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Compliance Tips for COVID-19

Presented by Bryan Hill

March 26, 2020

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*Our Annual Investment Adviser
Compliance Conference Is Going Virtual
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August 26 & 27, 2020

https://www.ria-compliance-consultants.com/conference_2020/



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RCC will award a Compliance Professional of the Year during our conference RIA Compliance Connection 2020.

Winner received free attendance for RIA Compliance Connection 2020 and RCC will donate \$500 to a charity of the recipient's choosing.

Now Accepting Nominations

Upcoming Webinars

Expungement of Customer Complaints

Wednesday, April 8, 2020 at 12:00 p.m. CDT

Complimentary

Preparing Form ADV Part 3/CRS

Wednesday, April 22, 2020 at 12:00 p.m. CDT

Complimentary

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Presentation Agenda

An Array of Compliance Topics Related to COVID-19:

Notice of Office Closure

Custody

Form ADV

BCP/Succession Planning

Due Diligence

Client Communication

Cybersecurity

Financial Condition of Firm

Client Complaints

Exams & Enforcement

Notice of Office Closure

- If Supervised Persons Are Not Working in Office and Not Available to Accept Mail or Deliveries
 - Notify Clients of Such Closing
 - Explain How Clients Can Contact the Applicable Supervised Persons
 - Remind Clients that All Securities & Checks Should Be Sent Directly to Qualified Custodian
 - Notify Applicable Vendors
 - Consider Options on How to Monitor Mail/Deliveries
 - Daily Visit to Office, Mail Pick-Up Service or Forwarding Mail

Custody – Receipt of Client Assets

- Previous Custody Guidance
 - Inadvertently Receives Securities from Client – Must Return within 3 Days
 - Inadvertently Receives Tax Refund, Class-Action Settlement or Dividends – Must Forward within 5 Days
- Updated Custody Guidance
 - If an Investment Adviser Is Unable to Access Mail or Deliveries at an Office Location Due to BCP in Response to COVID-19, SEC Wouldn't Consider Investment Adviser to Have Received Such Assets Until Personnel Are Able to Access the Office Location.

See Staff Responses to Questions About the Custody Rule Question II.1 (Modified March 16, 2020.)

Update ADV – Temporary Office

Q: My firm has employees who are temporarily conducting investment advisory business from a temporary location other than their usual place of business (their homes, for example) as part of the firm's business continuity plan due to circumstances related to coronavirus disease 2019 (COVID-19). Item 1.F of Part 1A requires information about a firm's principal office and place of business. Section 1.F of Schedule D requires information about "each office, other than your principal office and place of business, at which you conduct investment advisory business." Is my firm required to update either Item 1.F of Part 1A or Section 1.F of Schedule D in order to list the temporary teleworking addresses of its employees?

A: No. As long as the employees are temporarily teleworking as part of the firm's business continuity plan due to such circumstances, staff would not recommend enforcement action if the firm does not update either Item 1.F of Part 1A or Section 1.F of Schedule D in order to list the temporary teleworking addresses. (Posted March 16, 2020)

See <https://www.sec.gov/divisions/investment/iard/iardfaq.shtml#item1f>

Update ADV – Other Issues

- Regulatory Contact – Verify Contact Person & Contact Information Is Current on Form ADV Part 1
- Books & Records - If Original Required Records Are Maintained at New Location - Form ADV Part 1, Schedule D, Section 1.L
- Material Information – If Impact of COVID-19 Is Material on Investment Adviser or Services, the Form ADV Part 2A Should Be Updated Promptly.

SEC ADV Filing & Delivery Extension

- If Investment Adviser Registered with SEC or ERA Is Unable to Meet ADV Annual Amendment Filing, Form PF Filing or ADV 2A Delivery Requirements Due Effects of COVID-19, Investment Adviser May File/Deliver No Later Than 45 Days After the Original Due Date of the Filing/Delivery (as Applicable) If it Meets the Following Requirements:
- Provides the Commission via Email at IARDLive@sec.gov and Discloses on its Public Website the Following Information:
 - It is relying on this Order;
 - A brief description of the reasons why it could not file or deliver its Form on a timely basis; and
 - The estimated date by which it expects to file or deliver the Form.

SEC – Use of Extension Is Not Risk Factor

*OCIE believes it is important to communicate to registrants that **reliance on regulatory relief will not be a risk factor utilized in determining whether OCIE commences an examination.** We encourage registrants to utilize available regulatory relief as needed.*

See <https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor-protection-and-continued>

COVID-19 Updates by State Securities Regulators

- NASAA Established a Webpage of COVID-19 Updates by State Securities Regulators:

<https://www.nasaa.org/industry-resources/covid-19-updates/>

- Several States Have Announced Extensions for Annual ADV Amendments

Business Continuity Plan

- Should Review & Update BCP in Light of Extended Work From Home Scenario
- Verify All Mission Critical Tasks Are Documented
- Cross-Train Back-Up Employee on All Mission Critical Tasks

Succession Plan

- Multi-Rep Investment Adviser Firm - Should Review, Establish and/or Update the Following Related to Disability or Death of Owner or Key Officer
 - Limited Powers of Attorney, Corporate Resolution, Check-Writing Authority, Buy-Sell Agreement
- Single-Rep Investment Adviser Firm – Should Review, Establish and/or Update
 - Temporary Service Agreement with Limited Power of Attorney & Buy-Sell Agreements with Other Investment Adviser Firms

Vendors – Ongoing Due Diligence

Investment Adviser Should Consider,
Analyze or Investigate the Implications of
COVID-19 on Critical Operational
Relationships with Key Service Providers

Client Communication

- Check In with All of Your Clients
- Document All Communications/Meetings
 - Have a 2nd Staff Member in Call/Meeting Taking Notes
- Utilize Agendas/Checklists, Contemporaneous Notes & Follow-Up Emails, Letters or Minutes
- Trusted Emergency Contact Authorization
 - Don't Rely Upon Merely Qualified Custodian
- Verify with Client Beneficiaries Are Correct
- Make Sure Power of Attorneys, Health Directive, Trusts and Will Up-To-Date

Client Communications

- Text Messaging, Social Media Messaging and/or Slack to Clients
 - Does Your Investment Adviser Have Technology to Supervise & Archive Messages
 - If Yes, Need Compliance Manual Section & Training
 - If No, Remind Supervised Persons Cannot Use Text Message for Client Communication or Trading Purposes
- Email sent to Multiple Clients Should Be Reviewed as Advertising/Sales Literature

Client Communications - Scams

- Warn Clients of COVID-19 Scams Related to Miracle Drugs/Remedies
 - Watch Out for Bogus Research Reports on Microcap Stock Fraud – Pump & Dump Schemes
 - Submit Tips & Complaints of Fraud to <https://www.sec.gov/tcr>
- Warn Clients of Stimulus Package Related Scams – Sharing SSN or Account Numbers
- Remind Supervised Persons to Watch for Diminished Capacity & Financial Exploitation – Report to CCO for Investigation
- Remind Supervised Persons to Verify 3rd Party Transfer Requests

Working from Home – Physical Security

- Implement clean desk policy - no confidential client information or documents on unattended desk
- Implement procedures to shred immediately any discarded document with confidential client information
- Lock file cabinets and desks (or office) with confidential client documents and information

Working from Home – Cybersecurity

- Require Supervised Person to Use Firm's Computer/Laptop & Prohibit Using Personal Computer/Laptop
 - Encrypt Computer/Laptop
 - Make Sure Firewall Turned-On & Anti-Virus/Malware Active
 - Lock Screen When Not In Use
 - Do Not Write Password Down Next to Computer/Laptop
 - Have IT Use Remote Access To Verify Set-Up Correctly If New Arrangement

Working from Home – Cybersecurity

- If Using Personal Computer/Laptop, Recommended Mitigation:
 - Verify Operating System and Security Patches Are Current and Automatically Updated
 - Make Sure Firewall Turned-On
 - Verify Anti-Virus and Malware Software Installed/Active
 - Conduct Full Scan to Identify Any Issues
 - Create a Separate Login for Supervised Person
 - Do Not Save Passwords in Browser & Automatically Delete Browsing History
 - Use Password Manager to Login To Cloud Services & Turn On Two-Factor Authentication Wherever Possible
 - Do Not Save Documents with Confidential Information on Personal Computer/Laptop
 - Lock Screen or Log Out When Not Using
 - Recommend Requiring Supervised Person to Confirm in Writing & Have IT staff check via Remote Access

Working from Home – Cybersecurity

- WiFi
 - Verify Not Using Public WiFi
 - Recommend Using Data When Accessing Confidential Client Info or Systems
 - Verify WiFi Is Password Protected, Only Used by Trusted Family Members/Roommates & Other Security Features Are Turned-On (e.g. Using WPA2)
- Remote Access to Server – Require VPN to Access
- Access Cloud Service Providers
 - Turn on 2FA
 - Use Unique/Complex Password

Cybersecurity - Protecting Against Phishing

- **Stay Current.** Watch news about current developments of phishing scams.
- **Check Out Links Before Clicking.** Hover over links before clicking and verify that the links lead to where they should. It's better to go to the site than click on a link when possible.
- **Ask Others About Unexpected Emails.** If you receive an unexpected email, ask the sender or others about whether this is an expected email.
- **Double Check Website Address** – Watch out for a malicious website's use of deceptive website addresses using similar but different names with one character missing or different from a legitimate website.
- **Avoid Ads with Diagnostic Warnings, Prize Notices or Sensational Headlines.** Avoid ads on website that look like diagnostic warnings about your computer or that the user has won a prize. Also avoid pop-up windows trying to lead you to a less secure website. Avoid clickbait – sensational headlines designed to click to read more.
- **Investigate Suspicious Websites** - Search for information about the suspicious or unknown website – look for other people's experiences with the site. Run a Google safe browsing diagnostic on site.
- **Verify Site's Security.** Make sure website starts with "https" and/or includes a locked sign near the website address.
- **Secure Browser.** Utilize an open-source, secure browser like Firefox with a privacy focused extension like PrivacyBadger to protect sensitive browser and user data.

Cybersecurity - Protecting Against Phishing

- **Install Anti-Phishing Toolbar in Internet Browser.** Run quick checks on the sites that you are visiting and compare them to lists of known phishing sites.
- **Check Online Accounts and Statements.** Regularly review online accounts and any statements to verify no unauthorized activity.
- **Change Passwords.** Regularly change the passwords for online accounts.
- **Keep Browser Updated.** Promptly download and install security patches for browser.
- **Use Firewalls.** Verify that your network has a hardware firewall and desktop has software firewall.
- **Block Pop-Ups.** Turn-on browser feature that blocks pop-up ads.
- **Utilize Anti-Virus Software.** Scan for malicious files.
- **Notify CCO and CIO of Phishing.** Encourage supervised persons to report promptly any instances of the supervised person falling victim of phishing scam.
- **Monitor Security Breaches Involving Email Address.** Subscribe to Firefox Monitor to monitor whether your email addresses have been involved in a cybersecurity breach exposing your personal information.

Working from Home – Cybersecurity

- Educate Supervised Person on Who to Contact if Possible Cybersecurity Breach
- Maintain Copy of Cybersecurity Incident Response Plan at Home
 - Including Contact Name and Info of Various Parties Who Have To Be Contacted In Event of Breach

To Extent COVID-19/Market Volatility Causes Investment Adviser's Financial Condition to Decline

- SEC – Must Disclose Precarious Financial Condition to Clients
- State – If State Has a Net Worth Requirement, Must Make Sure that Still Meeting State's Requirements

Client Complaints

- Remind Supervised Person that Any Client Complaints or Potential Complaints Should Be Reported to CCO
- Review Emails/Messages/Correspondence for Complaints for Potential Complaints
 - Refine Key Words for Filters to Help Identify Complaints
- Promptly Acknowledge Receipt of Client Complaint in Writing, Conduct Investigation by Objective & Competent Party, Consult with Legal Counsel Depending Upon Circumstances, Report to E&O Carrier Depending Upon Circumstance, Provide Letter of Findings to Client.

Regulatory Exams

- New Exams Are Currently Being Initiated
- Existing Exams Are Continuing with New Information Requests
- Our Past Experience Is Regulators Intensify Scrutiny During Volatile Markets to Protect Clients

SEC Exam & Enforcements

*[T]he Division of Enforcement and the Office of Compliance Inspections and Examinations **continue to execute on their mission of protecting investors and remain fully operational.** The agency is actively monitoring our markets for frauds, illicit schemes and other misconduct affecting U.S. investors relating to COVID-19—and as circumstances warrant, will issue trading suspensions and use enforcement tools as appropriate.*

See <https://www.sec.gov/sec-coronavirus-covid-19-response>

SEC Exams Now Off-Site (3/23/2020)

*OCIE remains fully operational nationwide and continues to execute on its investor protection mission. In light of health and safety concerns and other circumstances, OCIE has moved to conducting examinations **off-site through correspondence**, unless it is absolutely necessary to be on-site.*

<https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor-protection-and-continued>

SEC Exams – Will Attempt to Minimize Disruption

Recognizing these conditions and priorities, OCIE is working with registrants to address the timing of its requests, availability of registrant personnel, and other matters to minimize disruption. Specifically, we will work with registrants to ensure that our work can be conducted in a manner consistent with maintaining normal operations, and importantly, necessary or appropriate health and safety measures.

<https://www.sec.gov/ocie/announcement/ocie-statement-operations-health-safety-investor-protection-and-continued>

ADV Part 3/CRS

SEC Has Provided **No** Indication Whether It Will Postpone Requirement to File Form ADV Part 3/Client Relationship Summary with SEC (6/30/20) or Delivery to Existing Client (7/30/20).

Questions & Answers



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Automation-focused software designed to streamline back office functions

bridgeft.com



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Insurance Solutions

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First 20 attendees pay \$395 for both days - Click [here](#) to register

Client Relationship Summary – Form ADV Part 3

Webinar Presented by Bryan Hill
Over 30 FAQs Pertaining to Form ADV Part 3
Form ADV Part 3 Drafting Service - \$595

<https://www.ria-compliance-consultants.com/form-adv-part-3-faqs/>

Schedule Introductory Call via Online Appointment System

<https://my.timedriver.com/QQ21L>

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