

SEC Reporting & Compliance Alert

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the next page or call your regular Skadden contact.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

SEC Adopts Rules To Allow Use of Electronic Signatures

On November 17, 2020, the Securities and Exchange Commission (SEC) adopted amendments to Rule 302(b) of Regulation S-T (Rule 302(b)), which permits registrants and others to use electronic signatures in documents authenticating typed signatures used in electronic filings, subject to certain requirements. The adopted rules also amend certain rules and forms under the Securities Act of 1933, the Exchange Act of 1934 (Exchange Act) and the Investment Company Act of 1940 to allow signatories to use electronic signatures in connection with certain other filings. The revised rules will permit the use of electronic signatures in connection with, among others, annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, Section 16 of the Exchange Act forms, registration statements on Forms S-1, S-3 and S-8, and foreign private issuer filings such as Form 20-F. The amendments will take effect upon their publication in the Federal Register, and the Staff will permit filers to comply with the amendments to Rule 302(b) in advance of their publication.

Currently, Rule 302(b) requires signatories of electronic filings to manually sign documents — known as signature authentication documents — authenticating the typed signatures in the filings, and for companies to retain physical copies of the documents for five years. As amended, Rule 302(b) will permit the use of electronic signatures in signature authentication documents, subject to certain requirements, and companies will continue to be able to use manual signatures if they prefer.

In connection with the rule amendments, the SEC updated its EDGAR Filer Manual, which will set forth the signing process requirements for electronic signatures. The updated EDGAR Filer Manual states that for a signatory to use an electronic signature in a signature authentication document, the signing process for the electronic signature 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.

In addition, before a signatory initially uses an electronic signature to sign a signature authentication document, the signatory must manually sign a document attesting that the signatory agrees that the use of an electronic signature in any authentication document

SEC Reporting & Compliance Alert

constitutes the legal equivalent of the signatory's manual signature for purposes of authenticating the signature to any filing for which it is provided. The filer must retain an electronic or a hard copy of the signatory's manually signed document for at least seven years after the date of the most recent electronically signed authentication document. As amended, Rule 302(b) also will require electronic filers to retain, for five years, electronic copies of signature authentication documents, and such filers must, upon request, furnish to the SEC documents retained pursuant to Rule 302(b).

Filers that choose to use electronic signatures in signature authentication documents should confirm that the electronic signing process their signatories use conforms to the updated

EDGAR Filer Manual, that signatories sign the signature authentication documents before the related forms are filed and that filers retain, for the requisite period, each signatory's initial, manually signed signature authentication document.

Separately, the SEC revised its rules to facilitate electronic service and filing in the SEC's administrative proceedings.

Additional information is available in the SEC's [adopting release](#) and [accompanying press release](#).

Contacts

Brian V. Breheny

Partner / Washington, D.C.
202.371.7180
brian.breheny@skadden.com

Andrew J. Brady

Of Counsel / Washington, D.C.
202.371.7513
andrew.brady@skadden.com

Hagen J. Ganem

Counsel / Washington, D.C.
202.371.7503
hagen.ganem@skadden.com

Josh La Grange

Counsel / Palo Alto
650.470.4575
josh.lagrange@skadden.com

Ryan J. Adams

Associate / Washington, D.C.
202.371.7526
ryan.adams@skadden.com

Blake M. Grady

Associate / Washington, D.C.
202.371.7591
blake.grady@skadden.com

Caroline S. Kim

Associate / Washington, D.C.
202.371.7555
caroline.kim@skadden.com

Justin A. Kisner

Associate / Washington, D.C.
202.371.7367
justin.kisner@skadden.com