

RE: NYDFS ADDRESSES CYBERSECURITY REGULATION NOTICE OF EXEMPTION FILINGS

The New York Department of Financial Services (DFS) recently updated its cybersecurity regulation FAQs on its website to address larger Covered Entities filing notices of exemptions on behalf of their employees or captive agents who are also Covered Entities (for example, an individual New York-licensed broker). Please see below and click on http://www.dfs.ny.gov/about/cybersecurity_faqs.htm for the full FAQ document. The DFS guidance applies to filings of 50 or more employees or captive agents and only if they all qualify for the same exemptions. Firms are permitted to contact the DFS to gain permission to submit such a filing and to coordinate on its submission.

“Can a Covered Entity file a notice of exemption on behalf of its employees or agents?”

By permission, the Department will approve certain Covered Entities to file notices of exemption on behalf of their employees or captive agents who are also Covered Entities. This option will only be available for filings of 50 or more employees or captive agents and only if all employees or captive agents qualify for the same exemptions. Covered Entities with over 50 employees or agents on whose behalf they have authority to file should contact the Department at CyberRegComments@dfs.ny.gov from the email to which your Cybersecurity portal account is associated with the **following instructions**. The Department will coordinate with the Covered Entity to submit a one-time filing form to effectuate an exemption filing for multiple covered entities. On the spreadsheet, the submitter will need to provide the first and last name, DFS identification number, type of license, and email for every employee or captive agent. After approval, the Department will send more detailed instructions and the exemption spreadsheet. In the event that there is a need for additional names or captive agents after the initial submission, the submitter will be able to submit a supplemental form through the portal. The Department emphasizes that the employee or captive agent, for whom the Covered Entity is filing, continues to be ultimately responsible in ensuring compliance with 23 NYCRR Part 500. It remains the responsibility of the employee or captive agent to notify the Department of any changes in their status.”

ELANY wrote to the DFS on August 30, 2017 (see attachment) explaining our belief that the plain language of the regulation explicitly exempts licensees who are employees, agents, representatives or designees of a Covered Entity from the entirety of the regulation, including the Notice of Exemption filing requirement. However, the DFS FAQ is their current guidance on how to handle Notice of Exemption filings for larger firms, and indicates the DFS' belief that all licensees who qualify for an exemption pursuant to Section 500.19(b) need to file a Notice of Exemption. Section 500.19(b) states in its entirety:

“An employee, agent, representative or designee of a Covered Entity, who is itself a Covered Entity, is exempt from this Part and need not develop its own cybersecurity program to the extent that the employee, agent, representative or designee is covered by the cybersecurity program of the Covered Entity.”

We will keep you informed of further developments. Please address any questions to Howard Greene at (646) 292-5591 or hgreene@elany.org.

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