

ALERTS

SEC Update: Staff Guidance on Manual Signatures of EDGAR Filings

March 26, 2020

On March 24, 2020, the staff of the Division of Corporation Finance, the Division of Investment Management and the Division of Trading and Markets of the U.S. Securities and Exchange Commission issued a staff statement addressing authentication document retention requirements under Rule 302(b) of Regulation S-T, in light of the current COVID-19 outbreak.[1] Regulation S-T contains rules prescribing requirements for making filings electronically with the SEC through its Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"). Rule 302(b) under Regulation S-T requires that a signatory to documents that are electronically filed with the SEC "manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing." [2] In addition, the signatory must execute the document prior to the submission of the electronic filing to the SEC, and such physical document must be retained by the filer for a period of five years.[3]

The staff statement notes that, due to the COVID-19 situation, persons and entities subject to the authentication document retention requirements may encounter difficulties in complying with such requirements. In particular, given the logistical difficulties presented by the COVID-19 situation with respect to satisfaction of the Rule 302(b) requirements, including the requirement that each signatory provide the signature page to the filer, the staff statement provides assurances that the staff will not recommend an enforcement action if:

- A signatory retains a manually signed signature page or other document authenticating, acknowledging or otherwise adopting their signature that appears in typed form in the electronic filing, and they provide the document to the filer for retention as soon as reasonably practicable;
- The manually signed or authenticated document indicates the date and time that the signature was executed; and
- The filer establishes and maintains policies and procedures governing this process.

The staff statement also indicates that a signatory may wish to provide the filer with an electronic record of the signed document (such as a photograph or PDF of the manual signature).

In view of the current COVID-19 situation, those subject to the requirements of Rule 302(b) must consider implementing policies and procedures for the collection of manual signature images or pdfs, as well as the collection and retention of executed signature pages or documents. For assistance with developing policies and procedures to comply with Rule 302(b) and the staff statement, or if you have any questions about the content of this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] Staff statement Regarding Rule 302(b) of Regulation S-T in Light of COVID-19 Concerns (March 24, 2020), available [here](#).

[2] 17 CFR § 232.302(b).

[3] *Id.*

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