

KIRKLAND AIM

June 23, 2016

Adviser Settles SEC Proceeding for Failure to Safeguard Customer Data

The SEC recently entered into a consent order¹ with a registered investment adviser and broker-dealer, settling allegations that it failed to adopt written policies and procedures reasonably designed to protect customer records and information, in violation of Regulation S-P's Safeguards Rule.

According to the Consent Order, the adviser adopted policies and restrictions with respect to employees' access to and handling of confidential personally identifiable information. However, an employee of the adviser managed to discover and exploit a weakness in the adviser's restrictions and to download customer account data from the adviser's systems to a personal server in his home. A third party then likely hacked into that employee's personal server, copied the confidential customer data and posted the data on internet sites, purportedly for sale.

Although the adviser discovered the breach and promptly took steps to remove the data from the internet and notify law enforcement and other authorities, the Consent Order provided that the adviser's policies and procedures were ineffective in that they failed to safeguard customers' personally identifiable information from the breach. The adviser agreed to a cease and desist, censure and a civil money penalty of \$1,000,000. The SEC considered the adviser's cooperation and prompt remedial efforts in accepting the settlement.

The FTC closed its investigation of the same matter last year, determining not to bring an action because the adviser had established and implemented comprehensive policies and promptly addressed the problem when it came to its attention. However, the SEC's willingness to pursue this matter with an administrative proceeding highlights the priority that the SEC is willing to give to cybersecurity incidents, as well as its willingness to view breaches as evidence of a failure to adopt and implement adequate policies and procedures. As a result, advisers should continue to test and review their policies and procedures with a view to identify and prevent leaks of personally identifiable information.

¹ See [Press Release](#) and [Consent Order](#), June 8, 2016.

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