

November 19, 2020

SEC Adopts Rules Permitting Electronic Signature Authorizations

The SEC this week adopted final rules that permit a signatory to an SEC filing to electronically sign a document that authenticates his or her typed signature in the filing.¹ The rules were adopted without notice and comment because the SEC concluded the changes were simply administrative and did not affect any substantive rights. They apply to filings under the Securities Act, the Exchange Act and the Investment Company Act.

Attorneys
[Keith F. Higgins](#)
[Paul M. Kinsella](#)
[Patrick O'Brien](#)
[Craig E. Marcus](#)
[Paul D. Tropp](#)
[Thomas J. Fraser](#)
[Christopher J. Capuzzi](#)

Currently, typed signatures are included in electronic filings made on EDGAR. Nothing about that process will change. Under the current rules, however, filers must obtain from the signatory a manually signed copy of the signature page or another document “authenticating, acknowledging or otherwise adopting his or her signature . . .” executed before or at the time the filing is made. The SEC staff issued guidance in June 2020 that in light of COVID-19 it would not recommend enforcement action if signatories executed the signature page or authentication document before or at the time the filing and did their best to provide the filer such document as soon as reasonably practicable. This rule provides a more permanent and possibly less forgiving fix.

The SEC is setting forth the requirements for the electronic signature signing process in the EDGAR Filing Manual,² such 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 (i.e., reasonable assurance that an individual cannot falsely deny having provided 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.

The SEC intends for the process to be technologically neutral and providers of digital signature services will presumably meet these requirements.

The process does not dispense with manual signatures altogether. Before a signatory can use an electronic signature on an authentication document, the signatory must manually sign a document agreeing that the use of an electronic signature in any authentication document constitutes the legal equivalent of the individual’s manual signature for purposes of authenticating the signature to any filing for which it is provided. This acknowledgement must be kept for as long as the signatory uses an electronic signature to sign an authentication, but in no case less than seven (7) years after the date of the most recently signed authentication document.

If you have any questions about this alert or the final rules, please contact your regular Ropes & Gray advisor.

¹ <https://www.sec.gov/rules/final/2020/33-10889.pdf>

² <https://www.sec.gov/info/edgar/edmanuals.htm>