INCEDO

CCPA AND ITS IMPACT ON WEALTH MANAGEMENT INDUSTRY

When the GDPR became a law in Europe, American companies not doing business in Europe heaved a sigh of relief that they did not have to comply with the stringent requirements laid out in the law. However, as Arab spring showed us, movements have a way of spreading beyond borders. Privacy spring has now come to USA in the form of CCPA (California Consumer Privacy Act). CCPA provides protection to all California residents and lays down markers on how the consumer data can be used by various businesses.

THE ACT WHEN IT BECOMES OPERATIONAL IN JAN 2020 PROVIDES THE CALIFORNIA RESIDENTS THE RIGHT

- to know what kind of data is being collected for them and for what purpose it is getting used
- to request deletion of the personal data
- To opt out in case their personal information is getting sold (defined broadly to include any valuable consideration) to third parties.

While the legislation will impact any business dealing with the consumer data, this article will focus narrowly on the impact of legislation to the wealth management industry and more narrowly to wealth managers * (Wire houses, broker dealers, RIAs, Advisors). Since the act defines that any business that earns gross revenue of more than 25 million dollars will be under its purview, a large number of wealth managers will fall under the ambit of the act.

TO START LET US LOOK AT THREE IMPORTANT TERMS DEFINED BY CCPA

1) **Personal Data –** information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household

2) **Sale –** selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer's personal information by the business to another business or a third party for monetary or other valuable consideration

3) **Collection –** Active or passive buying, renting, gathering, obtaining, receiving, or accessing any personal information pertaining to a consumer by any means.

The complete implications of the act are still evolving, but the article below looks at some typical scenarios in the wealth management space which will get impacted by the legislation. There may be many more areas which the wealth managers will need to analyze to gauge the true impact of this far reaching legislation.

Client and Advisor Data – CCPA defines consumers broadly as any person who is a resident of California. Therefore, not only the end clients but even the advisors would be classified as consumers under this definition and will therefore both client as well as advisor portals will fall under CCPA ambit. Therefore the wealth managers will have to.

- Disclose on their respective client/ advisor portals all the consumer information that they are collecting/ storing on their systems. If the business is storing client information in electronic or other forms outside the client portal, then those data points will also need to be disclosed here since the client does not have access to the other systems. For example: certain client data may have been collected in the CRM system which is only used by the advisors, but the business will need to disclose those data points in the client portal.

- Allow clients to request for deletion of the various data points. This clause is especially tricky since the client data gets proliferated into many systems apart from the client portal and the business may not even have the full inventory of where all the client data exists. For example: the client data exists in systems ranging from CRM, Portfolio management, financial planning, trade review, document management etc. Not fully deleting the data after request may lead to non-compliance. One important point to note is that the wealth managers can turn down certain specific deletion request if they are essential to providing services to the clients but other non-essential data will need to be deleted on request. Advisors will probably not ask for deletion of data while they are affiliated with the wealth manager, but they may ask for deletion of their data (even more widely proliferated than the client data) after termination.
- Lastly, if the broker dealers or wire houses make this data available to third parties (example outside RIAs, ensemble practices) for value (defined very broadly to include non-monetary considerations), then they will need to give the clients the option to opt out.
- Wealth managers would also need to educate customer about their rights under CCPA .

CCPA has defined the personal information in very broad terms to make it all encompassing. Definition of personal information is not restricted to income, demographics, investments etc. but also includes details such as usage patterns, device data or any other information that can be tied to an individual or household. Therefore, if the companies collect client usage analytics to provide them more relevant information or provide them a more personalized experience, those details will also need to be disclosed to the customer. The customer will have the right to know its usage and can also request for its deletion, although savvy wealth managers should be able to justify turning down these requests claiming necessity for providing effective service

Data Aggregators – Data aggregators like Yodlee, Quovo will be directly impacted by CCPA as they are directly collecting the consumer data from multiple sources and making it available for value to the various advisors, broker dealers, banks and other financial institutions. The aggregators will need to disclose on their websites what kind of data they are collecting/ aggregating and reselling to wealth management industry and beyond. If a significant number of consumers request for opt out or deletion of such data, that may impact the astronomical valuations that the data aggregators currently command. The wealth managers even though they are not directly collecting the data but via indirect means will fall under the ambit. The wealth managers will be required to

- Comply with aforementioned points mentioned under the client and advisor portal section and will need to declare the details of the Held away data even though they may not hold that data.
- For deletion, if wealth managers are viewing the data on the data aggregator website, then deletion would mean unsubscribing to the particular client's data. If the wealth managers have the data on their servers, they would be required to delete such data not directly provided by the consumer.
- Provide opt out clause if this data is further resold for value.

Service Providers – The act defines service providers as any entity that processes consumer data on behalf of another entity. The wealth manager's deal with a number of such service provider's example: New client personal information is generally keyed in by advisors or clients on the wealth manager's portal but is then passed on to custodians (service provider) for account creation. Another example would be TAMPs who are given client personal information (demographics, goals, risk profile) for providing asset management services. CCPA does not impose the same level of stringent requirements for data shared with the service providers but it does mandate that

- Such sharing of information should be disclosed to the customer
- There should be a contract in place between the service provider and the business which prohibit the service provider from using or disclosing the information shared for purposes other than the performance of service.

So the wealth managers should start looking at their custodian or TAMP contracts to incorporate the above language. As long as such a contract is in place and the service provider does not misuse the data with explicit knowledge of the wealth manager, the wealth managers would not be liable.

Data Monetization – The wealth managers have in recent times looked to monetize the wealth of data that they possess by sharing it with the product sponsors or with the advisors for monetary value. Needless to say, such data sharing will fall straight under the ambit of CCPA and the entities will need to disclose about such data sharing to the consumers and also give them the chance to opt out of such an arrangement. Bear in mind, the act only prohibits data sharing in case it can be tied back to the final customer, it does not preclude creation and sharing of anonymized data or analytics regarding a group of customers. For example : If you share information about the trades and investments of consumer A, that falls under CCPA ambit, however if you share analytics about the investment patterns of consumers from a particular demographic or an age group , that does not fall under the ambit of CCPA, since the information cannot be tied back to an individual or a household.

Employee and Contractor Data – As the consumer is defined broadly, theoretically employee and contractors data will also fall under the ambit of CCPA. Wealth managers will need to disclose details of the information stored for the employees/ contractors to them. However, the businesses may be able to claim exemption from the deletion clause (even after termination), since the personnel records are required to be stored for legal compliance and for future employment verifications.

SO HOW SHOULD THE WEALTH MANAGER APPROACH THE UPCOMING LEGISLATION AND BE PREPARED FOR ITS IMPLEMENTATION COME 2020.

- For a start, the technology department should look at inventory of all its application and look at what kind of data each of these applications collect or disseminate. This will help them determine whether a particular application falls under the purview of CCPA.
- If the business teams are running their own applications outside IT knowledge and dealing with customer data, they should disclose such applications and the respective data to the IT teams to arrive at a master repository of Apps.
- The inventory exercise should identify the data housed and also look to classify each type of data as “Delete Eligible” or not based on exemptions provided by the act.
- Similarly, the operations departments such as brokerage ops, commissions, L&R should look at their processes and see what all consumer information they are processing/ sharing with external entities in the form of spreadsheets or data exchange.

Knowing is the first step towards correcting. Such an exercise will reveal many blind spots that the organizations were not even aware of and which would make them non-compliant. Once the data is collected, subsequent steps would be similar to the ones outlined earlier in the white paper viz. updating privacy policies, client disclosures, service agreements, providing deletion and opt out requests etc.

Although the act will come into force in 2020, it does mandate looking at client related activities for the last 12 months. The wealth managers should already be looking at how and what kind of consumer data they are holding or processing and should have their strategy in place on how they will address the various provisions of the act. What applications are impacted, what all data is held in each of the systems, what privacy notices will be shown, what all agreements need to be changed, what all deletion requests will be honored without compromising the business performance are some of the questions that the organization's CCPA task force should be asking now.

CCPA actually is a milder version of the original CCPA that California voters were to vote on. Therefore businesses should absolutely expect that come 2020, many consumer groups would demand to know the details of their data. Therefore business should Ask question now to be able to answer in 2020.

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