

January 16, 2024

RE: NEW DFS CYBERSECURITY REGULATION EXEMPTION QUALIFICATION STANDARDS

On November 1, 2023, the New York Department of Financial Services adopted significant revisions to its [cybersecurity regulation](#). The new requirements have varied compliance dates and ELANY will publish additional guidance in the coming weeks and months. However, brokers should note that effective immediately are revisions to who may qualify for a limited or full exemption from the regulation's requirements. A limited exemption only exempts licensees from specified regulatory requirements.

Licensees now qualify for a limited exemption under Section **500.19(a)** of the regulation if they have **less** than:

- 20 employees and independent contractors, including affiliates; or
- \$7.5 million in gross annual revenue in each of the prior three years from all business operations and the New York business operations of affiliates; or
- \$15 million in year-end total assets calculated in accordance with generally accepted accounting principles (GAAP), including all affiliates.

Note that the number of employees and independent contractors is NOT limited to those located in New York or responsible for New York business.

Licensees that file a 500.19(a) limited exemption must still comply with certain requirements of the regulation.

In addition, a new full exemption has been created under Section **500.19(e)** of the regulation for inactive brokers. To qualify, an individual broker (1) must not maintain, control or use, even indirectly, any Information Systems and must not have any Nonpublic Information¹; (2) has not for anything of value, acted or aided in any manner in soliciting, negotiating, or selling any policy or contract, or in placing risks or taking out insurance on behalf of another person for at least one year; and (3) does not otherwise qualify as a non-500.19(e) licensee, such as holding another type of license that is subject to the regulation.

For licensees that do not qualify for the 500.19(e) full exemption, a limited exemption under Section **500.19(c)** remains unchanged and applies to licensees that do not directly or indirectly operate, maintain, utilize, or control any information systems, and do not, and are not required to, directly or indirectly control, own, access, generate, receive, or possess nonpublic information.

Finally, a full exemption is still available under Section **500.19(b)** for a licensed employee, agent, wholly owned subsidiary, representative or designee of another licensee that is subject to the regulation if the exempt licensee is covered by the cybersecurity program of the entity licensee.

To file or change an exemption, brokers must file a [Notice of Exemption](#) with the Department of Financial Services.

Should you have any questions regarding the content of this bulletin, please direct them to Howard Greene at hgreene@elany.org.

¹ For definitions of *Information Systems* and *Nonpublic Information*, please see Section 500.1 of the [regulation](#).