

VIA ELECTRONIC MAIL

January 27, 2017

Maria T. Vullo, Financial Services Superintendent
New York State Department of Financial Services
One State Street
New York, NY 10004-1511

Re: File Number 23 NYCRR 500 Cybersecurity Requirements for Financial Services Companies

Dear Ms. Vullo:

On December 28, 2016, the New York State Department of Financial Services (DFS) announced that they have updated a proposed rule that will require banks, insurance companies, and other financial services institutions regulated by DFS to establish and maintain a cybersecurity program designed to protect consumers and ensure the safety and soundness of New York State's financial services industry (Proposed Rule).¹ The Proposed Rule would create regulatory minimum standards for cybersecurity policies and procedures for regulated entities.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. We support the Proposed Rule's adoption of a principles based approach to cybersecurity regulation and exemptions for small businesses.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives.³ These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners with strong ties to

¹ See PROPOSED RULE 23 NYCRR 500 <http://www.dfs.ny.gov/legal/regulations/proposed/rp500t.pdf>

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

³ The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term "investment adviser" or "advisor" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.⁴

Discussion

FSI appreciates the opportunity to comment on the Proposed Rule. In particular, FSI commends DFS for taking a principles based approach to cybersecurity regulation and for creating exemptions to protect small businesses.

I. FSI supports a principles based approach to cybersecurity regulation for maximum regulatory efficiency

The Proposed Rule would require regulated entities to maintain a cybersecurity program to protect the confidentiality, integrity, and availability of their information systems. The threat posed to information and financial systems by nation-states, terrorist organizations, and independent criminal actors makes cybersecurity programs a necessity to protect both the institution and consumers. DFS opted for a principles-based approach to cybersecurity regulation, creating regulatory minimum standards that are not overly prescriptive, thus providing the flexibility for designing programs that match the relevant risks and keep pace with technological advances. FSI supports principles based regulation as an efficient regulatory tool allowing businesses to tailor their cybersecurity programs to meet their unique needs. Further, a "one-size-fits-all" regulation may have a disparate impact on smaller businesses lacking the scale to spread their compliance costs across a larger base. Such an impact would likely force smaller financial institutions out of the industry, severely limiting lower income investors' access to financial advice. Additionally, the principles based approach developed by the DFS also provides more flexibility for regulators as it allows the regulators of the institutions to tailor rules to different business models. FSI commends the DFS for adopting such an approach.

II. FSI supports the Proposed Rule's thoughtful exemptions for small businesses

The Proposed Rule provides that small financial institutions that have (1) fewer than 10 employees including any independent contractors, or (2) less than \$5,000,000 in gross annual revenue in each of the last three fiscal years, or (3) less than \$10,000,000 in year-end total

⁴ Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2016).

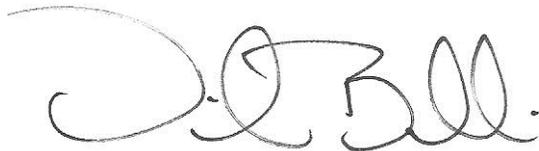
assets, are exempt from most of the requirements of the Proposed Rule.⁵ DFS also included exemptions for entities that do not directly or indirectly control the information systems and for employees or representatives of regulated entities.⁶ These exemptions ensure that financial institutions bear compliance costs proportionate to their business size and do not require duplicate efforts. DFS created these exemptions because larger financial institutions are inherently a more attractive target to cyber-attackers and carry more risk. By providing regulatory exemptions for small businesses, DFS will achieve their regulatory goal of protecting consumers while ensuring smaller, lower risk companies with fewer resources are not subject to unnecessary or duplicative requirements that could potentially drive them out of business. FSI applauds DFS for creating these exemptions, and supports DFS in their mission to create an efficient and effective cybersecurity regime that does not have a disparate impact on smaller financial institutions.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with DFS on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by the name "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel

⁵ See Proposed Rule <http://www.dfs.ny.gov/legal/regulations/proposed/rp500t.pdf>.

⁶ *Id.*