

CLIENT ALERT

# SEC Permits Use of Electronic Signatures for EDGAR Filings

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**AUTHOR**

**Jeffrey S. Hochman**

In light of technological developments in authentication and security of electronic signatures and prompted by difficulties in obtaining manual signatures due to COVID-19-related public health and safety concerns, last week the Securities and Exchange Commission adopted amendments to permit the use of electronic signatures in connection with electronic filings on EDGAR.<sup>1</sup> The amendments, which are summarized below, become effective immediately upon publication in the Federal Register.<sup>2</sup>

## **Signature Requirements for EDGAR Filings**

Regulation S-T previously required each signatory to an electronic filing to manually sign a signature page as an “authentication document” prior to the electronic filing via EDGAR that includes the signature in typed form. This authentication document must then be retained by the electronic filer for five years, with a copy furnished to the SEC upon request.

As amended, the rules now provide that, as an alternative to the manual signature requirements, which remain in effect, the authentication document may be executed using an electronic signature. However, *before* a signatory uses an

<sup>1</sup> See SEC Release Nos. 33-10889; 34-90441; 39-2534; IC-34096, *Electronic Signatures in Regulation S-T Rule 302*, available [here](#).

<sup>2</sup> In a companion release, SEC Release No. 34-90442, *Amendments to the Commission’s Rules of Practice*, available [here](#), the SEC similarly adopted amendments to its Rules of Practice to require electronic filing and service of documents in connection with SEC administrative proceedings. These amendments will become effective 30 days after publication in the Federal Register, with compliance required commencing April 12, 2021, subject to a phase-in period.

electronic signature to sign an authentication document, new Rule 302(b)(2) provides that the signatory must manually sign a document attesting that the signatory agrees that the use of an electronic signature in any authentication document is equivalent to a manual signature for purposes of authenticating any filing for which the electronic signature is provided. This manually signed document must be retained by the electronic filer for as long as the signatory may use an electronic signature to sign an authentication document and for a minimum of seven years following the date of the most recent electronically signed authentication document, and a copy must be furnished to the SEC upon request. The other requirements of Rule 302(b) remain unchanged and, as such, the electronic filer must still retain any electronically signed authentication documents for five years and provide a copy to the SEC upon request.

The SEC similarly amended corresponding Exchange Act, Securities Act and Investment Company Act rules and forms to allow electronic signatures in other filings. Pursuant to these amendments, filers will be able to use electronically signed authentication documents under generally the same conditions applicable to electronic filers under Rule 302(b).

### **Additional Electronic Signature Requirements**

The electronic signature signing process must comply with certain requirements, which will be specified in the EDGAR Filer Manual. According to the adopting release, these requirements are intended to be technologically neutral and allow for different types and forms of electronic signatures, provided that the signing process satisfies a number of conditions that relate to the validity and enforceability of an electronic signature. At a minimum, the signing process 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.

If you have any questions regarding this client alert, please contact the following attorney or the Willkie attorney with whom you regularly work.

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**Jeffrey S. Hochman**

212 728 8592

[jhochman@willkie.com](mailto:jhochman@willkie.com)

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