

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 230, 232, 240, 249, and 270**

**[Release Nos. 33-10889; 34-90441; 39-2534; IC-34096]**

**Electronic Signatures in Regulation S-T Rule 302**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** We are adopting amendments to Regulation S-T and the Electronic Data Gathering, Analysis, and Retrieval system (“EDGAR”) Filer Manual (“EDGAR Filer Manual” or “Filer Manual”) to permit the use of electronic signatures in signature authentication documents required under Regulation S-T in connection with electronic filings on EDGAR that are required to be signed. We are also adopting corresponding revisions to several rules and forms under the Securities Act of 1933 (“Securities Act”), Securities Exchange Act of 1934 (“Exchange Act”), and Investment Company Act of 1940 (“Investment Company Act”) to permit the use of electronic signatures in signature authentication documents in connection with certain other filings.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the

Federal Register as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Charles Kwon, Office of Rulemaking, at (202) 551-3430, Division of Corporation Finance; Terri Jordan, Office of Rulemaking, at (202) 551-6792, Division of Investment Management; or Devin Ryan, Office of Chief Counsel, at (202) 551-5550, Division of Trading and Markets; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to the following rules and forms to permit the use of electronic signatures in signature authentication documents in connection with certain specified filings, including electronic filings on EDGAR:

<b>Commission Reference</b>		<b>CFR Citation (17 CFR)</b>
Securities Act <sup>1</sup>	Securities Act Rule 402	§ 230.402
	Securities Act Rule 471	§ 230.471
Regulation S-T		§§ 232.10 through 232.903
	Rule 301	§ 232.301
	Rule 302	§ 232.302
Exchange Act <sup>2</sup>	Exchange Act Rule 12b-11	§ 240.12b-11
	Exchange Act Rule 14d-1	§ 240.14d-1
	Exchange Act Rule 15Fb1-1	§ 240.15Fb1-1
	Exchange Act Rule 16a-3	§ 240.16a-3
	Form CB	§ 249.480
Investment Company Act	Investment Company Act Rule 8b-11	§ 270.8b-11

We are also adopting an updated EDGAR Filer Manual, Volume II: “EDGAR Filing” (Version 55) (November 2020) that sets forth certain requirements that the electronic signing process must meet when electronic signatures are used. The updated Filer Manual is incorporated by reference into the Code of Federal Regulations.<sup>3</sup>

## **I. DISCUSSION**

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<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 17 CFR 232.301.

Regulation S-T, in conjunction with the EDGAR Filer Manual and other applicable rules, regulations, and forms, governs the electronic submission of documents filed with or otherwise submitted to the Securities and Exchange Commission (the “Commission”) through EDGAR.<sup>4</sup> Title 17, section 232.302(b) (Rule 302(b)) currently requires that each signatory to an electronic filing manually sign a signature page or other document (“authentication document”) before or at the time of the electronic filing to authenticate, acknowledge, or otherwise adopt the signature that appears in typed form within the electronic filing.<sup>5</sup> An electronic filer must retain the authentication document with respect to each signatory to the electronic filing for a period of five years and must furnish a copy of it to the Commission or its staff upon request.<sup>6</sup>

The Commission has stated that the authentication document requirement in Rule 302(b) “was established to provide a satisfactory means by which signatories could authenticate and adopt their typed signatures appearing on filed documents for evidentiary purposes.”<sup>7</sup> In March

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<sup>4</sup> Rule 10(a) of Regulation S-T [17 CFR 232.10a]. The EDGAR Filer Manual contains the technical specifications needed for filers to make submissions through the EDGAR system. The Commission originally adopted the EDGAR Filer Manual on April 1, 1993, with an effective date of April 26, 1993. *Adoption of EDGAR Filer Manual*, Release No. 33-6986 (Apr. 1, 1993) [58 FR 18638 (Apr. 9, 1993)]. The amendments adopted in this rulemaking do not apply to the notarized signature requests for EDGAR access pursuant to the requirements of Rule 10(b) of Regulation S-T. Moreover, the authentication document discussed herein is distinct from the authentication document referenced in Volume I of the Filer Manual in connection with Rule 10(b) notarized authentication documents.

<sup>5</sup> Pursuant to Rule 302(a) of Regulation S-T, signatures required in any electronic submission must be in typed form.

<sup>6</sup> See Rule 302(b) of Regulation S-T. As discussed below, certain rules and forms under the Securities Act and the Exchange Act also require authentication documents in connection with certain filings when these filings contain typed, rather than manual, signatures. References to “authentication documents” in this release refers to such documents as required by Rule 302(b) or these other rules and forms, as the context requires.

<sup>7</sup> *Application of the Electronic Signatures in Global and National Commerce Act to Record Retention Requirements Pertaining to Issuers under the Securities Act of 1933, Securities Exchange Act of 1934 and Regulation S-T*, Release No. 33-7985 (June 14, 2001) [66 FR 33175 (June 21, 2001)] (citing *Rulemaking for EDGAR System*, Release No. 33-6977, Section III.F.2 (Feb. 23, 1993) [58 FR 14628 (Mar. 18, 1993)]). In the 2001 release, the Commission issued guidance stating that the requirements to retain authentication documents are not subject to the Electronic Signatures in Global and National Commerce Act (“E-SIGN Act”), because “authentication documents are records generated principally for governmental purposes rather than in connection with a business, consumer or commercial transaction.”

2020, the Commission staff provided its views on, among other things, complying with this requirement when considering the public health and safety concerns related to COVID-19.<sup>8</sup> In April 2020, the Commission received a rulemaking petition requesting that we permit the use of electronic signatures when executing authentication documents under Rule 302(b).<sup>9</sup> The rulemaking petition states, among other things, that “the current COVID-19 situation has ... significantly increased the difficulties associated with obtaining manual ‘wet’ signatures” and that “[i]mprovements in electronic signature software technology make it possible to confirm (with at least equal confidence to the collection of manual signatures) who has signed a document and when it was signed.” In June 2020, nearly 100 public companies jointly submitted a letter in support of the rulemaking petition.<sup>10</sup>

After considering the widespread use of electronic signatures and technological developments in the authentication and security of electronic signatures,<sup>11</sup> and the issues raised in the rulemaking petition, we have reevaluated the requirement that signatories may only manually sign authentication documents under Rule 302(b). As a result, we are amending Rule 302(b) to permit a signatory to an electronic filing who follows certain procedures discussed herein to sign an authentication document through an electronic signature that meets certain

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<sup>8</sup> See Staff Statement Regarding Rule 302(b) of Regulation S-T in Light of COVID-19 Concerns (Mar. 24, 2020), available at <https://www.sec.gov/corpfin/announcement/rule-302b-regulation-s-t-covid-19-update>.

<sup>9</sup> Specifically, the rulemaking petition requested that the Commission amend Rule 11 and Rule 302 of Regulation S-T, as well as any other necessary rules and forms, to permit the use of electronic signatures in addition to manual signatures when executing authentication documents under Rule 302 and to provide that authentication documents may be retained physically or electronically for the requisite five-year period. See letter from Wilson Sonsini Goodrich & Rosati, Fenwick & West LLP, and Cooley LLP, available at <https://www.sec.gov/rules/petitions/2020/petn4-760.pdf>.

<sup>10</sup> See comment letter from Richard Blake, *et al.*, available at <https://www.sec.gov/comments/4-760/4760-7278993-217809.pdf>. We have not received any letters that oppose the rulemaking petition.

<sup>11</sup> See discussion in Section IV. Economic Analysis *infra*.

requirements specified in the EDGAR Filer Manual.<sup>12</sup> This amendment will provide additional flexibility in complying with the authentication document requirement by providing signatories with the option of signing an authentication document either manually or electronically, while requiring the signing process for an electronic signature to meet certain conditions that are consistent with the evidentiary purposes of the authentication document. The existing requirements of Rule 302(b) will be otherwise unchanged, including the requirements that an electronic filer retain the authentication document for a period of five years and furnish a copy of it upon request to the Commission or its staff.<sup>13</sup>

We are setting forth the requirements for the electronic signature signing process in the EDGAR Filer Manual, which will specify that, when a signatory signs an authentication document using an electronic signature, the signing process for the electronic signature must, at a minimum:

- 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.<sup>14</sup>

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<sup>12</sup> We are also adopting amendments to Rule 302(a) of Regulation S-T to update the definition of "signature," by revising "electronic entry" to "computer representation," "letters" to "symbols," and by removing references to obsolete terminology ("magnetic impulse"). This amendment does not change the substance or intended meaning of the definition.

<sup>13</sup> See new Rules 302(b)(1) and (b)(3).

<sup>14</sup> For purposes of the process requirements underlying the electronic signature of authentication documents, we are defining the terms "electronic signature," "credential," and "non-repudiation" in the EDGAR Filer Manual. The term "electronic signature" is defined as an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. While this definition is

These requirements are intended to be technologically neutral and allow for different types and forms of electronic signatures, provided that the signing process satisfies a number of conditions that relate to the validity and enforceability of an electronic signature. The signing process must incorporate a security procedure that requires the authentication of a signatory's individual identity through a physical, logical, or digital credential, and the signing process must reasonably provide for the non-repudiation of the electronic signature. The signing process requirements also provide that the signature be logically associated with the signature page or document being signed, thereby providing the signatory with notice of the nature and substance of the document and an opportunity to review it before signing, and that the electronic signature be linked to the signature page or document in a manner that allows for later confirmation that the signatory signed the signature page or document. Finally, given that a signatory must execute an authentication document pursuant to Rule 302(b) before or at the time an electronic filing is made, the signing process must include a timestamp that records the date and time of the electronic signature.

We have included a requirement in new Rule 302(b)(2) that, before a signatory initially uses an electronic signature to sign an 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 constitutes the legal equivalent of such individual's manual signature for purposes of authenticating the signature to any filing for which it is provided ("initial

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consistent with the widely used definition of the term "electronic signature" in the E-SIGN Act, 15 U.S.C. 7006, we continue to believe that the E-SIGN Act does not apply to the Commission's requirements related to authentication documents. *See supra* note 7. The term "credential" is defined as an object or data structure exclusively possessed and controlled by an individual to assert identity and provide for authentication. The term "non-repudiation" is defined as assurance that an individual cannot falsely deny having performed a particular action.

electronic signature authentication document”).<sup>15</sup> An electronic filer must retain this manually signed document for as long as the signatory may use an electronic signature to sign an authentication document and for a minimum period of seven years after the date of the most recent electronically signed authentication document. Pursuant to Rule 302(b)(3), the electronic filer shall furnish a copy of it upon request to the Commission or its staff.<sup>16</sup>

In addition, we are amending certain rules and forms under the Securities Act, Exchange Act, and Investment Company Act to allow the use of electronic signatures in authentication documents in connection with certain other filings when these filings contain typed, rather than manual, signatures.<sup>17</sup> These amendments extend comparable treatment to these filers in allowing electronically signed authentication documents under generally the same conditions applicable to electronic filers under Rule 302(b).<sup>18</sup>

Along with the adoption of an updated EDGAR Filer Manual, we are amending Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of the current revisions. This incorporation by reference was approved by the

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<sup>15</sup> See new Rule 302(b)(2). Additionally, Section 6(a) of the Securities Act provides that signatures to any Securities Act registration statement shall be presumed to have been written by authority of the person(s) who signed it, and the burden of proof, in the event such authority shall be denied, shall be upon the denying party. See 15 U.S.C. 77f(a).

<sup>16</sup> A manually signed document under Rule 302(b), including an initial electronic signature authentication document or a manually signed authentication document, may be stored via electronic means. See new Rule 302(b)(3).

<sup>17</sup> Securities Act Rules 402(e) and 471(b); Exchange Act Rules 12b-11(d), 14d-1(h), 16a-3(i) and, 15Fb1-1; Form CB; and Investment Company Act Rule 8b-11. Rules 402(e), 471(b), 12b-11(d), 14d-1(h); 16a-3(i); and 8b-11 allow manual, typed, duplicated, or faxed signatures on paper filings, with a manual signature retention requirement for typed, duplicated, or faxed signatures. See *Phase One Recommendation of Task Force on Disclosure Simplification*, Release No. 33-7300 (May 31, 1996) [61 FR 30397 (June 14, 1996)] at 30400 (stating that the Commission was adopting these requirements “to provid[e] comparable treatment to both paper and electronic filers” with respect to the signature and authentication requirements). The signature requirements in Rules 12b-11(d) and 14d-1(h) apply solely with respect to the scope of regulation defined in Rules 12b-11 and 14d-1(a), respectively.

<sup>18</sup> The amendments to these rules include a cross reference to the requirements set forth in Rule 302(b) of Regulation S-T.

Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The updated EDGAR Filer Manual is available at <https://www.sec.gov/info/edgar/edmanuals.htm>.

The EDGAR Filer Manual also is available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm.

## **II. PROCEDURAL AND OTHER MATTERS**

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a rulemaking in the Federal Register and provide an opportunity for public comment.<sup>19</sup> This requirement does not apply, however, to rules of agency organization, procedure, or practice,<sup>20</sup> or if the agency “for good cause finds ... that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>21</sup> We find that these amendments relate to agency procedures or practice and do not substantially alter the rights and obligations of non-agency parties. We also find that notice and comment are unnecessary because the amendments merely provide an optional alternative method for signatories to sign authentication documents pursuant to Rule 302(b) and corresponding provisions in our rules and forms. It follows that the amendments do not require analysis under the Regulatory Flexibility Act or a report to Congress under the Small Business Regulatory Fairness Act.<sup>22</sup>

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<sup>19</sup> See 5 U.S.C. 553(b) and (c).

<sup>20</sup> 5 U.S.C. 553(b)(3)(A).

<sup>21</sup> 5 U.S.C. 553(b)(3)(B).

<sup>22</sup> See 5 U.S.C. 601(2) (for purposes of a Regulatory Flexibility Act analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking) and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).



The APA generally requires that an agency publish an adopted rule in the Federal Register at least 30 days before it becomes effective.<sup>23</sup> This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.<sup>24</sup> For the same reasons we are forgoing notice and comment, the Commission finds good cause to make these amendments effective upon publication in the Federal Register. We further believe signatories and electronic filers should have the option of using electronic signatures in authentication documents as soon as practicable and find there is good cause for these amendments to take effect upon publication in the Federal Register. We also believe the amendments relieve a restriction in that execution of authentication documents no longer will be limited to manual or “wet” signatures.<sup>25</sup>

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

### **III. PAPERWORK REDUCTION ACT**

Certain provisions of our rules and forms contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>26</sup> The hours and costs associated with preparing and filing forms and retaining records—including those associated with signature authentication requirements—constitute reporting and cost burdens imposed by the collection of information requirements. An agency may not conduct or sponsor,

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<sup>23</sup> 5 U.S.C. 553(d)(3).

<sup>24</sup> *Id.*

<sup>25</sup> 5 U.S.C. 553(d)(1).

<sup>26</sup> 44 U.S.C. 3501 *et seq.*

and a person is not required to respond to, a collection of information requirement unless it displays a currently valid Office of Management and Budget control number. Compliance with the information collections is mandatory. The paperwork burden associated with the Commission's signature authentication requirements is imposed through the forms that are subject to those requirements and is reflected in the analysis of those forms. Responses to these information collections are not kept confidential and there is no mandatory retention period for the information disclosed, although filers are required to retain an authentication document for a period of five years.

As noted above, the amendments do not substantively alter the authentication document requirements, but rather provide an optional alternative method for signatories to sign authentication documents electronically. Although the requirements underlying the use of an electronic signature differ somewhat from those for use of a manual signature in connection with an authentication document (*e.g.*, an initial electronic signature authentication document will be required to be retained for seven years), on balance, we expect the amendments to incrementally ease the burden associated with executing such a document. It is difficult to predict how many filers will take advantage of the alternative signing method; however, we expect a filer would utilize this optional method only if it determines that the burdens of this alternative method are less than existing methods. Given the incremental nature of the amendments and in order to avoid overestimating any potential reduction in paperwork burdens, we are not revising any burden and cost estimates in connection with these amendments.

#### **IV. ECONOMIC ANALYSIS**

The final amendments provide signatories with additional flexibility in connection with documents filed with the Commission, including electronic filings made on EDGAR, by

permitting the use of electronic signatures in authentication documents. Due to technological advances that have enabled electronic signatures to become as credible as their manual, “wet” counterparts and the potential for efficiency gains, we believe providing such flexibility is justified. Below, we consider the benefits and costs, as well as the effects on efficiency, competition, and capital formation that we anticipate will result from the final amendments.<sup>27</sup> We evaluate the economic effects of the amendments relative to a baseline which includes the current regulatory requirements applicable to filers and signatories, as discussed in Section I above, as well as current practices. These requirements apply to both electronic and paper filers. The vast majority of Commission filings must be made electronically.<sup>28</sup> Based on information from 2019, the Commission received approximately 644,000 electronic filings from approximately 131,000 filers. By contrast staff analysis of filings in EDGAR identified 4,881 scanned paper filings from 2,603 filers in 2019.

Developments in cryptography and computing have enabled the development of digital signatures that are at least as credible as manual signatures. Digital signatures available today can: (i) assure users that signed documents have not been altered; (ii) identify the signatory; and (iii) make it impossible for a signatory to deny signing the document.<sup>29</sup> Moreover, digital

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<sup>27</sup> Section 3(f) of the Exchange Act, Section 2(b) of the Securities Act, and Section 2(c) of the Investment Company Act state that when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, we must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Additionally, Section 23(a)(2) of the Exchange Act requires us, when making rules or regulations under the Exchange Act, to consider, among other matters, the impact that any such rule or regulation would have on competition and states that the Commission shall not adopt any such rule or regulation which would impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.

<sup>28</sup> 17 CFR 230.101

<sup>29</sup> See William Kuechler & Fritz H. Grupe, *Digital Signatures: A Business View*, 19(4) INFO. SYS. MGMT. 19 (2003).

signature systems can be deployed on a broad range of computing platforms,<sup>30</sup> and are widely accessible at low cost.

Technological developments have also increased the efficiency of electronic communication relative to reliance on the mail. Remote work, as opposed to work on a business's premises, has increased for management, professional, and related occupations.<sup>31</sup> These changes have been facilitated by developments in technology and communications infrastructure,<sup>32</sup> as a greater volume of business communication now occurs electronically, rather than through paper, workers in these occupations have adapted to electronic communications. Further, remote work has increased substantially in recent months due to the COVID-19 pandemic. Survey evidence collected during the pandemic shows that a substantial proportion of the U.S. labor force now works from home full time.<sup>33</sup> At the same time, measures related to COVID-19 have, at the margin, increased the time associated with printing and mailing, and in some cases have increased the risk of delay.<sup>34</sup> In response to lengthier or less certain printing and mailing times, filers may incur additional costs by hastening internal processes to meet external deadlines.

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<sup>30</sup> *Id.*

<sup>31</sup> See Rachel M. Krantz-Kent, *Where did workers perform their jobs in the early 21st century?*, U.S. BUREAU OF LAB. STAT.: MONTHLY LAB. REV. (July 2019), available at: <https://doi.org/10.21916/mlr.2019.16> (last accessed October 22, 2020).

<sup>32</sup> *Id.*

<sup>33</sup> See Erik Brynjolfsson et al., *COVID-19 and remote work: an early look at US data* (Nat'l Bureau of Economic Research, No. w27344, 2020). See also May Wong, *Stanford Research Provides a Snapshot of a New Working-From-Home Economy* (June 29, 2020), available at: <https://news.stanford.edu/2020/06/29/snapshot-new-working-home-economy/> (last accessed Oct. 13, 2020).

<sup>34</sup> For example, The U.S. Postal Service announced that certain two-day and three-day service commitments were extended to three days and four days, respectively, and suspended services or service guarantees for international shipments. Private carriers similarly suspended guarantees. See e.g., *USPS® Coronavirus Updates: Expected Delivery Changes*, USPS: FAQ (Apr. 17, 2020) available at: <https://faq.usps.com/s/article/USPS-Coronavirus-Updates-Expected-Delivery-Changes> (last accessed Oct. 10, 2020).

We expect the amendments to Rule 302(b), and the related amendments to certain rules and forms under the Securities Act, the Exchange Act, and the Investment Company Act will result in cost savings for those filers whose signatories sign an authentication document by using an electronic signature. Filers who choose this option would no longer be required to have a signatory manually sign a signature page or other document and convey that document to the filer for each typed signature they provide in each filing that is made. Thus filers and signatories would not incur related costs of printing or mailing such a document in connection with each typed signature and may experience cost reductions to the extent that retaining electronic authentication documents is less costly than retaining manual authentication documents. It is difficult to quantify cost savings per filing as they would depend on the nature of the filing and the circumstances of the individual signatories.<sup>35</sup> Further, cost savings per filer would depend on the number and nature of filings each filer must make.<sup>36</sup> To the extent that the amendments make filers' compliance programs more efficient and less expensive, filers may be able to reallocate resources otherwise used for printing or mailing authentication documents to more productive uses. Filers may experience greater cost savings to the extent they choose to incorporate processes for electronic signatures in the design of their overall compliance programs and such processes are lower cost than their manual equivalents.

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<sup>35</sup> Analysis of electronic filers in EDGAR in 2019 demonstrates substantial variation in the number of signatories per filing. For example, we estimate 99.0% of 6,660 Form 10-K filings included more than one signatory in 2019, while only 1.6% of 14,884 Form 497 filings included more than one signatory in 2019. Staff were able to identify approximately 105,000 electronic filings with multiple signatories in 2019 by searching for signature tags in all electronic filings. Although this method may fail to identify certain filings with multiple signatories that do not tag individual signatures, this sample serves to demonstrate the degree of variability in the number of signatories across form types.

<sup>36</sup> Analysis of electronic filers in EDGAR in 2019 demonstrates a high degree in variation in the number of filings per filer. Staff estimate that the median number of filings per filer across the full sample of filers was two, however, the 25 filers with the largest number of filings in 2019 each submitted more than 850 filings.

We do not expect the amendments to Rule 302(b) to impose substantial additional costs on filers because filers will be permitted to continue to use manually signed authentication documents and existing policies and procedures if they choose to do so. Because the electronic signing process for authentication documents would be optional, we expect that filers would avail themselves of this option only to the extent that the potential benefits justified any associated costs.

Filers that choose to avail themselves of the ability to use electronic signatures in authentication documents may need to update their compliance systems to ensure that a signatory manually signs a document attesting that the signatory agrees that the use of an electronic signature in any authentication document constitutes the legal equivalent of such individual's manual signature, before first utilizing an electronic signature to sign an authentication document. Further, filers must retain this initial signature authentication document for a minimum period of seven years after the date of the most recent electronically signed authentication document, and must furnish a copy of it upon request to the Commission or its staff. However, we generally expect these one-time costs to be relatively low, and once such a filer has updated its systems, we do not believe these substantive requirements will result in additional on-going costs because producing and retaining authentication documents are existing requirements under Rule 302(b). Additionally, such filers may incur costs associated with compliance with the electronic signing process requirements prescribed in the EDGAR Filer Manual. These costs include initial costs related to identifying and acquiring software capable of producing electronic signatures that meet the updated process requirements and likely also include annual fees associated with ongoing use of electronic signature software.

We do not expect the amendments to have meaningful effects on competition or capital formation. As noted above, the amendments may improve efficiency, to the extent that they permit filers to lower the costs associated with complying with the amended rules. The amendments could reduce the variable cost (cost per filing) associated with meeting Commission filing requirements. If meeting Commission filing requirements involves high fixed costs then this reduction in variable costs could reduce the average cost of filing for high-volume filers more than for low-volume filers. Similarly, a filer's printing and mailing costs under the baseline depend both on the number of signatures required for its filings and the need for mailing manual signature pages to a central location. Thus, filers that have a larger number of signatories, or have signatories that are more geographically dispersed, likely would experience greater cost savings than filers with fewer or less-dispersed signatories.

Finally, we considered alternative ways of permitting the use of electronic signatures in authentication documents. The Commission could have chosen not to adopt a requirement to create or retain an initial electronic signature authentication document. Such an alternative would have increased cost savings for filers, but could have undermined the evidentiary value of the authentication document. The Commission also considered longer or shorter retention periods for authentication documents. Longer (shorter) retention periods could increase (decrease) the costs associated with storing authentication documents, while potentially increasing (decreasing) the evidentiary benefits of such documents.

## **V. STATUTORY AUTHORITY**

The amendments contained in this release are being adopted under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,<sup>37</sup> Sections 3, 12, 13, 14, 15, 15B, 23,

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<sup>37</sup> 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

and 35A of the Securities Exchange Act of 1934,<sup>38</sup> Section 319 of the Trust Indenture Act of 1939,<sup>39</sup> and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.<sup>40</sup>

## **List of Subjects**

### **17 CFR Part 230**

Investment companies, Reporting and recordkeeping requirements, Securities.

### **17 CFR Part 232**

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

### **17 CFR Part 240**

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

### **17 CFR Part 249**

Brokers, Reporting and recordkeeping requirements, Securities.

### **17 CFR Part 270**

Investment companies, Reporting and recordkeeping requirements, Securities.

## **TEXT OF THE AMENDMENTS**

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

### **PART 230 – GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

1. The authority citation for part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28,

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<sup>38</sup> 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78o-4, 78w, and 78ll.

<sup>39</sup> 15 U.S.C. 77sss.

<sup>40</sup> 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.



80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

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Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, and 77s).

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2. Amend § 230.402 by revising paragraph (e) to read as follows:

**§ 230.402 Number of copies; binding; signatures.**

\* \* \* \* \*

(e) *Signatures.* Where the Act or the rules thereunder, including paragraphs (a) and (c) of this section, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated, or facsimile signatures are used, each signatory to the filing shall manually or electronically sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the registrant for a period of five years. The requirements set forth in § 232.302(b) must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (e). Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

3. Amend § 230.471 by revising paragraph (b) to read as follows:

**§ 230.471 Signatures to amendments.**

\* \* \* \* \*

(b) Where the Act or the rules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated, or facsimile signatures are used, each signatory to the filing shall manually or electronically sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing (“authentication document”). Such authentication document shall be executed before or at the time the filing is made and shall be retained by the registrant for a period of five years. The requirements set forth in § 232.302(b) must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (b). Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

## **PART 232 REGULATION S-T -- GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS**

4. The authority citation for part 232 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

Section 232.302 is also issued under secs. 3(a) and 302, Pub.L. No. 107-204, 116 Stat. 745.

5. Amend § 232.301 by revising it to read as follows:

### **§ 232.301 EDGAR Filer Manual.**

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements

for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: “General Information,” Version 35 (January 2020). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: “EDGAR Filing,” Version 55 (November 2020). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available at <https://www.sec.gov/info/edgar/edmanuals.htm>. The EDGAR Filer Manual is also available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr/locations.html>.

6. Amend § 232.302 by revising paragraphs (a) and (b) to read as follows:

**§ 232.302 Signatures.**

(a) Required signatures to, or within, any electronic submission (including, without limitation, signatories within the certifications required by §§240.13a-14, 240.15d-14, and 270.30a-2 of this chapter) must be in typed form rather than manual format. Signatures in an HTML document that are not required may, but are not required to, be presented in an HTML graphic or image file within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. When used in connection with an electronic filing, the term “signature” means a computer representation of any symbol or series of symbols comprising a

name executed, adopted, or authorized as a signature. Signatures are not required in unofficial PDF copies submitted in accordance with §232.104.

(b)(1) Each signatory to an electronic filing (including, without limitation, each signatory to the certifications required by §§240.13a-14, 240.15d-14 and 270.30a-2 of this chapter) shall manually or electronically 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 (“authentication document”). Such authentication 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. An electronically signed authentication document pursuant to this paragraph (b)(1) must meet the requirements set forth in the EDGAR Filer Manual.

(2) Before a signatory may electronically sign an authentication document pursuant to paragraph (b)(1) of this section, such signatory must manually sign a document attesting that, when using electronic signatures for purposes of paragraph (b)(1) of this section, the signatory agrees that the use of such electronic signature constitutes the legal equivalent of such individual’s manual signature for purposes of authenticating the signature to any filing for which it is provided. An electronic filer must retain this document for as long as the signatory may use an electronic signature to satisfy the requirements of paragraph (b)(1) of this section and for a minimum period of seven years after the date of the most recent electronically signed authentication document.

(3) 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. A manually signed document under paragraphs (b)(1) or (b)(2) of this section, including an initial electronic signature authentication

document or a manually signed authentication document, may be retained and stored via electronic means.

\* \* \* \* \*

**PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

7. The authority citation for part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, secs. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

Sections 240.12b-1 to 240.12b-36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78l, 78m, and 78o.

\* \* \* \* \*

Section 240.14d-1 is also issued under 15 U.S.C. 77g, 77j, 77s(a), 77ttt(a), 80a-37.

\* \* \* \* \*

8. Amend § 240.12b-11 by revising paragraph (d) to read as follows:

**§ 240.12b-11 Number of copies; signatures; binding.**

\* \* \* \* \*

(d) Signatures. Where the Act or the rules, forms, reports or schedules thereunder, including paragraph (b) of this section, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed

signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated, or facsimile signatures are used, each signatory to the filing shall manually or electronically sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing (“authentication document”). Such authentication document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. The requirements set forth in § 232.302(b) must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (d). Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

9. Amend § 240.14d-1 by revising paragraph (h) to read as follows:

**§ 240.14d-1 Scope of and definitions applicable to Regulations 14D and 14E.**

\* \* \* \* \*

(h) *Signatures.* Where the Act or the rules, forms, reports or schedules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated, or facsimile signatures are used, each signatory to the filing shall manually or electronically sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing (“authentication document”). Such authentication document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. The requirements set forth in § 232.302(b) must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (h). Upon request, the filer shall

furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

10. Amend § 240.15Fb1-1 by revising paragraphs (b) and (d) to read as follows:

**§ 240.15Fb1-1 Signatures.**

\* \* \* \* \*

(b) Each signatory to an electronic filing (including, without limitation, each signatory to the forms and certifications required by §§240.15Fb2-1, 240.15Fb2-4, and 240.15Fb6-2) shall manually or electronically 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 (“authentication document”). Such authentication document shall be executed before or at the time the electronic filing is made. The requirements set forth in § 232.302(b) must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (b). Upon request, the security-based swap dealer or major security-based swap participant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this paragraph (b).

\* \* \* \* \*

(d) Each manually or electronically signed signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing (“authentication document”)—

(1) On Schedule F to Form SBSE (§249.1600 of this chapter), SBSE-A (§249.1600a of this chapter), or SBSE-BD (§249.1600b of this chapter), as appropriate, shall be retained by the filer until at least three years after the form or certification has been replaced or is no longer effective;

(2) On Form SBSE-C (§249.1600c of this chapter) shall be retained by the filer until at least three years after the Form was filed with the Commission.

11. Amend § 240.16a-3 by revising paragraph (i) to read as follows:

**§ 240.16a-3 Reporting transactions and holdings.**

\* \* \* \* \*

(i) *Signatures.* Where Section 16 of the Act, or the rules or forms thereunder, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated, or facsimile signatures are used, each signatory to the filing shall manually or electronically sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing (“authentication document”). Such authentication document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. The requirements set forth in § 232.302(b) must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (i). Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

\* \* \* \* \*

**PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934**

12. The general authority citation for part 249 continues to read as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.



\* \* \* \* \*

13. Amend Form CB (referenced in § 249.480) by amending General Instruction II.B to read as follows:

**Note: The text of Form CB does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**Form CB**

\* \* \* \* \*

B. When submitting the Form CB in electronic format, the persons specified in Part IV must provide signatures in accordance with Regulation S-T Rule 302 (17 CFR 232.302). When submitting the Form CB in paper, the persons specified in Part IV must sign the original and at least one copy of the Form and any amendments. You must conform any unsigned copies. The specified persons may provide typed or facsimile signatures in accordance with Securities Act Rule 402(e) (17 CFR 230.402(e)) or Exchange Act Rule 12b-11(d) (17 CFR 240.12b-11(d)) as long as the filer retains copies of signatures manually or electronically signed by each of the specified persons for five years. The requirements set forth in Regulation S-T Rule 302(b) (17 CFR 232.302(b)) must be met with regards to the use of an electronically signed signature page.

\* \* \* \* \*

**PART 270 – RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

14. The authority citation for part 270 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

\* \* \* \* \*

Section 270.8b-11 is also issued under 15 U.S.C. 77s, 80a-8, and 80a-37.

\* \* \* \* \*

15. Amend §270.8b-11 by revising paragraph (e) to read as follows:

**§270.8b-11 Number of copies; signatures; binding.**

\* \* \* \* \*

(e) *Signatures.* Where the Act or the rules thereunder, including paragraph (c) of this section, require a document filed with or furnished to the Commission to be signed, the document should be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. When typed, duplicated, or facsimile signatures are used, each signatory to the filing shall manually or electronically sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing (“authentication document”). Execute each such authentication document before or at the time the filing is made and retain for a period of five years. The requirements set forth in §232.302(b) must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (e). Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

By the Commission.

Dated: November 17, 2020.

Vanessa A. Countryman,  
Secretary.