DREHER TOMKIES LLP ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

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UPDATED FTC SAFEGUARDS RULE SETS NEW STANDARD FOR DATA SECURITY

The Federal Trade Commission issued updated Standards for Safeguarding Customer Information ("Safeguards Rule") in the wake of significant data security incidents and cyberattacks in the consumer financial services sector.

The new Safeguards Rule expands the definition of "financial institution" to include not only non-bank financial institutions like non-bank lenders and credit reporting agencies, but also entities engaged in activities that the Federal Reserve determines to be incidental to financial activities. The FTC indicated that the change is intended to bring "finders"—companies that bring together buyers and sellers of a product or service—within the scope of the new Safeguards Rule. The FTC reasoned that finders often collect and maintain very sensitive consumer financial information, and that expanding the definition of financial institutions to include finders will help protect consumer financial information.

Unlike previous rules and guidance promulgated by federal financial regulators, the FTC's new Safeguards Rule includes specific technical criteria for what safeguards financial institutions must implement as part of their information security program instead of just general guidance. Among other things, the Safeguards Rule requires financial institutions:

- To establish a comprehensive written information security program and designate a qualified individual responsible for overseeing and implementing the program and reporting at least annually to boards of directors about the program.
- To undertake risk assessments and implement safeguards to address identified risks. Risk assessments must be set forth in writing and include criteria for evaluating, categorizing and identifying security risks, as well as ways to mitigate or accept those identified risks. Risk assessments must be performed periodically to reexamine the reasonably foreseeable internal and external risks to the security, confidentiality and integrity of customer information.
- To conduct annual penetration tests of information systems and twice-annual vulnerability assessments, including any systemic scans or reviews of information systems.
- To encrypt all customer information, both in transit over external networks and at rest.
- To take reasonable steps to select, retain and periodically assess service providers that maintain appropriate safeguards for consumer financial information.
- To implement multifactor authentication for individuals accessing networks that contain customer information.
- To develop, implement and maintain procedures for the secure disposal of customer information no later than two years after the last date the information was used, unless otherwise required to retain the information. Likewise, financial institutions must implement policies, procedures and controls designed to monitor and log the activity of unauthorized users and detect unauthorized access or use of, or tampering with, customer information.

The new Safeguards Rule will become effective within 30 days after publication in the Federal Register. However, many key requirements of the rule that mandate whole new compliance programs will be delayed by one year. Many of the FTC's new measures track recently enacted regulations by state financial regulators, for example, the New York Department of Financial Services' 2017 Cybersecurity Regulation. The remaining requirements, largely mirror the requirements under the existing Safeguards Rule. As a result, financial institutions likely will have no new obligations until the requirements cited above are effective in one year.

Financial institutions should carefully review the new Safeguards Rule to ensure compliance. If you have any questions, please do not hesitate to contact us. ❑

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