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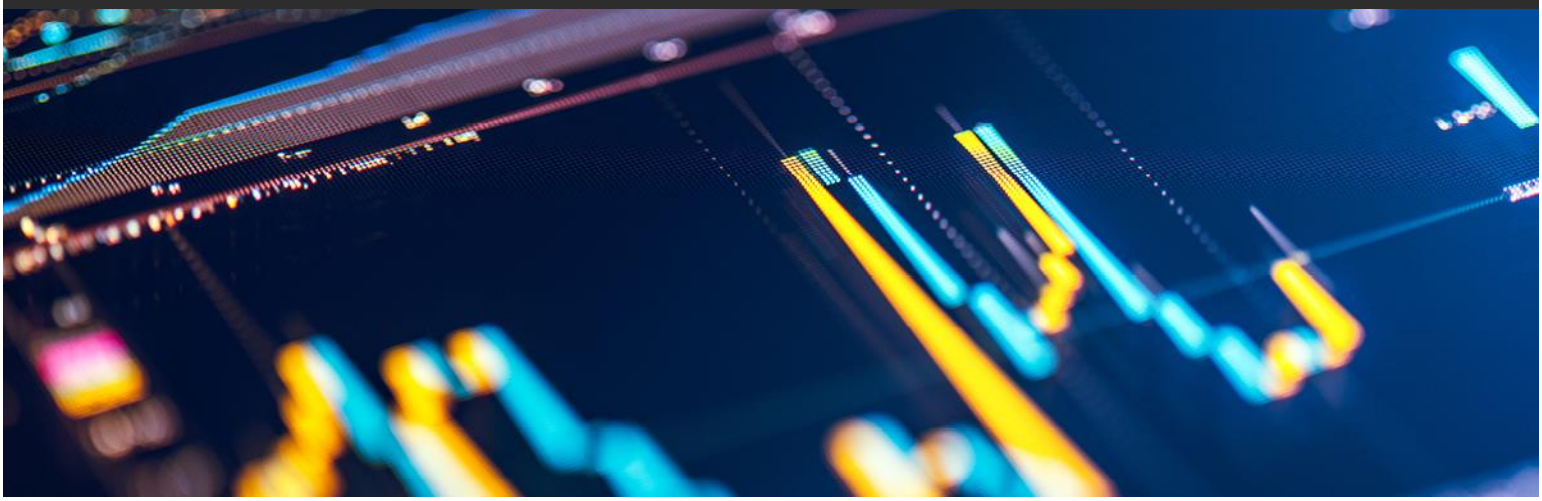

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OCIE Provides Registered Advisers and Broker-Dealers Guidance on Data Protection Compliance Obligations Under Reg S-P and Safeguards Rule

On April 16, 2019, the Securities and Exchange Commission's Office of Compliance, Inspections and Examinations (SEC OCIE) issued a helpful Risk Alert relating to the privacy Regulation S-P (Reg S-P) and "Safeguards Rule" policies and procedures of registered investment advisers and broker dealers. The Risk Alert gives registered investment advisers and broker-dealers fair notice of various points of emphasis the SEC OCIE considers important from an examination perspective and those points that could surface post-breach when the SEC OCIE's antennae are well-tuned towards finding fault with the registrant's data protection practices.

After recounting the basics of Reg S-P's privacy requirements and the requirements of the Safeguards Rule, the SEC OCIE lists what it calls "examples" of the "most common deficiencies or weaknesses identified by OCIE staff in connection with the Safeguards Rule."

A. Privacy and Opt-Out Notices – inaccurate (or completely absent) initial privacy notices, annual privacy notices, annual privacy notices, and/or opt-out notices provided to customers.

B. Lack of policies and procedures under the Safeguards Rule, related to administrative, technical, and physical safeguards – though there are some policies that address the contents of the privacy notice, there are many that do not address written policies and procedures required by the Safeguards Rule.

C. Policies not implemented or not reasonably designed to safeguard customer records and information – the SEC OCIE staff observes many registrants with written policies and procedures that are not implemented or not reasonably designed to (1) ensure the security and confidentiality of customer records and information, (2) protect against anticipated threats or hazards to the security or integrity of customer records and information, and (3) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to customers. The SEC OCIE also notes general absence of the following:

   - Policies and procedures that appear reasonably designed to safeguard customer information on personal devices like laptops;
   - Policies and procedures addressing the inclusion of customer personally identifiable information (PII) in electronic communications like unencrypted emails;
   - Policies and procedures prohibiting employees from sending customer PII to unsecured locations outside the registrant's networks;
   - Policies and procedures followed by registrants requiring vendors to keep customer PII safe;
   - Policies and procedures identifying all systems where the registrant maintains customer PII, limiting the registrant's ability to adopt reasonably designed policies and procedures to safeguard customer information;
   - Properly configured incident response plans, and procedures requiring the assessment of system vulnerabilities; and
   - Properly configured access management plans disabling former employees from logging into the network after they depart the firm so they cannot access restricted customer information.

Organizations concerned about whether their current data protection program complies with Reg S-P and the Safeguards Rule should consider a third-party gap analysis of their current program and regular vulnerability assessments.

For many of the issues identified by the SEC OCIE, the adage "pay me now or pay me later" comes to mind. Given that data breaches of large organizations are reported daily in journals and blogs, such organizations should generally be prepared for the worst. If a breach occurs and customer information is stolen, the SEC will likely take an exceedingly unsympathetic view if the registrant is found to have ignored well-defined guidance around the privacy and safeguarding of customer data.

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