

Two States Propose ID Theft Rules

State legislatures in both Massachusetts and New Jersey are considering new laws that would further tighten up procedures that securities firms need to take in order to protect their clients' identities.

But a number of advocacy groups, including the Investment Company Institute, have come out against both states. They charge that the states have exceeded their respective authorities and the changes will make it harder for nationwide firms to conduct business.

Last year, New Jersey's Department of Consumer Affairs published for comment a rule proposal that called for businesses to take steps to maintain and protect certain information about their in-state clients. Massachusetts' Consumer Affairs Division is working on another proposal that firms must notify in-state consumers if there is a breach of their personal information that could create a risk of identity theft or fraud.

State laws have a unique path before they take effect. The state legislature gives the authority for a specific agency to modify a law, and that agency writes up the proposal for comment before finally adopting it. New Jersey has published its proposal, while Massachusetts has not.

Identity theft has been a growing concern recently. Last year, the threat was renewed in the public mind when the department store TJ Maxx announced that an unknown suspect stole customer information off almost 48 million credit and debit cards.

Prior to that, the SEC increased its interest in the issue. First, it launched a sweep of investment advisers and broker-dealers to track down perpetrators of identity theft. The Commission also investigated how firms prevented identity theft and how they compensated victims.

The Commission also said it would propose a series of amendments to Regulation SP that would give financial services firms clearer guidance on how to protect customers' confidential information. Thus far, the SEC has not published any amendments.

While the Massachusetts law is geared more for the retail stores such as TJ Maxx and others, it also applies to financial services firms because it specifically addresses any business that handles state residents' personal information.

The new standards aren't new to companies in the financial services industry.

their own requirements that could conflict with national standards, it can become troublesome and costly for firms.

“We are a national industry and we do business in all 50 states,” said Tamara Salmon, senior associate counsel at the ICI. “When you have individual states dictating what our data security needs to be, that’s problematic.”

And if more states pass their own standards, those might conflict with national procedures and could complicate matters for firms, she said.

Other trade groups also submitted comments voicing their concerns. They say the rules will have unforeseen consequences. They said it might prove costly. One Massachusetts requirement is that firms keep an inventory of records of personal information and the hardware used to store them.

“Essentially, these requirements may discourage larger businesses from locating in Massachusetts or doing business with residents of Massachusetts, while putting the existence of small businesses in severe jeopardy,” said Jon Hurst, the president of the retailers trade group, in his comments to the Commonwealth.

In her letter to the Commonwealth of Massachusetts, Salmon said that she felt the state had exceeded its authority by proposing the law. She said that all of ICI’s members registered with the SEC. The Commission takes care of identity theft concerns through the Gramm-Leach-Bliley Act.

While New Jersey is pondering the comments it received over its proposal, Massachusetts held a hearing last month and invited those who are against the proposal to testify. Thus far, the Commonwealth has not made any changes to the proposal.

If the two states approve their respective rule proposals, the ICI’s only recourse would be to go before Congress and request some form of national standard that would supersede what the states did. ICI has not reached out to Congress yet. Salmon said such a move would be premature, since the states have not enacted any legislation yet.

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