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SEC adopts rule amendments to allow use of electronic signatures and electronic storage of signature pages

On November 17 the SEC adopted rules that permit the use of electronic signatures for most SEC filings and the electronic storage of executed signature pages. As a result, filers will no longer be required to create or collect “wet ink” signature pages for these SEC filings or keep physical files with manual signatures. The SEC expects that many companies will make use of the new rules to simplify their signature collection and storage processes, particularly in light of the administrative burdens imposed by the COVID-19 pandemic.

The amendments will be effective immediately upon publication in the Federal Register, although the SEC staff has issued guidance indicating that it will not object if filers elect to rely on the new rules before the effective date.

The SEC’s adopting release describing the amendments (Release No. 33-10889) can be viewed [here](#).

Summary of amendments

The amendments will allow filers to rely on electronic signatures for all EDGAR filings that require a signature (and for certain paper filings), including Forms 10-K, 10-Q and 8-K, registration statements, Section 16 filings, and CEO and CFO certifications.

Rule 302(b) of Regulation S-T historically has required any signatory to an EDGAR filing to sign manually a signature page or other document authenticating the typed signature that appears in the electronic filing. While the SEC adopted limited relief for signature collection earlier this year in response to the COVID-19 pandemic, the relief did not allow for electronic signatures or electronic storage of manually signed signature pages.

The amendments retain the five-year signature retention requirement of the old rule. New Rule 302(b)(3), however, permits electronic storage of signature documents, whether signed manually or electronically, and filers

will be able to scan and store electronically all manual signatures currently stored in physical files.

To use electronic signatures, signatories must manually sign a consent attesting that the use of their electronic signature will constitute the legal equivalent of their manual signature for purposes of authenticating the signature to any filing. Filers will be required to retain this consent in physical or electronic form for as long as the signatory is able to use an electronic signature and for at least seven years after the date of the most recent electronically signed filing. Filers also will be required to furnish a copy of this document to the SEC upon request.

The electronic signature process must meet certain technical requirements that will be set forth in a new version of Volume II of the EDGAR Filer Manual and that should be met by DocuSign and most other major electronic signature platforms. The SEC indicates in its release that the process must, at a minimum:

- incorporate a security procedure to authenticate the signatory’s identity through use of a physical, logical, or digital credential;
- reasonably provide for non-repudiation of the electronic signature;
- provide that the electronic signature be attached, affixed, or otherwise logically associated with the signature page or document being signed; and
- include a timestamp that records the date and time of the electronic signature to ensure that the document was signed before or at the time the filing was made.

As a result of these requirements, neither merely affixing an electronic image of a signatory’s physical signature to a Word document nor relying on e-mailed consents as equivalent to digital signatures is likely to be a permissible



form of electronic signature for SEC filings. The SEC expects to post the new version of Volume II of the EDGAR Filer Manual, addressing these and other technical requirements, on December 14, 2020. In the meantime, filers may seek guidance in the draft version posted on the SEC's website [here](#).

Next steps

Filers likely will wish to take advantage of the new alternative for obtaining and storing signature pages for SEC filings. To start the process, signatories should sign and return to the company's compliance officer a consent form to establish eligibility to sign filings electronically. Companies also should consider scanning all existing, manually signed signature pages and retaining the scanned pages in an electronic file. The scanning process will require an investment of time but, over the longer term, is likely to reduce administrative burdens associated with maintaining these files in physical form.

This SEC Update is a summary for guidance only and should not be relied on as legal advice in relation to a particular transaction or situation. If you have any questions or would like any additional information regarding this matter, please contact your relationship partner at Hogan Lovells or any of the lawyers listed on the following page of this update.

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