

# SEC Staff Offers Relief From Manual Signature Requirements Amid Coronavirus Concerns

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As more annual meetings may be held virtually this year, and many board meetings are being held telephonically due to social distancing or travel restrictions caused by COVID-19, working remotely has created a number of logistical challenges for companies, including the gathering of manually executed signature pages for electronic filings with the SEC. The Staff of the SEC has now provided guidance to help address this concern. On March 24, 2020, the Staff\* of the three divisions of the SEC issued a staff statement regarding Rule 302(b) of Regulation S-T, which generally requires filers to obtain manual signatures for all documents filed electronically with the SEC, on or before the time of the electronic filing.

The Staff still expects that those subject to Regulation S-T will comply with Rule 302(b) to the fullest extent practicable based on their particular facts and circumstances. However, in light of the COVID-19 pandemic, the Staff indicated it will not recommend enforcement action with respect to Rule 302(b) under the following circumstances:

- The signatory retains a manually signed signature page or other document (such as a power of attorney) and provides the document to the filer “as promptly as reasonably practicable,” for retention pursuant to Rule 302(b);
- The document indicates the date and time when the signature was executed; and
- The filer establishes and maintains policies and procedures governing this process.

The signatory may also provide to the filer an electronic record (such as a photograph or pdf) of the document when it is signed.

Based on this statement, the Staff would permit a filing on the basis of a manual signature which is scanned and emailed, or otherwise electronically delivered, to the filer, but even electronic delivery would not be necessary as long as the filer’s policies and procedures provide for identification of the signatory and confirmation of the date and time of the signature, for example by an email or phone call. The Staff notes that if a signatory is telecommuting, the signatory could execute a hard copy of the signature page remotely, and deliver the page to the filer upon his or her return to the place of

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However, it is less clear whether a filing can be made on the basis of a purely electronic signature, for example, on a board portal document. And in fact, the Staff reiterates the language of Rule 302(b)'s adopting release, that the requirement to retain the paper original of authentication documents was "established to provide a satisfactory means by which signatories could authenticate and adopt their typed signatures appearing on filed documents for evidentiary purposes."

Filers that are subject to Regulation S-T should establish and maintain policies and procedures to ensure that they receive the original documents, whether by mail or at the next in-person meeting, if they are planning to rely on the relief provided by the Staff statement.

\*The statement was a joint statement of the staff of the Division of Corporation Finance, the Division of Investment Management and the Division of Trading and Markets. It reflects the views of the three divisions indicated and is not a rule, regulation or statement of the Securities and Exchange Commission.