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Alert

NYDFS Finalizes 'First-in-the-Nation' Cybersecurity Regulation for New York-Regulated Financial Services Companies

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On Feb. 16, 2017, the New York State Department of Financial Services ("NYDFS") issued its final regulation imposing new, rigorous cybersecurity requirements on banks, consumer lenders, money transmitters, insurance companies and certain other financial service providers (each, a "Covered Entity") regulated by the NYDFS (the "Final Cybersecurity Rule").[1] It will take effect on March 1, 2017.

The Final Cybersecurity Rule is nearly identical in all material respects to the NYDFS's revised proposal that was issued on Dec. 28, 2016 (which was revised from an earlier draft issued on Sept. 13, 2016).[2] Thus, as we have discussed in our prior *Alerts*, in many ways the Final Cybersecurity Rule exceeds what other regulators have suggested, much less required, with regard to cybersecurity.[3] Further, given the scope and footprint of many New York financial institutions, the Final Cybersecurity Rule will likely have an impact far beyond the state of New York.

Timeline for Compliance

- Covered Entities have until March 1, 2018 to comply with:
    - The reporting obligations of the Chief Information Security Officer;
    - The requirement to conduct periodic risk assessments;
    - Any requirement to conduct annual penetration testing and bi-annual vulnerability assessments;

[1] The full text of the Final Cybersecurity Rule can be found at www.dfs.ny.gov/legal/regulations/adoptions/rf23-nycrr-500_cybersecurity.pdf.

[2] For a full analysis of the Dec. 28, 2016 NYDFS proposal, please see our Jan. 3, 2017 *Alert* at www.srz.com/resources/nydfs-revises-its-proposed-cybersecurity-regulation-for.html. For an analysis of the original Sept. 13, 2016 NYDFS proposal, please see our Sept. 15, 2016 *Alert* at www.srz.com/resources/nydfs-proposes-detailed-and-sweeping-cybersecurity-regulation.html. The only material differences between the Dec. 28, 2016 proposal and the Final Cybersecurity Rule are that under the latter: (1) audit trail records need only be kept for three years (instead of five years); (2) Covered Entities with 10 or employees will still be exempt so long as fewer than 10 such employees are located in New York or responsible for the business of the covered entity; and (3) Covered Entities with $5 million or more in gross revenue during each of the last three fiscal years will still be exempt so long as less than $5 million was derived each year from the New York business operations of the Covered Entity and its affiliates. *See* Final Cybersecurity Rule §§ 500.06(b); 500.19(1)-(2).

[3] However, the federal banking agencies have proposed their own cybersecurity regulations, which were subject to an extended comment period that ended today. For an analysis of those proposed regulations, please see our Oct. 24, 2016 *Alert* at www.srz.com/resources/federal-banking-agencies-propose-new-cybersecurity-regulations.html.

    - Any requirement to implement multifactor authentication or risk-based authentication; and
    - The obligation to provide regular up-to-date cybersecurity awareness training for all personnel.
- Covered Entities have until Sept. 1, 2018 to comply with:
    - Any requirement to maintain audit trail systems;
    - The requirements to implement:
        - Written procedures, guidelines and standards on application security;
        - Policies and procedures for the secure disposal of "Nonpublic Information"; and
        - Policies, procedures and controls to monitor authorized users; and
    - Any requirement to encrypt Nonpublic Information.
- Finally, Covered Entities have until March 1, 2019 to comply with the requirement to implement written policies and procedures regarding the security of systems and information accessible to, or held by, third-party service providers.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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