

Memorandum

SEC Adopts Rules Permitting Electronic Signatures

November 20, 2020

On November 17, 2020, the Securities and Exchange Commission (“SEC”) voted to adopt amendments to Regulation S-T and the Electronic Data Gathering, Analysis, and Retrieval system (“EDGAR”) Filer Manual to permit the use of electronic signatures when executing documents in connection with electronic filings on EDGAR that are required to be signed. The [new rules](#) will be effective immediately upon publication in the Federal Register, which is expected to occur in the coming weeks.

Current Rule 302(b) of Regulation S-T requires any signatory to an electronic filing to manually sign a signature page or other document (“authentication document”) before or at the time of the filing and further requires issuers to retain the original “wet ink” signatures for five years. Under the new rules, a signatory will be permitted to sign an authentication document using an electronic signature provided that certain requirements are met. Specifically, under the new rules:

- The signatory must manually sign a document attesting that the signatory agrees that the use of an electronic signature in an SEC filing constitutes the legal equivalent of the individual’s manual signature (“attestation document”). This attestation document must be retained by the issuer for as long as the signatory may use 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;
- The signatory must present a physical, logical or digital “credential” that authenticates the signatory’s individual identity. The EDGAR Filer Manual defines “credential” as an object or data structure exclusively possessed and controlled by an individual to assert identity and provide for authentication;
- The signing process must reasonably provide for “non-repudiation” of the signature. The EDGAR Filer Manual defines “non-repudiation” as assurance that an individual cannot falsely deny having performed a particular action;
- The signature page must be attached, affixed or otherwise logically associated with the signature page or the document being signed; and
- The “electronic signature” must include a timestamp to record the date and time of the signature. The EDGAR Filer Manual defines “electronic signature” 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.

The new rules follow an April 2020 rule-making petition from multiple law firms requesting that the SEC adopt rules permitting the use of electronic signatures in SEC filings in response to the obstacles posed by the COVID-19 pandemic. Advances in electronic signature technology have led to the widespread use of electronic signatures in other commercial arenas, and the new rules come at a welcome time for many issuers still grappling with the logistical complexities of properly authenticating SEC filings in the context of remote work arrangements. Looking ahead, issuers intending to take advantage of the new rules should obtain the attestation document from signatories of SEC filings required by Rule 302(b)(1) and should confirm that their electronic signature software otherwise satisfies the requirements outlined above.

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