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## **SEC Provides COVID-19 Relief for Filing Signature Rules—But Why Not Modernize the Requirement for Original Manual Signatures?**

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### *The Current Rule on Manual Signatures*

SEC filings are almost universally made electronically on the SEC's EDGAR system, with required signatures represented with “/s/” before the typed name of the signatory, i.e. “/s/John Doe” (referred to by practitioners as a “conformed” signature). Rule 302(b) of the SEC's Regulation S-T however requires that each required signatory must

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. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

So Rule 302(b) requires signatories to manually sign a filing signature page or other authentication instrument before or at the time of the filing, and requires companies to retain the original ‘wet ink’ signatures for five years.

### *The Relief Guidance*

Due to the restrictions on in-person interaction occasioned by the COVID-19 pandemic, on March 20 the SEC issued [guidance](#) relaxing the manual signature requirements. Specifically, the SEC staff will not recommend enforcement action with respect to the manual signature requirements if:

- a signatory retains a manually signed signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing and provides such document, as promptly as reasonably practicable, to the filer for retention;
- such document indicates the date and time when the signature was executed; and
- the filer establishes and maintains policies and procedures governing this process.

So a telecommuting signatory could, for instance, open up a document file of an SEC report on her home computer, print the signature page on her home printer, manually sign (and date and note the signing time,

according to the guidance) the page at or prior to the time of the filing, but retain that original and not deliver it to the company until such time as the signatory returns to the workplace, presumably after the filing is made. The staff also noted the signatory could “also provide to the filer an electronic record (such as a photograph or pdf) of such document when it is signed”—for example, scan the manually signed signature page or take a digital photo with a smartphone and email or text the file to the company before the SEC filing is made, and deliver the original later, after the filing, when the signatory is back in the office, or by other physical delivery.

### *Some Questions About the Guidance*

Some filers will no doubt recognize this as a procedure they were following before the pandemic—i.e., getting a scan or digital photo file of a manually signed signature page emailed or texted to the company by a remote signatory, but not obtaining the original for record retention until after the filing, whether by in-person delivery the next time the signatory came to headquarters, or by mail or overnight service. After all, Rule 302(b) specifies that signatories must manually sign a filing “before or at the time the electronic filing is made”, but says nothing about the timing of a signatory’s delivery of the original signature page to the filer.

Teleworking existed long before the current pandemic, and it is commonplace, for instance, for a member of the company’s board to audio- or videoconference into a board meeting that they are unable to attend in person. If the company is collecting signatures to an SEC report or registration statement from the board at that meeting, the company’s receipt of the remote director’s original signature will necessarily come in later, in many or most cases after the filing. Filers may be unpleasantly surprised if this guidance is suggesting that—absent the COVID-19 crisis—Rule 302(b) requires delivery of original wet ink signature pages to the filer before the filing, even in cases where the filer has pre-filing evidence (like an emailed copy of the signed page) that the signatory has duly signed.

Stepping back from the question of timing of delivery of original manual signatures under Rule 302(b)—perhaps a more important question is whether it is time to modernize this rule to take into account the emergence of digital and electronic signatures and other uses of technology to indicate assent or agreement.

The staff considered the application of the federal E-SIGN Act, which facilitates the use of signatures in electronic form (see our recent [alert](#) on this topic), in a [2001 interpretative release](#). The staff justifiably concluded that SEC filings were exempt from E-SIGN and clarified that the SEC rules controlled. That of course does not mean that the SEC cannot embrace electronic and digital signatures through interpretation or the rulemaking process.

Nineteen years later—in a world where “click through” signatures and signatures via digital signature software are commonplace and generally given the same effect as wet ink signatures—Rule 302(b) seems a bit antiquated.

*A Better Solution?*

Perhaps the COVID-19 Rule 302(b) guidance could have been more helpful if it had endorsed modern signature methods, including:

- Digital signatures, including through DocuSign, Adobe Sign, HelloSign, RightSignature, PandaDoc and other similar software services;
- Electronic signatures, including 'pasting' signature images on signature lines;
- A text or email from a signatory expressly adopting a conformed signature or otherwise indicating the signatory's assent to the filing;
- A photo or scan file of a manual signature (without any requirement of subsequent physical delivery of wet ink originals); and
- Anything else that qualifies as a signature under E-SIGN, the Uniform Electronic Transactions Act or general law.

We further suggest it is time to consider updating Rule 302 for the future, after the pandemic, to expressly adopt electronic and digital signatures, and eliminate the wet ink manual signature requirement.

Rule 302(b) was adopted in 1993 "to provide a satisfactory means by which signatories could authenticate and adopt their typed signatures appearing on filed documents for evidentiary purposes." Perhaps in 1993 traditional wet ink signatures seemed like the only method to accomplish this, but we do not view that as the case in 2020.