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Between The Lines

OCTOBER | 2017 | WWW.CP2LAW.COM



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Cybersecurity and the Colorado Securities Act



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On July 15th, 2017, the latest amendments to the Colorado Division of Securities Rules under the Colorado Securities Act took effect. Contained within these Rules are several new provisions related to cybersecurity standards for broker-dealers (BDs) and investment advisors (IAs) that follow in the footsteps of several other state legislatures taking on the increasingly prevalent cybersecurity issue. In the absence of formal Rules, BDs and IAs have been operating in a “fingers-crossed” environment where the only way of really knowing what cybersecurity controls are necessary is to get sued for some sort of cybersecurity issue (likely a data or privacy breach) and see how the case plays out. With these new Rules, Colorado is moving closer to a safe harbor for BDs and IAs as to cybersecurity controls, which is a good first step toward minimizing risk to BDs and IAs for data and/or privacy breaches and minimizing risk to client data and information loss.

In general, the cybersecurity standards for BDs and IAs require BDs and IAs to establish and maintain written procedures reasonably designed to ensure cybersecurity and include cybersecurity as part of its risk assessment. Easy enough, but what procedures should you establish and how do you know if they are reasonably designed? The Rules provide guidance on both points to start.

To the extent reasonably possible, the cybersecurity procedures must provide for:

- 1) An annual assessment by the firm or an agent of the firm of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Confidential Personal Information (CPI);
- 2) The use of secure email for email containing CPI, including use of encryption and digital signatures;
- 3) Authentication practices for employee access to electronic communications, databases, and media;
- 4) Procedures for authenticating client instructions received via electronic communication; and
- 5) Disclosure to clients of the risks of using electronic communications.

Best Lawyers® Honors G. Brent Coan and John W. Madden, III

G. Brent Coan, managing member, and John W. Madden, III, of counsel, were included in the 2018 Edition of The Best Lawyers in America. This is Mr. Coan’s fifth year in a row having been selected by his peers for inclusion for corporate and real estate law and Mr. Madden’s third year having been selected for his work in construction law.

Since it was first published in 1983, Best Lawyers® has become universally regarded as the definitive guide to legal excellence. Best Lawyers® lists are compiled based on an exhaustive peer-review evaluation. Corporate Counsel magazine has called Best Lawyers® “the most respected referral list of attorneys in practice.”

CP2 Welcomes New Attorney Carol S. Raznick



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Ms. Raznick's practice focuses on all aspects of commercial real estate, homebuilding, financing, mergers and acquisitions and general business. She assists her clients with all their transactional needs, including negotiating and drafting contracts and other documents regarding acquisitions, warranties, indemnities, dispositions, purchase and sale options, debt, as well as entity formations and restructuring.

Ms. Raznick has over thirty-five years of experience in practice, including a period where she served as VP of Real Estate-Legal for M.D.C. Holdings, Inc., one of the nation's largest publicly traded homebuilders. As a result of that experience, she developed exceptional negotiating skills which offer creativity within the legal framework and optimize legal and other protections, while achieving the entrepreneurial objectives of her clients.

Ms. Raznick has represented real estate developers, homebuilders, investment bankers, management companies, investors, entrepreneurs and Fortune 500 Companies. She enjoys working with individuals and entities in developing tactics and strategies to allow them to not only compete, but to succeed in today's business and real estate environments. She has been instrumental in creating highly effective solutions to significant business and legal issues.

Ms. Raznick received her undergraduate degree from the University of Colorado at Boulder, and her J.D. from Emory University School of Law. She is licensed to practice in Colorado as well as the 10th Circuit.

Confidentiality, integrity, and availability, known in the cybersecurity world as the "CIA Triad", is the cornerstone of cybersecurity. The CIA Triad is specifically referenced in the first requirement of the new Rules, but applies to all of the requirements. If any element of the CIA Triad is compromised, you are vulnerable. The Rules are focused on the protection of CPI, and protection of the CIA Triad protects CPI, thereby protecting BDs and IAs.

CPI is specifically defined in the Rules, but most of us understand that CPI is information about a person that a person would not want to have disclosed – social security numbers, account numbers, passwords, etc. Unauthorized access to CPI can be mitigated by strengthening the CIA Triad, which in turn can be done through the creation and implementation of proper internal controls. The current strength of your CIA Triad is determined through an

assessment commonly referred to as an IT Audit, and which is addressed in the first requirement of the Rule. The IT Audit starts with an understanding of the needs of the business, looks at the risks to the business itself, looks to how technology interacts with the business, identifies risks and vulnerabilities to those business-supporting technologies, and then recommends controls to implement to reduce those risks and vulnerabilities. An external IT Audit typically covers risks and vulnerabilities pertaining to everything from the network to the business systems to human interactions to physical security; however, there is no set formula or pattern as each individual IT Audit is focused on the specific needs of the business. A good IT Auditor will begin to align your business with one of the many standardized control protocols, meaning that each year as your cybersecurity program matures, the IT Audit becomes less intense because your business continues to further protect the CIA Triad.

The Rules do not require that you have a specific control or procedure in place that states something specific, but rather that you have controls and procedures in place that address the requirements of the Rules. In other words, the specifics of your business dictate the controls and procedures that will be required to be in compliance with the Rules. An individualized IT Audit will help you determine what is specifically needed for your business.

Along with the cybersecurity-specific requirements, the new Rules also have requirements for development of business continuity and succession planning. Although beyond the scope of this article, business continuity and succession planning are frequently addressed in an IT

CP2 Welcomes New Senior Paralegal Pamela Czerwinski

Ms. Czerwinski works with the firm's real estate team. She comes to CP2 with twenty-five years of paralegal experience in real estate, corporate law, and litigation. Ms. Czerwinski is a graduate of the University of Arizona with a degree in Criminal Justice Administration. Ms. Czerwinski is a tutor with Whiz Kids providing literacy, math and homework help to elementary school children. In her free time, she enjoys spending time with her husband, Marek, her dog, Bosco, and family and friends.



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Audit as technology is a key factor in these areas. Sound planning, periodic testing, and a continual desire to adapt will help ensure that business continuity plans and succession plans meet the letter and intent of the Rules.

Altogether, the new cybersecurity requirements in the Rules appear daunting, and if you haven't given any thought to cybersecurity in the past, they probably are daunting. With that being said, a trusted advisor in the IT Audit field can shoulder this burden for you and allow you to continue spending your time working for your clients and making money while the IT Auditor handles your cybersecurity compliance. The attorneys of Coan, Payton & Payne's Technology Group provide a full range of IT-focused services, including counseling, regulatory compliance, litigation, and IT Audit services. For assistance with compliance with the new Rules, contact us today.

Cautious Optimism—Plan for the Worst and Hope for the Best

A Look at Agricultural Insolvencies



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Staring into a Crystal Ball Ploy

In the last four years, there has been a protracted downturn in agricultural commodities prices. Nevertheless, it appears that there may be a significant uptick in commodity prices this year. Moreover, experts in Colorado remain optimistic for our region in light of potential regulatory reform and tax reform.

All current optimism and speculation and conjecture aside, it is always appropriate for those in an agricultural region to be prepared and equipped to, on the one hand, address threats and, on the other hand, exploit opportunities.

In this article, I will address the impact of farm failures and the need to prepare for the far-reaching impact, including the farmers; their families and workers; the equipment suppliers; the fertilizer and seed companies; and those who have leased or financed materials and equipment to the farmers. The chain reaction has the potential to ripple through the marketplace.

So, what becomes of a farmer when bankruptcy seems to be the only option? First, the farmer should seek

out wise bankruptcy counsel and accountants to navigate through all options. Second, the farmer should start those conversations much sooner than he or she actually thinks they should begin the conversation because many disappear as the economic situation declines. Third, because everyone in the business chain working with the farmer has some exposure, it is often wise to reach out to the lender to ascertain what options might be available to address any financial squeeze. However, when all else fails there are some very viable options in a bankruptcy. One of those options is found under Chapter 12 of the Bankruptcy Code.

Chapter 12

Chapter 12 of the Bankruptcy Code provides an option specifically to family farmers with regular annual income. 11 U.S.C. sections 101(18), 109(f). The reason for the "regular annual income" requirement is to ensure that a debtor's annual income is sufficiently stable and regular to permit the family farmer to make payments under a Chapter 12 Plan. The "regular annual income" language further recognizes the seasonal nature of a

Brett Payton Appointed to Greeley City Council



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Founding member Brett Payton has been appointed to the Greeley City Council, representing Ward 2. Mr. Payton's appointment demonstrates his continued commitment to service in the Greeley community. Mr. Payton is also the current chairman of the Greeley Chamber of Commerce, a former chairman of the Greeley Planning Commission, a board member for the University of Northern Colorado Bizhub collaborative, and the vice chairman of the Global Refugee Center in Greeley.

"Brett walks the talk when it comes to our core values of community service and leadership," said managing member, G. Brent Coan, "This is another terrific example of his commitment to serving his community," he continued.

Mr. Payton is a founding member of Coan, Payton & Payne, LLC with over 13 years of legal experience in all areas of real estate, business and banking litigation. Mr. Payton is the firm's litigation practice leader and has a successful professional record helping his clients deal with complex commercial litigation.

family farmer's business.

A family farmer is defined in the Bankruptcy Code with some precision. This reflects the concern of Congress that this provision only be used by family farmers. In some instances the question comes up as to whether a family farmer is, in fact, a family who farms. There are a number of advantages of Chapter 12 bankruptcy for the family farmer including, primarily, the ability to reorganize and preserve assets from liquidation in a much less complicated fashion than in Chapter 11. Another key advantage to Chapter 12 is that it also protects anyone who has co-signed on personal, family or household debt. Unless the bankruptcy court grants relief from the automatic stay as to the co-signer, a creditor may not seek to collect these consumer debts from the co-signer.

Creditor Interests

Because lenders often have liens over crops, livestock and so on, lenders should be proactive in protecting what is known as a cash collateral. Cash collateral is defined as any cash proceeds stemming from a secured creditor's collateral. A lender must ensure that

its interest in cash collateral is adequately protected by replacement liens and payment during the case. If the Debtor, for instance, sells crops and does not remit proceeds thereof to the secured creditor, it can mean that the creditor loses its secured lien and may be transitioning to an unsecured creditor status. Chapter 12, however, does have a special provision regarding adequate protection which among other things, allows for periodic cash payments, additional/replacement liens, or, with respect to farmland, payment for the use of the land of the reasonable rent customary in the community in which the property is located. This provision allows the debtor to sell crops, pay a portion of the secured proceeds to its secured creditor, and retain the remainder of the proceeds to fund new crops, for instance.

Future Thinking

It is important that lenders and farmers be aware of options when financial hardships arise. The future of farming, as it has always been, depends on weather, world economics, and governmental policy. Equipping for whatever comes is the most powerful advantage we can all have.

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Our offices are conveniently located throughout Colorado, giving you easy access to our trusted team of legal professionals.

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