May 10, 2023

A TOUR THROUGH RECENT CYBERSECURITY DEVELOPMENTS

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- ✓ **THE WHITE HOUSE AND THE BIDEN-HARRIS ADMINISTRATION**
- ✓ **U.S. SECURITIES AND EXCHANGE COMMISSION**
- ✓ **NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES**
- ✓ **WHAT SHOULD COMPANIES BE DOING?**

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BIDEN-HARRIS NATIONAL CYBERSECURITY STRATEGY

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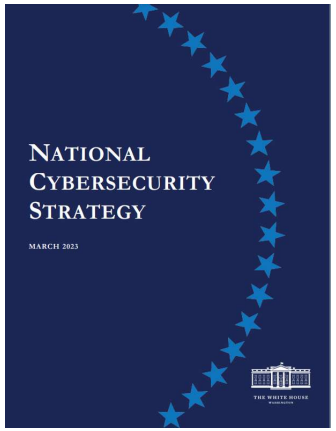
- On **March 3, 2023**, the White House released the **National Cybersecurity Strategy** – a blueprint for a long-term effort by the Biden administration, in cooperation with Congress and the private sector, to address cybersecurity issues

NATIONAL CYBERSECURITY STRATEGY PILLARS

- ✓ **Defend Critical Infrastructure**
- ✓ **Disrupt and Dismantle Threat Actors**
- ✓ **Shape Market Forces to Drive Security and Resilience**
- ✓ **Invest in a Resilient Future**
- ✓ **Forge International Partnerships to Pursue Shared Goals**



SEC PROPOSED RULES AND AMENDMENTS FEBRUARY 2022

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- On **February 9, 2022,** the SEC released proposed new rules and amendments addressing cybersecurity risk management and cybersecurity-related disclosures for registered investment advisers, registered investment companies, and funds (including business development companies)
- The SEC comment period will close on **May 22, 2023**

PROPOSED RULE 204-6

Requirements

- ✓ Advisers required to report significant cybersecurity incidents to the SEC promptly, but in no event later than 48 hours
- ✓ Advisers required to submit a report by submitting a new Form ADV-C, which would be confidential

PROPOSED RULES 206(4)-9 & 38A-2

Requirements

- ✓ Policies and procedures
- ✓ Annual reviews and required written reports
- ✓ Fund board oversight
- ✓ Recordkeeping

FORM ADV PART 2A PROPOSED AMENDMENTS

Requirements

- ✓ Advisers required to disclose certain material cybersecurity risks and certain cybersecurity incidents
- ✓ Funds required to disclose any principal cybersecurity risks and significant fund cybersecurity incidents

SEC PROPOSED AMENDMENTS MARCH 2022

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- On **March 9, 2022** the SEC released proposed cybersecurity disclosure amendments to its rules for **public companies**
- Comment period reopened late 2022; Date to be finalized is **TBD**

KEY PROPOSED AMENDMENTS

- ✓ **Report "material cybersecurity incidents" to the SEC, using Form 8-K, within 4 days**
- ✓ **Report non-material incidents that, when combined with other incidents, become material "in the aggregate"**
- ✓ **Mandatory disclosure of any material changes on Form 10- Q and Form 10K from the disclosures in the initially filed Item 1.05 8-K**
- ✓ **Provide updates on prior incidents in periodic SEC disclosures**
- ✓ **Provide a description of the company's cybersecurity risk management system**
- ✓ **Describe the Board's oversight of cybersecurity risk**
- ✓ **Disclose the cybersecurity expertise of the Board members**

SEC PROPOSED RULE AND AMENDMENTS MARCH 2023

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- On **March 15, 2023,** the SEC issued proposed cybersecurity amendments to current SEC regulations for broker dealers, investment companies, and registered advisors and a new proposed rule addressing cybersecurity requirements for market and covered entities
- Comments are due on **June 5, 2023**

REGULATION S-P PROPOSED AMENDMENTS

Applicability

- ✓ Broker-dealers
- ✓ Investment Companies
- ✓ Registered Investment Advisers

Requirements

- ✓ Customer notification
- ✓ Scope of information under Safeguards Rule and Disposal Rule
- ✓ Recordkeeping
- ✓ Incident response

REGULATION SCI PROPOSED AMENDMENTS

Key Amendments

- ✓ Expanded definition of SCI Entity
- ✓ Strengthening obligations of SCI Entities

PROPOSED RULE 10

Applicability

- ✓ Market Entities
- ✓ Covered Entities

Requirements

- ✓ Policies and procedures
- ✓ Notification and reporting of Significant Cybersecurity Incidents
- ✓ Disclosure of cybersecurity risks and incidents
- ✓ Recordkeeping

PROPOSED NYDFS PART 500 AMENDMENTS

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- ✓ Class A Companies: New obligations for large companies. Additional obligations include independent audits, vulnerability assessments, password controls, and monitoring
- ✓ Governance: CISO independence, additional board reporting + expertise, policy approvals, CEO certification, BCDR plans, and tabletop exercises and IRP
- ✓ Risk Assessment: Tailor assessments to the specific organization with annual updates
- ✓ Technology: Proscriptive requirements, including implementing policies and procedures to ensure a complete asset inventory and requirements relating to privileged accounts
- ✓ Notification Obligations: NYDFS must be notified within 72 hours of unauthorized access or deployment of ransomware; within 24 hours for extortion payments + rationale
- ✓ Penalties: Clarifies what constitutes a violation and provides a list of mitigating factors

WHAT SHOULD COMPANIES BE DOING TO PREPARE?

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- ✓Review cybersecurity and risk management documents
- ✓Educate the Board and management
- ✓Review incident response plans
- ✓Identify what materiality means to your company

Questions & Contacts

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