

RE: CYBERSECURITY REGULATION: QUALIFYING FOR AN EXEMPTION

The New York Department of Financial Services (DFS) has updated its online cybersecurity regulation FAQs to address the definition of who qualifies for an exemption pursuant to Section 500.19(b). The exemption applies to Covered Entities that are employees, agents, representatives or designees of another Covered Entity and are fully covered by the cybersecurity program of that Covered Entity. **All Covered Entities that qualify for the Section 500.19(b) exemption, or any other exemption contained in Section 500.19, must file a Notice of Exemption with the DFS by September 27, 2017.** Although a Notice of Exemption must be filed, ELANY's interpretation of Section 500.19(b) is that those who qualify for the exemption are exempt from the entirety of the regulation and will not need to develop their own cybersecurity program.

The DFS has explained its view of the definition of who qualifies for the Section 500.19(b) exemption. Number #1 in the DFS' online FAQs now reads in its entirety:

Is a Covered Entity entitled to an exemption under Section 500.19(b) if that Covered Entity is an employee, agent, representative or designee of more than one other Covered Entity?

Section 500.19(b) states that a Covered Entity who is an "employee, agent, representative or designee of a Covered Entity . . . is exempt from" 23 NYCRR Part 500 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" (emphasis added). This exemption requires an entire employee, agent, representative or designee to be fully covered by the program of another Covered Entity. Therefore, a Covered Entity who is an employee, agent, representative or designee of more than one other Covered Entity will only qualify for a Section 500.19(b) exemption where the cybersecurity program of at least one of its parent Covered Entities fully covers all aspects of the employee's, agent's, representative's or designee's business.

The DFS has therefore clarified that a Covered Entity, for instance an individual New York-licensed producer, must be fully covered by the cybersecurity program of another Covered Entity, such as a brokerage firm or insurance company where they are employed, to be eligible for the Section 500.19(b) exemption. If, for example, an individual licensed broker is covered under the program of multiple Covered Entities, one of those programs must fully cover the broker and all aspects of his or her business. ELANY's Bulletin No. 2017-26 explained the DFS' recently announced procedure for larger firms to file Notices of Exemptions on behalf of their employees and captive producers who are Covered Entities in their own right (<http://www.elany.org/hotnews.aspx?dID=2011&mode=8>).

Exemptions from all or part of the regulation should be filed electronically via the DFS web portal (ctrl + click: <https://myportal.dfs.ny.gov/web/cybersecurity>). You will first be prompted to create an account and log in to the DFS Web Portal, and then directed to the filing interface.

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