

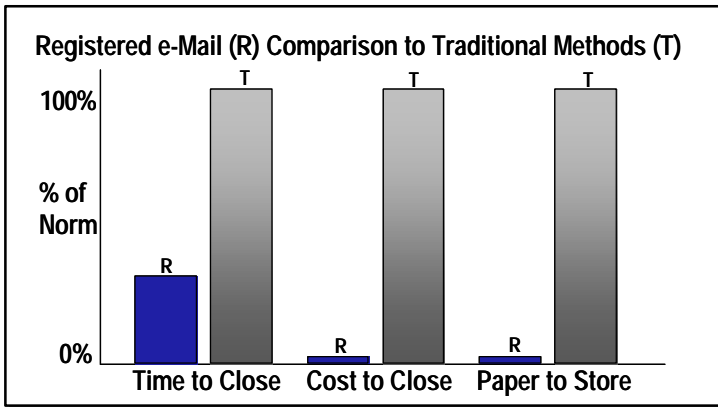


# Attorneys Use RPost® Registered e-Mail™ to Close Investment Deal

## HIGHLIGHTS:

RPost Registered e-Mail, when used with electronic transaction and signature statutes:

- ❑ Accelerated shareholder sign-off & expedited the closing of a business deal within days as opposed to weeks.
- ❑ Cut the closing cost to a fraction of the norm.
- ❑ Eliminated the need to store any paper as thousands of pages of executed agreements were retained in an electronic and verifiable format.



**Background:** In most business deals, where shareholder or participant approval is required, a significant investment of time and money is spent negotiating general terms, completing due diligence, and (after the principals agree to terms) incorporating the details into all of the rights and waiver agreements. What remains is the final closing requirement of obtaining written consent from the shareholders and all participants in the transaction.

**Electronic Law:** The Uniform Electronic Transaction Act (“UETA”) and the Electronic Signatures in Global and National Commerce Act (“ESIGN”) define, in similar language, **“that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form.”**<sup>1</sup> UETA goes further, affirmatively

<sup>1</sup> UETA § 7(a).

stating that **“if a law requires a record to be in writing, an electronic record satisfies the law,”** and both statutes state that **“if a law requires a signature, an electronic signature satisfies the law.”**<sup>2</sup> These pieces of legislation guarantee e-mail messages the same legal weight and value as paper records. Indeed, courts have recently ruled that proposals tendered by e-mail can have the same force as written contracts<sup>3</sup>; and that documents can be legally served by e-mail<sup>4</sup>. To be enforceable under U.S. law, **E-SIGN** and **UETA** require that an electronic signature possess three elements:<sup>5</sup> (1) A sound, symbol, or process, (2) attached to or logically associated with an electronic record, and (3) made with the intent to sign the electronic record.

**Registered e-Mail:** RPost ([www.rpost.com](http://www.rpost.com)) invented Registered e-Mail, that among other things, is a deal-closing tool that cuts closing time by 70%, closing cost by 99%, and paper storage by 100% when executing transactions involving: **shareholder consent, director consent, waivers, required notifications, SEC required shareholder notifications, and consents and agreements to business transactions.**

## CASE STUDY: CLOSING AN INVESTMENT DEAL UTILIZING RPOST REGISTERED E-MAIL

**The Deal:** RPost spent four months negotiating an investment proposal with Symantec Corporation, which took the form of an equity position through a private placement. In this instance, the two principals were able to close the deal by obtaining consent and sign-off in less than 30% of the time and at less than 1% of the normal cost involved, had they employed standard business transaction techniques, that would have necessitated the repeated exchange of multiple, signed, hard-copy documents.

**Law Firms:** The General Counsel’s office of **Symantec Corporation** (Cupertino, CA) hired the firms of **Heller Ehrman White & McAuliffe** (Palo Alto, CA) and **Appleby Spurling Hunter** (Hong Kong) to prepare the documents, perform due diligence, and orchestrate the closing. **RPost** worked with its corporate secretary and outside counsel at the **Allens** law firm.

<sup>2</sup> UETA §§ 7(c) and 7(d). E-SIGN §101(a)

<sup>3</sup> Nikoletta Banushi, “Can E-Mail Seal A Sales Deal?” Boston Globe, (March 16, 2002)

<sup>4</sup> American Bar Association website (March 29, 2002)

<sup>5</sup> **E-SIGN**, 15 U.S.C. § 7006(5) and **UETA** § 2(8) (definitions of “electronic signature”).

**Closing Documents:** To close the deal, the RPost preferred shareholders (seventy-five entities) were required to review and approve resolutions and waivers in seven agreements (investors' rights, voting, waiver, co-sale, purchase, and exception agreements), as well as the amended bye-laws. These agreements totaled ninety-eight pages.

**Timeframe for Final Approval:** RPost was able to complete the transaction within three days, following the close of the business negotiations, using electronic signature and RPost Registered e-Mail services.

**Deal-Closing Tool:** RPost Registered e-Mail is a **U.S. Government tested, accepted, and utilized service** that protects the sender in case of a dispute involving Internet e-mail. It is an open system where any e-mail user can participate. The receiver never needs to pre-enroll to receive Registered e-Mail and the receiver does nothing extra to generate the return of a Registered Receipt™ to the sender. All information necessary to verify the integrity of the Registered Receipt and reconstruct the original content is embedded within the receipt itself. This receipt is returned by e-mail and managed by the sender. Unlike standard e-mail return receipts, RPost Registered Receipts conform to the electronic statute requirements and prove delivery and content delivered to any Internet address. The RPost system does not store any e-mail, so security and privacy are not compromised by threat of discovery in a dispute.

**Closing Cost:** RPost's administrative cost of obtaining shareholder consent electronically, totaled less than \$100 for a transaction that otherwise would have involved 30,000 pages of paper documents, had RPost employed the standard, hard-copy, multiple exchange of signed documents.

## **TRANSACTION: SUMMARY OF ELECTRONIC TECHNIQUES EMPLOYED IN TRANSACTION**

RPost and Symantec agreed to employ both Registered e-Mail and electronic signature, in accordance with the electronic signature and transaction statutes (E-SIGN, UETA), to accelerate completion of the business deal. Because of the efficiencies inherent in Registered e-Mail, and the electronic signature statutes, **RPost was able to obtain all of the necessary signatures needed to close the transaction within three days.**

A timely closing is always desirable to guard against the possibility of unforeseen market events having a negative impact on the terms of a business deal.

Also, to allay any possible procedural concerns, RPost adopted a Board resolution to explicitly permit electronic signatures in lieu of "wet" signatures and documented the

electronic shareholder consent procedures for this specific case and for future business transactions.

**Electronic Documents:** There were seven document transactions contained within the body of one e-mail, directed to all participants, that RPost and its shareholders had to execute electronically to close the deal. RPost employed Registered e-Mail technology to:

- 1) Provide notice to shareholders
- 2) Send the documents to shareholders
- 3) Record shareholder sign-off
- 4) Countersign each shareholder approval
- 5) Manage and archive the electronic signature files

**Process:** Symantec and RPost appointed an Administrator to follow RPost's Board approved process of gathering shareholder consent, electronically. In this case, the Administrator was the authorized signatory for RPost. RPost and Symantec had to retain verifiable proof that proper notice was delivered, the time it was delivered, and content delivered. RPost Registered e-Mail provides the sender with legal and verifiable proof of delivery, receipt and content, plus an official time stamp for delivery to all addressees in the e-mail. [See [www.rpost.com](http://www.rpost.com) for details on RPost Registered e-Mail.] The Administrator managed the following transmissions:

**1) Provide notice** to each shareholder of the details of the proposed business transaction. For possible dispute resolution:

- a) The Administrator placed seventy-five RPost shareholder e-mail addresses in the "blind copy" field of the e-mail (to protect privacy of their identities) with the Administrator's address in the "To" field.
- b) The cover memo to the shareholders was contained in the body of the e-mail and referenced the seven attached closing documents.
- c) Within a few hours, the Administrator received a single Registered Receipt in the form of an e-mail that recorded the delivery status of all seventy-five recipients.
- d) The returned Registered Receipt provided the Administrator with the following information for each recipient:
  - The time delivered,
  - The level of legal delivery as defined by UETA (server, mailbox, opened, or delivery failure), and
  - The precise content associated with the original e-mail and all of its attachments.

**2) Send the documents** to each shareholder. In case of a possible future dispute, the principals would need to be able to prove the precise content of each document delivered to each shareholder as standard formats could easily be altered by recipients - PDF, Word, etc. Further, Symantec and RPost had to send the documents to each shareholder in a common file format that all recipients could open and review, regardless of how advanced or up-to-date their computer software was.

By using Registered e-Mail, the Administrator was able to send the e-mail with seven closing-documents attached in Word format, without concern for the integrity of the content of these documents. If the recipient ever questioned the integrity of these attachments, the Registered Receipt, returned to the sender, could be used to verify the authenticity and reconstruct the original e-mail, with all attachments as initially sent and delivered to each recipient.

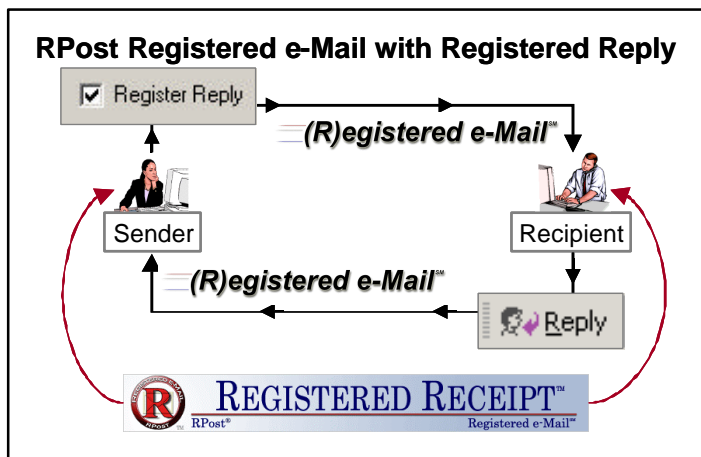
**3) Record shareholder sign-off** of approval of all resolutions and waivers in the business documents. The electronic signature statutes and case law provide that typing of one's name, associated logically with the material being signed, is a valid electronic signature. Non-repudiation techniques enhance validity, such as time sealing the electronic records; render them counterfeit-proof or tamper-detectable; and ensure that the integrity of the original documents can be verified at any time.

The Administrator sent the business transaction notification e-mail to shareholders via Registered e-Mail, with the "Register Reply" option engaged. The body of the e-mail explained the content of the seven attachments and contained the following instruction:

"If you accept and agree to all of the information contained in the body of this e-mail and each of the attachments [listed by file name], please reply to this e-mail by typing 'I hereby consent and approve all of the proposed resolutions as set out in this e-mail and associated e-mails and by their attachments pursuant to the E-SIGN and UETA electronic signature statutes.' Then type your name, followed by, 'accepts for and on behalf of' and follow with your typed shareholder entity name, and send."

Because the Registered e-Mail service employed the Register Reply™ function, a unique and proprietary feature to RPost Registered e-Mail services, Registered Receipts were **returned to both the shareholder signor and the Administrator by e-mail**. The Register Reply function enables a recipient to automatically receive a Registered Receipt when the recipient simply replies to the Registered e-Mail – **and does not require any extra software or know-how for the recipient**. These

Registered Receipts became the verifiable, counterfeit-proof, tamper-detectable electronic record of the transaction as approved by the shareholder by means of electronic signature. [The **Register Reply feature protects both parties to an agreement by providing Registered Receipts to both sender and recipient**, should a future dispute arise. These Registered Receipts offer added protection to the original "I accept..." e-mails that were returned to the Administrator.]



**4) Countersign each shareholder approval** via electronic signature.

The Administrator electronically signed the original outbound e-mail sent to shareholders by using the RPost Digital Seal™ service.

This technique allows the Administrator to electronically sign the outbound e-mail and all attachments. Consequently, **any recipient, or future recipient**, is provided the ability to verify authorship or integrity of the Digitally Sealed™ e-mail at any time. In this instant case, the Administrator was the authorized signor of RPost. Therefore, the Administrator conveyed the Company signature on the shareholder consent documents without needing another signatory.

**5) Record and maintain records only in electronic form.** To create a "closing volume" for distribution to RPost and Symantec record keepers, the Administrator simply stored the Registered Receipts on disk and distributed a copy to the two parties. This eliminated the need to store any paper records.

The original outbound Registered e-Mail, the reply returned to the Administrator, "Registered," along with the countersigned e-mail back to the shareholders were all linked by identification reference codes in their corresponding Registered Receipts. [The reference codes allow a reviewer after the fact to trace the principal (shareholder) e-mail, associated attachments, and associated Registered Receipts.]

The Administrator saved in electronic format all of the electronically signed e-mail and their corresponding verifiable, counterfeit-proof Registered Receipts. An electronic copy of these files was sent to the principals in the transaction and to their counsel, to provide them with the ability to verify the transaction at any future time. **There was NO need to store ANY paper copies of any agreements, records, and signatures in this transaction [thus eliminating the need to store 30,000 paper pages in this transaction.]**

NOTE: **The Registered e-Mail service stores no information** and therefore is not discoverable in a legal dispute. **Any holder of the Registered Receipt can verify the details of the business transaction at any time.** The Registered Receipt itself contains the encrypted information necessary to verify a transaction.

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### **NON-ELECTRONIC ALTERNATIVE TO OBTAINING SHAREHOLDER CONSENT:**

The old-fashion way of closing a deal like the Symantec - RPost transaction would have required the Administrator to send each shareholder two hard copies of each of the seven agreements, totaling 196 pages of legal documents. Each place that required a signature would have required a flag / notation, and the documents would have been sent via Fed-Ex with a return, pre-paid Fed-Ex envelope included. The Administrator would have sent these documents with a cover memo explaining the documents, where to sign, and asking the shareholder to sign both copies of each agreement and to return the entire package in the pre-paid return Fed-Ex envelope. The original sender would have in turn received each of these agreements, signed each, and returned one fully executed copy of each agreement to the shareholder by mail. A copy would be made of all of these agreements with one maintained by RPost and one maintained by Symantec record keepers.

In addition to the administrative and legal costs incurred to prepare, mail, and execute the business transaction documents, it would take a minimum of two days to prepare the materials, one day for mailing to each shareholder and one day for the return mailing if the return is shipped overnight.

One also has to take into account the time needed for the shareholder to review and return the documents. Further, there are often request to send copies to counsel of shareholders, trustees, and to alternate addresses. Following such a procedure, one would have to wait seven business days at an absolute minimum, (not

counting weekends that might intervene) compared with the three days that were employed to execute the same transaction electronically using RPost Registered e-Mail.

Another process that has its problems is sending the documents via e-mail to the shareholders, have them print the e-mails out, sign each document, and fax back each signature page, countersign the signature pages and fax a copy back, countersigned to the shareholder. The problems with this method include the use of simple e-mail where **one would not have confirmation that each shareholder received the notification and the documents, and some recipients would likely plead non-delivery.** Further, by employing this technique, the recipient would need to print, find the signature pages, sign, and fax the documents back to the Administrator. In this case, this would result in 525 faxed signature pages delivered to the Administrator and 525 pages would have to be countersigned and faxed back to the shareholders. In addition to the cost and inefficiencies of faxing, the need would arise to carefully document the original e-mail content sent to the shareholder and content associated with each signature page.

Simple e-mail transmission poses inherent problems:

- ❑ **There is no way to prove that all shareholders received the same content.**
- ❑ **If a future dispute arises, there is no way to authenticate and prove what the precise content was of each of the 98 pages of legal agreements that were sent by e-mail to each shareholder, and**
- ❑ **There is no way to prove that all shareholders received the original e-mail or proper notification**

Without using Registered e-Mail, one would be hard-pressed to defend successfully against a legal challenge that arose from one of the problems inherent with simple e-mail transmissions.

### **CONCLUSION:**

- ❑ **Registered e-Mail™ is a powerful deal-closing tool that can cut closing-time from weeks to days in situations involving shareholder consent, director consent, waivers, required notifications, SEC required shareholder notifications, and others.**
- ❑ **Registered e-Mail™ can cut closing time by 70% or more and closing cost by 99% in most cases.**
- ❑ **Further, there is NO need to store ANY paper copies of any agreements, records, and signatures in a transaction that uses Registered e-Mail™ techniques to close the deal.**