



Securities Law ADVISORY ■

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Six Steps to Prepare for the SEC's New Electronic Signature Amendments

On November 17, 2020, the Securities and Exchange Commission (SEC) [adopted amendments](#) to allow, subject to certain prerequisites, electronic signatures on documents filed with the SEC via EDGAR. The amendments to Rule 302 of Regulation S-T, among others, are part of a series of initiatives that are designed to modernize and strengthen the SEC's operations. The SEC also took action to amend other rules that require electronic filing and service documents in administrative proceedings.

Previous Signature Requirements Under Rule 302(b)

Previously under Rule 302(b), each signatory to an electronic filing was required to manually sign a signature page or other document (authentication document) before or at the time of filing to authenticate, acknowledge, or adopt the signature on the electronic filing. 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.

Amended Signature Requirements Under Rule 302(b)

The SEC, after receiving a rulemaking petition requesting that it permit the use of electronic signatures when executing authentication documents and a joint letter of support from nearly 100 public companies, adopted amendments to its signature requirements.

The amendments provide signatories with the option of signing an authentication document either manually or electronically, while requiring the signing process for an electronic signature to meet certain conditions that are consistent with the evidentiary purposes of the authentication document.

Under the amended rules, when an authentication document is signed with an electronic signature, the signing process must, at a minimum:

- 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.

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The signing must also meet the existing requirements of Rule 302(b), which will be otherwise unchanged. This includes the requirement to retain the authentication document for five years and furnish a copy to the SEC upon request. The initial electronic signature authentication document and electronically signed attestation documents may be electronically stored.

The SEC has also created new Rule 302(b)(2) and Rule 302(b)(3) to include new requirements related to electronic signatures. Before using electronic signatures, signatories must:

- Manually sign a document attesting that the use of an electronic signature in future authentication documents is the same legal equivalent of the signatory's manual signature (initial electronic signature authentication document) before initially using electronic signatures (Rule 302(b)(2)).
- Retain such document for at least seven years after the most recent electronically signed authentication document (Rule 302(b)(2)).
- Submit the initial manually signed electronic signature authentication document to the SEC or its staff upon request (Rule 302(b)(3)).

The SEC also adopted amendments to rules under the Securities Act, Exchange Act, and Investment Company Act to allow the use of electronic signatures in authentication documents for certain filings when the signatures are typed and not manually signed.

The amendments to the electronic signature rules in Regulation S-T will take effect upon publication in the *Federal Register*.

Next Steps – How to Start Using an Electronic Signature Process

Ahead of the amendments taking effect, issuers that plan to use electronic signatures should prepare by taking the following steps:

1. Consider all individuals that currently manually sign documents or may electronically sign documents in the future.
2. Make a list of the prospective signatories.
3. Create and manually sign an initial electronic signature authentication document for each signatory to agree that future electronic signatures will be the legal equivalent of the signatory's manual signature.
4. Retain the manually signed initial electronic signature authentication document for at least seven years after the most recent electronically signed authentication document.
5. Be prepared to submit the document to the SEC upon request.
6. Establish an electronic signature process that meets the SEC's requirements, including:
 - a. Credentials that authenticate the signatory's individual identity and provide for non-repudiation of the signature.
 - b. The signature be attached, affixed, or otherwise logically associated with the signature page or document being signed.
 - c. Include a timestamp to record the date and time of the signature.
 - d. Retain the authentication document for five years and furnish a copy to the SEC upon request.

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