

**Concurring Statement of Commissioners Christine S. Wilson
and Noah Joshua Phillips**

*Public Workshop Examining Information Security for Financial Institutions and
Information Related to Changes to the Safeguards Rule
File No. P145407*

February 28, 2020

Today the Commission announced a public workshop relating to its April 4, 2019 notice of proposed rulemaking (“NPRM”) recommending changes to the Commission’s Safeguards Rule. Although we dissented from the issuance of the NPRM, we concur with the decision to hold this workshop. Our dissent from the issuance of the NPRM¹ was based in part on the fact that the FTC lacked an adequate evidentiary basis for the proposed rule’s requirements, so we applaud the FTC’s willingness to seek additional information, empirical data, and testimony from stakeholders and experts to inform the agency’s analysis of potential changes to the Safeguards Rule.

Our dissent expressed several concerns that subsequently were echoed in comments submitted to the FTC during the NPRM process:

- First, we were concerned that the proposed revisions are overly prescriptive. We are wary of trading flexibility for a costly one-size-fits-all approach that would divert company resources away from risk management initiatives specifically tailored to each entity’s unique data collection, usage, and storage practices.² Our wariness was exacerbated by the fact that the proposal would apply remedies imposed in specific data security enforcement actions—generally outside the context of the Safeguards Rule and only to the firms named in those actions—to financial information generally, without a basis to conclude that the Safeguards Rule is not adequate or that covered firms systematically have worse data security than those not covered, such that additional regulation beyond the current Rule would be warranted.
- Second, we were concerned that this new and prescriptive approach would impose significant incremental costs without materially reducing data security risks or

¹ Dissenting Statement of Commissioner Noah Joshua Phillips and Commissioner Christine S. Wilson, Regulatory Review of Safeguards Rule (Mar. 5, 2019), https://www.ftc.gov/system/files/documents/public_statements/1466705/reg_review_of_safeguards_rule_cmr_phillips_wilson_dissent.pdf.

² Comments express similar concerns that the proposal is overly prescriptive and creates costs that may not significantly reduce data security risks or increase consumer benefits. See Comments submitted by Office of Advocacy, US Small Business Administration, National Automobile Dealers Association, Mortgage Bankers Association, Global Privacy Alliance, Software Information & Industry Association, and U.S. Chamber of Commerce. NPRM Comments are posted at <https://www.regulations.gov/document?D=FTC-2019-0019-0011>.

significantly increasing consumer benefits.³ The submission from NADA, by way of example, highlights the incremental costs imposed by the proposed revisions: NADA estimates that it would cost the average car dealership one-time, up-front costs of \$293,975, with \$276,925 in additional costs each year.⁴ These incremental costs will be particularly burdensome for new entrants and smaller companies, which may ultimately hinder competition with larger and better-established rivals.

- Third, we were concerned that the suggested Rule revisions substituted the Commission’s judgment for a private firm’s governance decisions.⁵
- Fourth, we were concerned that the Rule was premature because the proposed regulations are substantially based on relatively new New York State Department of Financial Services regulations that have not been market-tested for feasibility and efficacy.⁶

The workshop will enable the FTC to obtain additional information about the costs and benefits of the proposed rule changes and the ability of companies that fall within the Rule’s scope to comply with the proposed changes. We continue to encourage stakeholders, including experts in security for financial services companies, to comment and provide evidence for this workshop. We are particularly interested in hearing from those who are knowledgeable about security for small businesses. In light of the significant proposed changes to the Safeguards Rule, and the concerns expressed by many commenters thus far, we view this additional solicitation of input from stakeholders as vital.

³ See Comment from the National Independent Automobile Dealers Association (noting the considerable costs imposed on financial institutions from the proposed revisions and the need for the FTC to demonstrate a clear link between its proposal and reductions in data security risks and increases in consumer benefits).

⁴ Comment from the National Automobile Dealers Association (NADA), 42.

⁵ This sentiment is reflected in the comment from the Software Information & Industry Association.

⁶ Comments express similar concerns that the FTC’s proposed regulations rely on untested frameworks and recommend allowing time to assess the impacts of the model legislation. See Comments from the Office of Advocacy, US Small Business Administration, CTIA, National Automobile Dealers Association, and Consumer Data Industry Association (CDIA).