FINANCIAL SERVICES INSTITUTE | VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

May 22, 2023

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Release Nos. 33-11028; 34-941917; IA5956; IC-34497; File No. S7-04-22
Release Nos. 33-11167; 34-97144; IA-6263; IC-34855; File No. S7-04-22
Cybersecurity Risk Management Rules for Investment Advisers, Registered Investment Companies, and Business Development Companies ("IA Proposal")
Release Nos. 34-97141; IA-6262; IC-34845; File No. S7-05-23
Regulation S-P: Privacy of Consumer Financial Information and Safeguard Customer Information ("Reg S-P Proposal")
Release No. 34-97142; File No. S7-06-23
Cybersecurity Risk Management Rule for Broker-Dealers, Clearing Agencies, Major Security-Based Swap Participants, the Municipal Securities Rulemaking Board, National Securities Associations, National Securities Exchanges, Security-Based Swap Data Repositories, Security-Based Swap Dealers, and Transfer Agents ("BD Proposal")

Dear Secretary Countryman:

On March 15, 2023, the Securities and Exchange Commission ("SEC") published the above-referenced Reg S-P Proposal and BD Proposal while also reopening comment on the IA Proposal (collectively, the "Proposals"). The SEC's goal for the Proposals is to continue to bolster its efforts to protect investors, market participants and the financial services industry from cyber intrusions, cyber attacks and, more generally, address the risk of unauthorized access to or use of customer information.

The Financial Services Institute ("FSI") appreciates the opportunity to supplement our 2022 comment letter provided in response to the Investment Adviser Proposal,[1] as well as provide key observations and considerations in response to the Reg S-P Proposal and BD Proposal. The Proposals affect FSI members specifically, many of whom are also small business owners, and the financial services industry as a whole. FSI members, like many industry registrants, are enterprises (or part of enterprises) that include dual broker-dealer and investment adviser registrants or affiliated broker-dealer and investment advisers. Therefore, the impact of the Proposals on FSI members will be both extensive and non-uniform depending on the business models across the FSI membership.

The Proposals taken together are extensive, as befits the complexity of the issues they address. The Proposals' length and complexity, however, should also require extensive comment and input from the industry well beyond a standard 60-day comment period. We are

[1] Letter from D. Bellaire, Executive Vice President & General Counsel, Financial Services Institute, providing comment in response to Release Nos. 33-11028; 34-941917; IA5956; IC-34497; File No. S7-04-22 (April 11, 2022) *available at https://www.sec.gov/comments/s7-04-22/s70422-20123275-279543.pdf* ("2022 Comment").

appreciative that the IA Proposal benefits from a reopened comment period, and encourage a similar reopening of comment periods once the initial comments to the BD Proposal and Reg S-P Proposal have been considered.

FSI appreciates the opportunity to comment on the Proposals and is ready to engage with the SEC and its staff to provide further input. As noted in our 2022 Comment, we continue to believe that there is a common interest in establishing effective and sensible practices to protect firms and the investing public from cybersecurity threats. We reiterate that any cybersecurity framework promulgated by the SEC must provide flexibility for financial industry participants to exercise their judgment and experience to adopt and adjust their cybersecurity practices. We focus our comments on areas of differences between the Proposals that require at a minimum additional clarity for implementation and would benefit from extensive changes and re-proposal. These areas would also benefit from further revisions towards more uniformity across the Proposals. We focus on the various incident reporting requirements to the SEC and to customers or clients of financial institutions as well as the importance of workability for disclosures and risk assessments.

Background on FSI Members

FSI is an industry group comprised of members from the independent financial services industry. The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are more than 160,000 independent financial advisors, which account for approximately 53 percent of all producing registered representatives.[2] These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers ("IBD").[3] FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. The majority of FSI's IBD member firms either have affiliated Registered Investment Advisers ("RIAs" or "investment advisers") or are dually registered. FSI also has some Independent RIA members as well. FSI members make substantial contributions to our nation's economy.

According to Oxford Economics, FSI members nationwide generate $35.7 billion in economic activity. This activity, in turn, supports 408,743 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly $7.2 billion annually to federal, state, and local government taxes.[4]

Independent financial advisors are small-business owners and job creators with strong ties to their communities. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI members and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the affordable financial advice, products, and services necessary to achieve their investment goals.

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[2] Cerulli Associates, Advisor Headcount 2016.
[3] The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a dually registered representative of a broker-dealer and an investment adviser representative of a registered investment adviser firm. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the Securities and Exchange Commission (SEC) or state securities division as an investment adviser.
[4] Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2020).

High Level Summary of the Proposals

The Proposals are ambitious in breadth and scope yet subject to comment periods that are far too short considering the ambition of the Proposals. Many FSI members are dual broker-dealer and investment adviser registrants (or are enterprises comprising affiliated broker-dealers and investment advisers) and therefore will be subject to all three components of the Proposals. While we comment solely on the impact of the Proposals on FSI members, we note that the Proposals attempt to be an interlocking set of cybersecurity risk management and incident response requirements for the near totality of the securities industry, beyond broker-dealers and investment advisers.

The Proposals include the following components, several of which are present across the Proposals while others are specific to the individual Reg S-P, BD or IA Proposal:

- cybersecurity policies and procedures that address risk assessment, user security and access, information protection, cybersecurity threat and vulnerability management and incident response and recovery;
- reporting requirements to the SEC within compressed timeframes (whether immediately or within 48-hours) of significant cybersecurity incidents, with requirement that such reports be amended promptly after any information becomes materially inaccurate and/or new information is uncovered and/or resolution occurs;
- reporting requirements to affected clients or other affected individuals;
- disclosures to describe material cybersecurity risks, which must be promptly amended and re-delivered to clients if there are material revisions; and
- new recordkeeping requirements tied to the above requirements across all three Proposals.

Discussion

FSI appreciates the SEC's approach to the three proposals, which are interconnected in their application to FSI members and other industry participants. The interconnected nature of the Proposals, as well their inherent complexities – both on an individual basis and when considered together – require extensive comment and input. We provide several comments designed to streamline certain aspects of the Proposals, and expect other commenters will do so as well. Therefore, we believe that additional comment and input will be necessary prior to adoption. Furthermore, aligning the approaches across the Proposals should take into account firm resources and size.[5]

We provide our comments below, summarized as follows:

- the Proposal should not be adopted without benefitting from additional comment periods;
- when the SEC adopts the Proposals, the SEC should provide an extended implementation period of two years for all firms subject to the above referenced proposals, and three

[5] We appreciate that the BD Proposal has a partial exclusion for certain smaller broker-dealers though note that the impact of the BD Proposal – and the Reg S-P Proposal – remains outsized for these smaller broker-dealers. Smaller investment advisers do not benefit from any relief based on their size and are also subject to an outsized impact from the IA Proposal and the Reg S-P Proposal.

years for smaller BDs as defined in the BD proposal and smaller IAs defined as firms with up to $1 billion in regulatory assets under management ("RAUM");

- the SEC, insofar as it is possible and workable, should align as much of the Proposals as possible to existing incident reporting and data privacy regimes as well as aligning the Proposals to each other where appropriate;
- the Reg S-P notification requirement should be revised from "as soon as practicable, but not later than 30-days" to "as soon as practicable, but not later than 60-days" after a firm becomes aware that unauthorized access to or use of customer information has occurred or is reasonably likely to occur.
- the BD Proposal's immediate requirement for reporting to the SEC should be extended, as it is currently unworkable;
- the IA Proposal's 48-hour reporting requirement to the SEC should also be extended, as it is challenging and perhaps unworkable;
- Form SCIR-I and II, Form ADV-C and Form ADV Part 2A Disclosures should be streamlined into a single two-part form including both a confidential and a public-facing component.

I. The SEC and Firms Continue to Share Common Interest in Fostering Effective and Sensible Practices to Address Cybersecurity Threats Though Firms Seek Extended Implementation Periods to Ensure Workability

A. Introduction

As we outline below, the Reg S-P reporting requirement serves a different purpose than the IA Proposal's or the BD Proposal's reporting requirements. The proposed Reg S-P requirement is for reporting to affected clients, or other affected individuals. We appreciate the approach in the Reg S-P Proposal, though reiterate our concerns about workability of the interconnected nature of the Proposals. We address these further below.

B. FSI Appreciates the Reg S-P's Proposal at Creating a Federal Minimum Standard for Cyber Incident Notification for Broker-Dealers and Investment Advisers[6] and Proposes Changes to Clarify and Enhance the Proposal

FSI appreciates the Reg S-P Proposal seeks to establish a federal minimum standard for breach/incident notification to affected customers and supports this concept. We also appreciate that the SEC is considering putting into place a standard that contemplates both (1) incident notification and (2) certain key definitional aspects such as a definition for sensitive personal data. The SEC's attempt to align both incident response and definitional requirements with certain existing requirements will allow firms to leverage their existing programs in implementing changes to Reg S-P.

We agree with the Reg S-P Proposal approach that the notification requirement only apply if a firm determines that the sensitive customer information was not actually or is not reasonably likely to be used in a certain manner. However, with regard to the manner of use, we recommend that the SEC amend the manner of use from "in a manner that would result in substantial harm or inconvenience" to strike the reference to "or inconvenience." We do not recommend changing the definition of "substantial harm" other than removing "or inconvenience" as the definition uses the

[6] As a reminder, we focus our comments solely on these types of entities.

clear standard of "more than trivial," which aligns with "substantial harm" and does not align with "inconvenience."

We recommend that the notification requirement under Reg S-P be revised from "as soon as practicable, but not later than 30-days" to "as soon as practicable, but not later than 60-days" after a firm becomes aware that unauthorized access to or use of customer information has occurred or is reasonably likely to occur. We are requesting this change because the Reg S-P Proposal notes that the 30-day notification deadline is shorter than the timing mandated by 15 states and enhanced as compared to 32 states.[7] A 60-day deadline would accomplish the same goals and provide more workability for firms.

We note that Reg S-P's reporting requirement to affected clients or other individuals will not replace state requirements and that firms will continue to have to comply beyond the minimum federal standard set by Reg S-P for at least 20 or so states. The SEC should consider this burden when determining implementation periods, as it will require data privacy and incident notification programs at firms to insert the Reg S-P federal minimum standard into their existing processes and then reconcile remaining added requirements for certain states. The benefits of a federal minimum standard will outweigh the burden of this exercise, though the entire exercise will require an extended implementation period, which we address below.

C. FSI Reiterates the Importance of Revising the Proposals, Reopening Comment Periods and, upon Adoption, considering an Extended Implementation Timeline

As noted above, FSI requests that the SEC reviews and implements the comments to the Proposals and reopens the comment periods. While the IA Proposal is already benefiting from a reopened comment period, the Proposals, taken together, will benefit from revisions and another concurrent comment period. Taking this approach will also reduce the potential for unintended consequences that need to be corrected by future rulemaking or staff guidance.

We also request an extended implementation period of two years for all firms subject to the above referenced proposals, and three years for smaller broker-dealers as defined in the BD Proposal and smaller IAs defined as firms with up to $1 billion in RAUM. We propose a longer implementation period for smaller broker-dealers and investments advisers to allow these firms to benefit from implementation for larger industry participants.

The above two steps – follow-up comment periods and extended implementation deadlines – are especially important in light of the unprecedented magnitude of the SEC's rulemaking calendar and other rule changes that broker-dealers and investment advisers will need to make based on 2022 and 2023 rulemaking alone. For example, the SEC's Safeguards Proposal[8] will impact both investment advisers (who require qualified custodians for the custody and safeguard of assets) and broker-dealers (who act as qualified custodians along with banks and trust companies). Expecting FSI members, many of whom are dual registrants or have affiliated broker-dealers and investment advisers, to engage with implementation of the safeguarding proposal at the same time as the above referenced cybersecurity proposals is both burdensome

[7] See Reg S-P Proposal 88 FR 20616, 20618 (April 6, 2023).
[8] See Safeguarding Advisory Client Assets, Investment Advisers Act Rel. No. 6240, 88 FR 14672 (March 9, 2023). We would also support the SEC taking a holistic approach to the Proposals as well as the Safeguarding Proposal and other investment adviser proposals.

and an unwise use of technology, risk management tools and legal and compliance resources. Sequential implementation will allow firms to use their resources more effectively.

II. The SEC Should Clarify and Further Align the Various Cybersecurity Incident Reporting Requirements Across the Proposals and Streamline the Form Filings Required

A. Introduction

As we outline below in a comparative chart, the Reg S-P Proposal's incident reporting requirement serves a different purpose than the IA Proposal's or BD Proposal's incident reporting requirements. We appreciate the approach in the Reg S-P Proposal, which applies uniformly to broker-dealers and investment advisers and allows for streamlining of process. FSI encourages the SEC to rationalize the reporting requirements for cybersecurity incidents across the Proposals to ensure that a dual broker-dealer investment adviser registrant is not engaging in duplicative reporting to the SEC. Furthermore, timelines should more clearly align for both broker-dealers and investment advisers reporting to the SEC to allow for dual registrants and affiliated firms (e.g., a broker-dealer with one or two investment adviser affiliates) to streamline reporting.

We reiterate our 2022 Comment that the SEC should balance prompt cybersecurity incident reporting with the uncertain nature of initial fact finding immediately after an incident. This is especially important in the context of the BD and IA Proposals, which require very accelerated – to the point of unworkable – reporting timelines to the SEC.

B. Summary of Proposed Reporting Requirements in Event of an Incident

We summarize the reporting requirements across the Proposals below to illustrate areas where the SEC could exercise more uniformity to improve workability, streamline reporting and avoid duplication, particularly for dual registrants.

Proposal	Who receives report?	How soon after the incident	Comments
Reg S-P	Affected individuals, subject to harm analysis	As soon as practicable and no longer than 30-days.	Reporting (/notifying) affected individuals based on reasonable investigation that sensitive customer information could be used in a way that results in substantial harm or inconvenience. Reg S-P has no reporting requirement where the SEC is a recipient.
BD Proposal	SEC (electronically and then using Form SCIR-I within 48-hours)	Immediately upon having a reasonable basis to conclude that a significant incident has occurred or is	Electronically (immediately) and then Form SCIR-I for SEC reporting (48-hours) and Form SCIR-II used for disclosure to all customers (some or all of

		occurring and then again within 48-hours.	whom would have been notified through proposed Reg S-P notification requirement).
IA Proposal	SEC (use Form ADV-C)	Within 48-hours after having a reasonable basis to conclude that a significant incident has occurred or is occurring.	Form ADV-C used for SEC reporting (48-hours) and Form ADV Part 2A used for disclosure to all clients (some or all of whom would have been notified through proposed Reg S-P notification requirement).

C. The Immediate Reporting Requirement for Broker-Dealers is Unworkable and the 48 Hour Reporting for Form ADV-C Remains Challenging

FSI is concerned about the immediate reporting requirement for broker-dealers and FSI reiterates its 2022 Comment regarding the 48-hour reporting requirement for investment advisers, which also applies to broker-dealers in addition to the immediate reporting requirement. We continue to seek a thoughtful dialogue on the Form ADV-C requirement – in timing, breadth and scope – because Form ADV-C as currently proposed remains challenging and possibly wholly unworkable for investment advisers to file at the level of specificity and accuracy expected within 48-hours. We have similar concerns regarding the immediate reporting requirement for broker-dealers – whether electronically initially or then via Form SCIR-I – and believe that the immediate reporting requirement further exacerbates the workability concerns of a 48-hour reporting requirement. We reiterate our 2022 Comment that the SEC consider a 72 hour or 4-day report as opposed to an immediate report or a report within 48-hours.

We provide below comments on streamlining and consolidating the reporting requirements for investment advisers and broker-dealers through a single form, noting that the form would then also extend to other types of Market Entities as defined in the BD Proposal.[9] We do not comment on the single form being used for all Market Entities in addition to broker-dealers as these types of entities are not part of our membership. We note, however, that Market Entities other than broker-dealers would benefit from a streamlined reporting regime and encourage the SEC to revise the proposal and request further comment.

D. Form SCIR-I and II, Form ADV-C and Form ADV 2A Disclosures Should be Streamlined Through a Single Two-Part Form

As the above chart demonstrates, there are multiple forms required to achieve the same common goal of reporting cyber incidents to the SEC. We recommend that the SEC propose and adopt one standard two-part Form, Form SCIR ("Proposed Form"), that would be used by entities

[9] Market Entities in addition to broker-dealers include clearing agencies, major security-based swap participants, the municipal securities rulemaking board, national securities association, national securities exchanges, security-based swap data repositories, security-based swap dealers or transfer agents) as these types of entities are not part of our membership.

that must report incidents to the SEC and provide disclosures to their clients or stakeholders. We address the cybersecurity disclosure components of Form SCIR-II, as currently proposed, and Form ADV 2A further below in III.

Part 1 of the Proposed Form would serve the purpose of both Form SCIR-I and Form ADV-C[10] for broker-dealers and investment advisers.[11] In the event of an incident, broker-dealers and investment advisers would file Part 1 of the Proposed Form with the SEC via CRD/IARD. Part 1 of the Proposed Form would remain fully confidential and for regulatory use only. The goal of Part 1 of the Proposed Form would be to ensure reporting is streamlined, subject to regulator use only and benefitting from a safe harbor. For example, if a dual registrant has an incident reportable to the SEC, the dual registrant would report to the SEC as an institution, not separately as a broker-dealer or investment adviser, and also submit a copy of the report to FINRA.

We reiterate our 2022 Comment regarding the importance of confidentiality[12] and the need for clarifying that any form filed with the SEC regarding an incident (whether Part 1 of the Proposed Form, Form ADV-C or Form SCIR-I) be confidential and for regulator use only. We also reiterate our 2022 Comment that the responses to be filed with the SEC in the event of an incident be streamlined and limited[13] and that the responses be subject to a safe harbor.[14] Safe harbor language would provide additional SEC acknowledgement that the information that broker-dealers and investment advisers submit may evolve.

Should the SEC adopt both Form SCIR-I and Form ADV-C, we urge that Form SCIR be filed through CRD/IARD rather than Edgar. The Form CRS rulemaking is a good example of extending the capabilities of the CRD/IARD system for both broker-dealers and investment advisers.[15]

III. The SEC Should Streamline the Disclosure and Risk Assessment Burdens the Proposals Would Impose

A. Introduction

We reiterate our 2022 Comment regarding disclosure and risk assessments, and extend those comments to the BD Proposal as well as reiterating the comments in the context of investment advisers. Since investment advisers and broker-dealers often use the same vendors, it is important that the SEC consider uniform risk assessment approaches to ensure robust third party assessments across the industry. We also provide further comment on the public-facing portion of the Proposed Form that would replace Form SCIR-II and Form ADV Part 2A Disclosures.

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[10] If the SEC prefers to use Form SCIR for all broker-dealers and investment advisers, not that the Form it could be termed Form ADV-SCIR for ease of use.

[11] As noted above, though outside the scope of our comments, Market Entities other than broker-dealers would likely benefit from a streamlined reporting regime and encourage the SEC to revise the proposal and request further comment.

[12] We note that our 2022 Comment addressed how investment advisers may be asked to waive confidentiality of Form ADV-C in situations such as due diligence. We had asked that the SEC clarify that Form ADV-C is confidential and for regulator use only as part of any final rulemaking and include this clarification in Rule 204-6.

[13] In our 2022 Comment, FSI recommended that an initial Form ADV-C only contain questions (1)-(5) and (7), with an abbreviated question (6) that only includes the first question of 6, but not (6)(a) or (6)(b).

[14] Our 2022 Comment noted the potential chilling effect of Form ADV-C, as proposed, as an investment adviser would be filing Form ADV-C during a time when resources are best used to abate the attempted intrusion(s) of a bad actor seeking to victimize an investment adviser.

[15] When Form CRS was proposed, it contemplated that Edgar be used for broker-dealers and IARD for investment advisers, but by the final rulemaking, the SEC-FINRA relationship was expanded to include CRD for Form CRS.

B. Form SCIR-II and Form ADV 2A Incident Related Disclosures Should Be Streamlined Through a Single Two-Part Form

We described above how Part 1 of the Proposed Form (akin to Form SCIR-I or ADV-C, but further streamlined) would consolidate the confidential reporting of an incident to the SEC. We recommend taking a similar approach for client-facing disclosures through Part 2 of the Proposed Form. Part 2 of the Proposed Form would contain the disclosures currently contemplated by Form ADV 2A and Form SCIR-II and be subject to an annual update requirement.

When designing Part 2 of the Proposed Form, we also urge the SEC to draw from Form CRS and tie the initial submission of Part of the Proposed Form to Form CRS delivery triggers. Unlike Form CRS, however, Part 2 of the Proposed Form would allow affiliates to use a single form, though not require it. Regardless of whether an enterprise elects to use one or multiple Part 2 of the Proposed Form, the instructions would remain the same for broker-dealers and investment advisers.

We acknowledge that building a form such as the Proposed Form will require additional rulemaking and comment and urge the SEC to consider a broker-dealer/investment adviser working group to ensure as much uniformity as possible.

Conclusion

FSI is committed to constructive engagement in the regulatory process and welcomes the opportunity to work with the SEC on this and other regulatory efforts. We also reiterate our 2022 Comment regarding the importance of transparency in this area. Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

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