for certain filings. These amendments will now permit the use of e-signatures in connection with the filing of annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, foreign private issuer reports on Form 6-K and registration statements on Forms S-1, S-3, S-8, F-1, F-3, and F-6.

These amendments come after three law firms petitioned the SEC in April 2020 to allow for the use of e-signatures in light of the COVID-19 global pandemic. The petition received overwhelming support from nearly 100 public companies and the SEC did not receive any letters that opposed this petition.¹

The current Rule 302(b) requires the filer to obtain and retain a “manually sign[ed]” signature page that is “executed before or at the time the electronic filing is made.”² In addition, the filer was required to retain authentication documents for five years and furnish a copy of the “wet” signature to the SEC upon request. These requirements have been found to be difficult, if not impossible, under the logistical and health restrictions triggered by COVID-19.

As a result, the SEC has adopted this amendment to provide “additional flexibility in complying with the authentication document requirement”³ by allowing signatories to authenticate documents manually (as currently required) or electronically, provided that e-signatures meet certain conditions. The SEC intends for these requirements to be “technologically neutral” to allow for different forms of e-signatures. The EDGAR Filer Manual will be amended to specify that the minimum requirements for e-signatures must:

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

Further, the SEC has introduced a new requirement that, before using an e-signature in the first instance, 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 the individual’s manual signature. The electronic filer must retain this manually signed document for as long as the signatory uses e-signatures and for at least seven years after the last submitted e-signature.

¹ <https://www.sec.gov/comments/4-760/4760-7278993-217809.pdf>

² 17 C.F.R. § 232.302.

³ Electronic Signatures in Regulation S-T Rule 302, <https://www.sec.gov/rules/final/2020/33-10889.pdf>

⁴ *id.*

While the amendments are not yet effective, on November 20, 2020 the SEC Staff issued a statement that it will not recommend any enforcement action if filers take advantage of the new e-signature rules prior to the effective date of the new rules.⁵ The new rules will be effective immediately upon their publication in the Federal Register.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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⁵ <https://www.sec.gov/corpfin/announcement/staff-statement-rule-302b-regulation-st-covid-19>