

The Increasing Exposure Due to the Seen and Unforeseen - Data Security Liability

Did you know:

- 68% of all breaches are off-line - not related to what you do on the internet/web.
- 50% of breaches involve lost or stolen laptops or other media.
- 30% to 40% of breaches are by someone to whom you entrust data- a 3rd party custodian.

Risk Managers and/or Chief Compliance Officers (CCO), have an uphill battle in their effort to protect their firm against the seen and unforeseen. Now, they can add one more area of concern: The SEC will be increasing their focus on recent security breaches within the securities industry. Daniel Hawke from the Securities & Exchange Commission recently stated that one of their focus areas will be the protection of client's assets. As part of your risk-based approach to fraud prevention, an advisor needs to conduct a comprehensive fraud risk assessment on many aspects of their business including operational vulnerabilities and limitations, personnel risks as well as risks posed by vendors, partners and other third parties. At what point has your firm and the CCO done enough due diligence to alleviate them from liability?

Specific claim examples were outlined in a recent article written by Theodore J. Sawicki and Kerry K. Vatzakas from the law firm of Alston & Bird LLP. They stated cases that imposed liability on CCOs where their failure to supervise or monitor situations where "the CCO assumed or was assigned certain supervisory responsibilities pursuant to the firm's policies and procedures and failed to fulfill those responsibilities." In addition, they provided examples of "liability for failure to establish, maintain, and enforce compliance policies and procedures." Finally, and most importantly, since most CCOs are trying their best to keep up with the responsibilities that come along with the job, the authors state the following, "where the company has taken steps to adopt, implement, and enforce compliance policies and procedures in accordance with the Rules, there is authority for the proposition that the CCO would not be charged even though a bad actor in the firm is held accountable for his violation of applicable laws, rules and regulations."

The following developments add to the aforementioned areas of exposure:

- The Safeguarding Rule under SEC Regulation S-P and the 2008 proposed amendments.
- Developing strong internal controls to identify and assess the red flags of identity theft.
- Efforts on the part of the states, with a particular focus on the pending Massachusetts data security regulations, and the FTC to impose broader and more specific requirements on companies that collect personal information.

It is an impossible task for the CCO to keep-up with all the requirements and due diligence imposed upon them. The inability to properly protect your client's confidential information can be crippling to a business in terms of financial impact and damage to your reputation. As with most areas of exposure, there is an insurance solution that will help protect your firm when "due diligence" isn't enough.

There is a solution:

Starkweather & Shepley Insurance has negotiated Data Security Liability coverage specifically designed to meet the unique exposure faced by those in the investment industry.

This policy is offered by an "A XV" rated insurance carrier according to Best's Key Rating Guide with a superior reputation for claims handling. Enhancements include:

- Coverage for off-line risk.
- Loss due to breaches from lost or stolen laptops or other media.
- Full vicarious liability coverage
- Full limits for defense of privacy regulatory proceedings.
- Coverage responds to "breach response" or "notification" cost even if you don't have a statutory obligation to notify. Most carriers will only cover breach response costs if the law compels you to incur them.

To find out more about this specific product, please contact the articles author, Andrew Fotopulos.

Every day you face increasing exposures from many sources. As the saying goes, "when there is a will, there is a way." While you can control your own actions, you may not be able to control the actions of those around you, including outside service providers and especially criminals. However, you may be held responsible, or even worse, liable!

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