

Announcement

Staff Statement Regarding Rule 302(b) of Regulation S-T in Light of COVID-19 Concerns

The staff of the Division of Corporation Finance, the Division of Investment Management, and the Division of Trading and Markets has received inquiries from persons and entities subject to Regulation S-T regarding the authentication document retention requirements under Rule 302(b) in light of health, transportation, and other logistical issues raised by the spread of coronavirus disease 2019 (COVID-19). Given the public health and safety concerns related to COVID-19, the staff is providing the following statement to those affected by COVID-19 regarding Rule 302(b) of Regulation S-T.[1]

Rule 302(b) of Regulation S-T requires that each signatory to documents electronically filed with the Commission under the federal securities laws “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 documents must be executed before or at the time the electronic filing is made. Further, electronic filers must retain such documents for a period of five years and furnish copies to the Commission or its staff upon request. The Commission has stated 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.”[2]

We expect all persons and entities subject to Regulation S-T to comply with the requirements of Rule 302(b) to the fullest extent practicable based on their particular facts and circumstances. The staff understands that some persons and entities subject to Regulation S-T may experience difficulties satisfying these requirements due to circumstances arising from COVID-19. In light of these difficulties, the staff will not recommend the Commission take enforcement action with respect to the requirements of Rule 302(b) 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 in the ordinary course pursuant to Rule 302(b);[3]
- such 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 such document when it is signed.

We remind issuers and signatories of the presumption within Section 6 of the Securities Act that a signature is validly authorized, and we expect filers subject to Regulation S-T to maintain procedures to ensure that any typed signature in an electronic filing is affixed with the authority of the signatory. Signatories are also reminded of the penalties under, among other things, 15 U.S.C. 78ff(a).

[1] The statement represents the views of the staff of the Division of Corporation Finance, the Division of Investment Management, and the Division of Trading and Markets. It is not a rule, regulation, or statement of the Securities and Exchange Commission (“Commission”). The Commission has neither approved nor disapproved its

content. This statement, like all staff statements, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

[2] SEC Rel. No. 33-7985 (June 14, 2001).

[3] For example, if a signatory is teleworking, the signatory could execute a hard copy of the signature page remotely and hold that page for delivery to the filer upon his or her return to the place of work.

Modified: March 24, 2020