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# Drafting Tips for Form ADV Part 3

April 2020

# Strategic Alliance Members



## Bridge Financial Technology

Automation-focused software designed to streamline back office functions.



## Lockton Affinity, LLC

Insurance Solutions for member based organizations



## WiserAdvisor/Paladin

Connecting motivated investors to financial advisors nationwide

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## Presentation Limitation

This presentation is strictly limited to issues facing an investment adviser under the new Form CRS/Form ADV, Part 3 Relationship Summary. It does not address issues facing broker-dealers.

# Agenda

- What Is the Form ADV Part 3 Relationship Summary
  - Applicable Firms
  - Applicable Clients
  - Format
  - Length
  - Filing
  - Delivery
  - Updates
- Specific Questions of Form CRS/Form ADV, Part 3 Relationship Summary
- Areas of Focus During SEC Exams on Form ADV Part 3 Compliance

## What is the Form ADV Part 3

The Form CRS/Form ADV, Part 3 relationship summary is a written disclosure that provides a retail investor with succinct information about the relationships and services the firm offers to retail investors, fees and costs that retail investors will pay, specified conflicts of interest and standards of conduct, and disciplinary history, among other things.

## Form ADV Part 3 Applies to SEC Investment Advisers

The requirements of the Form CRS/Form ADV, Part 3 apply to all investment advisers registered or applying for registration with the U.S. Securities and Exchange Commission (“SEC”).



## ERAs Are Not Required to File Form ADV Part 3

The requirements of the Form CRS/Form ADV, Part 3 do not apply to exempt reporting advisers filing with the SEC.

## State Investment Advisers Are Not Required to File/Deliver Form ADV Part 3

The SEC's new rule, which adopts the Form CRS/Form ADV, Part 3 requirement, applies only to SEC registered investment adviser firms and not state registered investment adviser firms.

See page 3 at <https://www.sec.gov/rules/final/2019/34-86032-appendix-a.pdf>.

## Intended Clients

A SEC registered investment adviser firm will be required to deliver the Form CRS/Form ADV, Part 3 relationship summary to each “retail investor” of the investment adviser firm.

# Retail Investor

For purposes of an SEC registered investment adviser's delivery of the Form CRS/Form ADV Part 3 relationship summary, a "retail investor" is a **natural person**, or the **legal representative** of such natural person, who seeks to receive or receives services **primarily for personal, family or household purposes**.

See page 10 at <https://www.sec.gov/rules/final/2019/34-86032-appendix-b.pdf> .

# Legal Representative of Retail Investor

- Only Covers Non-Professional (i.e., Non-regulated) Legal Representatives
- Examples of Non-Professional Legal Representatives Are Non-Professional Trustees that Represent Assets of Natural Persons and Similar Representatives Such as Executors, Conservators, and Persons Holding a Power of Attorney for a Natural Person
- A Non-Professional Legal Representative Is Covered Pursuant to this Rule Even If Another Person is a Trustee or Managing Agent of the Trust

## Legal Representative of Retail Investor

- A workplace retirement plan representative (e.g., plan sponsor, trustee, other fiduciary) generally is not considered a non-professional legal representative of a natural person
  - Except in limited circumstances (e.g., where the plan representative is a sole proprietor or other self-employed individual who will participate in the plan).

# Legal Representative of Retail Investor

- If a legal representative is a regulated financial services industry professional, he or she would not be covered by the definition of “retail investor.”
- Examples of regulated financial services industry professionals include registered investment advisers and broker-dealers, corporate fiduciaries (e.g., banks, trust companies and similar financial institutions) and insurance companies, and the employees or other regulated representatives of such advisers, broker-dealers, corporate fiduciaries and insurance companies.
- In the staff’s view, a legal representative who was formerly a regulated financial services industry professional, but who is not currently regulated, would be considered a “non-professional” legal representative that would be covered by the definition of “retail investor.”

## No “Retail Investors” = No Form ADV Part 3

No, a SEC registered investment adviser firm is not required to prepare or file a Form CRS/Form ADV, Part 3 relationship summary if it does not have any retail clients.

See page 2 at <https://www.sec.gov/rules/final/2019/34-86032-appendix-b.pdf> .



## Length of Form ADV Part 3

For a SEC registered investment adviser firm (which is not dually registered as a broker/dealer), the Form CRS/Form ADV, Part 3 may not exceed 2 pages. If an investment adviser firm is a dually registered as a broker-dealer and desires to use 1 relationship summary, the relationship summary may not exceed 4 pages. The SEC registered investment adviser firm must use reasonable paper size, font size and margins.

See page 2 at <https://www.sec.gov/rules/final/2019/34-86032-appendix-b.pdf> .

## Content of Form ADV Part 2A

Similar to the Form ADV, Part 2A, the Form CRS/Form ADV, Part 3 relationship summary must include the specific information asked in the instructions. The investment adviser firm must respond to each item and must provide responses in the same order as the items appear in these instructions. The investment adviser firm may not include disclosure in the relationship summary other than disclosure that is required or permitted by the instructions and the applicable item.

## Writing the Form ADV Part 3

- Use short sentences and paragraphs
- Use definite, concrete, everyday words
- Use active voice
- Avoid legal jargon or highly technical business terms unless you clearly explain such terms
- Avoid multiple negatives
- Write your response to each item as if the investment adviser firm is speaking to the retail investor, using “you,” “us,” “our firm,” etc.

# Opinions in Form ADV Part 3

- Must be factual and provide balanced descriptions to help retail investors evaluate your services.
- May not include exaggerated or unsubstantiated claims, vague and imprecise “boilerplate” explanations, or disproportionate emphasis on possible investments or activities that are not offered to retail investors
- All information in a SEC registered investment adviser firm’s Form CRS/Form ADV, Part 3 relationship summary must be true and may not omit any material fact.

## Is Form ADV Part 3 Substitute for ADV Part 2A?

No, the Form CRS/Form ADV, Part 3 relationship summary does not replace or serve as substitute for any other reporting or disclosure obligations of a SEC registered investment adviser firm under the Investment Advisers Act of 1940 as amended or the SEC rules thereunder.

## Relationship Between Form ADV Part 3 & Part 2A

- In electronic version of the Form CRS/Form ADV, Part 3 relationship summary which are posted on the investment adviser firm's website or delivered electronically, the investment adviser firm must provide a way to access the referenced materials such as a hyperlink.
- In the paper version of the Form CRS/Form ADV, Part 3 relationship summary, the investment adviser firm must include URL address or QR code or other means to access the information.

## Only One Version of Form ADV Part 3 Allowed

- Investment Adviser Can Only Provide One Version of the Form ADV Part 3 Listing All Programs for Retail Investors

## Initial Filing of Form ADV Part 3 via IARD System

Must file electronically the Form CRS/Form ADV Part 3 relationship summary with the SEC through the Investment Adviser Registration Depository (“IARD”)



# Text Searchable Machine-Readable Headings

- The investment adviser firm must file via the IARD a Form CRS/Form ADV, Part 3 relationship summary which is a text searchable format with machine-readable headings

# IARD Filing Deadline

- If an investment adviser firm is already registered with the SEC or has an application pending to register with the SEC before June 30, 2020, an investment adviser firm may file with the SEC the Form CRS/Form ADV, Part 3 relationship summary starting **May 1, 2020** and must have filed with the SEC the Form CRS/Form ADV, Part 3 relationship summary by **June 30, 2020**.

## Delivery Deadline to Existing Clients

Existing Clients Who Are Retail  
Investors Must Receive Form ADV  
Part 3 By No Later Than **July 30,  
2020**

See page 8 at <https://www.sec.gov/rules/final/2019/34-86032-appendix-b.pdf>.

## Deadline for New Client (After 6/30/2020) to Receive Form ADV Part 3

- Before or at the time the investment adviser firm enters into an investment advisory contract with the retail investor.
- Even if the investment adviser firm's agreement with the retail investor is oral.

# Updating Form ADV Part 3

*Must Amend Form ADV Part 3 within 30 days whenever any information in the investment adviser firm's relationship summary becomes materially inaccurate by filing with the SEC an additional other-than-annual amendment or by including the relationship summary as part of an annual updating amendment.*

## Delivery of Form ADV Part 3 Updates to Clients

A SEC registered investment adviser must communicate any changes in the updated Form CRS/For ADV, Part 3 relationship summary to retail investors who are existing clients within 60 days after the updates are required to be made and without charge.

See page 8 at <https://www.sec.gov/rules/final/2019/34-86032-appendix-b.pdf>.

# Showing Updates to Clients

*Must include an exhibit highlighting the most recent changes when delivering the updated Form CRS/Form ADV, Part 3 relationship summary to an existing retail investor.*

## Post to Website

Must post the current version of the Form ADV, Part on the investment adviser firm's public website, if it has one, in a location and format that is easily accessible for retail investors



## Recordkeeping

Required to maintain for 5 years following the end of the fiscal year during which the last entry was made on such record

## Item 1 of Form ADV, Part 3 Introduction

- *Name*
- *Whether Registered as Investment Adviser and/or Broker-Dealer*
- *Indicate that Brokerage and Investment Advisory Services and Fees Differ*
- *State that Free Tools Available to Research Financial Firms at [Investor.gov/CRS](https://www.investor.gov/CRS)*

## Item 2 of Form ADV, Part 3 Relationship & Services

- *Use the heading: “What investment services and advice can you provide me?”*
- Description of Services:
  - State that you offer brokerage services, investment advisory services, or both, to retail investors, and summarize the principal services, accounts, or investments you make available to retail investors, and any material limitations on such services.
  - State the particular types of principal investment advisory services you offer to retail investors, including, for example, financial planning and wrap fee programs.

## Item 2 of Form ADV, Part 3 (Continued) Services

- Description of Services Should Address:
  - *Monitoring – Whether Monitors Investments, Frequency of Monitoring and Any Material Limitations*
  - *Investment Authority –*
    - *Whether Accept Discretionary Authority and Any Material Limitations*
    - *For Non-Discretionary Services, Explain Client Makes Ultimate Decision*
  - *Limited Investment Offerings – Whether Only Offer Advice on Proprietary Products or Limited Menu*
  - *Account Minimums & Other Requirements to Establish Relationship*

## Item 2 of Form ADV, Part 3 (Continued) Services

- *Conversation Starters*

- *If you are an investment adviser and not a dual registrant, include: “Given my financial situation, should I choose an investment advisory service? Why or why not?”*
- *If you are a dual registrant, include: “Given my financial situation, should I choose an investment advisory service? Should I choose a brokerage service? Should I choose both types of services? Why or why not?”*
- *“How will you choose investments to recommend to me?”*
- *“What is your relevant experience, including your licenses, education and other qualifications? What do these qualifications mean?”*

## Item 3 of Form ADV, Part 3

### Fees, Costs, Conflicts, and Standard of Conduct

- *Use the heading: “What fees will I pay?”*
- *Summarize the principal fees and costs that retail investors will incur for your brokerage or investment advisory services, including how frequently they are assessed and the conflicts of interest they create.*
- *Investment advisers must describe their ongoing asset-based fees, fixed fees, wrap fee program fees, or other direct fee arrangement. The principal fees for investment advisory services should align with the type of fee(s) that you report in response to Form ADV Part 1A, Item 5.E.*

## Item 3 of Form ADV, Part 3 (Continue)

### Wrap Program Fees

- Investment advisers with wrap fee program fees are encouraged to explain that asset-based fees associated with the wrap fee program will include most transaction costs and fees to a broker-dealer or bank that has custody of these assets, and therefore are higher than a typical asset-based advisory fee.

## Item 3 of Form ADV, Part 3 (Continue) Conflict of Interest

With respect to addressing conflicts of interest, an investment adviser that charges an asset-based fee could, for example, include a statement that the more assets there are in a retail investor's advisory account, the more a retail investor will pay in fees, and the firm may therefore have an incentive to encourage the retail investor to increase the assets in his or her account.



## Item 3 of Form ADV, Part 3 (Continue) Other Fees & Costs

- Describe other fees and costs related to your brokerage or investment advisory services and investments in addition to the firm's principal fees and costs disclosed in Item 3.A.(i) that the retail investor will pay directly or indirectly.
  - List examples of the categories of the most common fees and costs applicable to your retail investors (e.g., custodian fees, account maintenance fees, fees related to mutual funds and variable annuities, and other transactional fees and product-level fees).

## Item 3 of Form ADV, Part 3 (Continue) Fees & Costs - Additional Information

- State “You will pay fees and costs whether you make or lose money on your investments. Fees and costs will reduce any amount of money you make on your investments over time. Please make sure you understand what fees and costs you are paying.”
- You must include specific references to more detailed information about your fees and costs that, at a minimum, include the same or equivalent information to that required by the Form ADV, Part 2A brochure (specifically Items 5.A., B., C., and D.).
- You may include hyperlinks, mouse-over windows, or other means of facilitating access to this additional information and to any additional examples or explanations of such fees and costs included in response to Item 3.A.(i) or (ii).

## Item 3 of Form ADV, Part 3 (Continue) Fees & Costs - Conversation Starters

*Include the following question for a retail investor to ask a financial professional and start a conversation about the impact of fees and costs on investments:*

*“Help me understand how these fees and costs might affect my investments. If I give you \$10,000 to invest, how much will go to fees and costs, and how much will be invested for me?”*

## Item 3 of Form ADV, Part 3 (Continue) Standard of Conduct

- If you are an investment adviser, use the heading: “What are your legal obligations to me when acting as my investment adviser? How else does your firm make money and what conflicts of interest do you have?”
- If you are a dual registrant that prepares a single relationship summary, use the heading: “What are your legal obligations to me when providing recommendations as my broker-dealer or when acting as my investment adviser? How else does your firm make money and what conflicts of interest do you have?”

## Item 3 of Form ADV, Part 3 (Continue) Standard of Conduct

- If you are an investment adviser, include (emphasis required): “When we act as your investment adviser, we have to act in your best interest and not put our interest ahead of yours. At the same time, the way we make money creates some conflicts with your interests. You should understand and ask us about these conflicts because they can affect the investment advice we provide you. Here are some examples to help you understand what this means.”

## Item 3 of Form ADV, Part 3 (Continue) Standard of Conduct

- Summarize the following other ways in which your investment adviser your affiliates make money from brokerage or investment advisory services and investments you provide to retail investors.
- If none of these conflicts applies to your investment adviser or affiliates summarize at least one other material conflict of interest that affects retail investors.
- Explain the incentives created by each of these examples.
  - a. Proprietary Products: Investments that are issued, sponsored, or managed by you or your affiliates.
  - b. Third-Party Payments: Compensation you receive from third parties when you recommend or sell certain investments.
  - c. Revenue Sharing: Investments where the manager or sponsor of those investments or another third party (such as an intermediary) shares with you revenue it earns on those investments.
  - d. Principal Trading: Investments you buy from a retail investor, and/or investments you sell to a retail investor, for or from your own accounts, respectively.

## Item 3 of Form ADV, Part 3 (Continue) Standard of Conduct – Conversation Starter

- Include the following question for a retail investor to ask a financial professional and start a conversation about conflicts of interest: *“How might your conflicts of interest affect me, and how will you address them?”*

## Item 3 of Form ADV, Part 3 (Continue) Standard of Conduct – Additional Information

- You must include specific references to more detailed information about your conflicts of interest that, at a minimum, include the same or equivalent information to that required by the Form ADV, Part 2A brochure.
- You may include hyperlinks, mouse-over windows, or other means of facilitating access to this additional information and to any additional examples or explanations of such conflicts of interest.



## Item 3 of Form ADV, Part 3 (Continue)

### Description of How Financial Professionals Make Money

- Summarize how your financial professionals are compensated, including cash and non-cash compensation, and the conflicts of interest those payments create.
- Include, to the extent applicable, whether your financial professionals are compensated based on factors such as: the amount of client assets they service; the time and complexity required to meet a client's needs; the product sold (i.e., differential compensation); product sales commissions; or revenue the firm earns from the financial professional's advisory services or recommendations.

## Item 4 of Form ADV, Part 3 (Continue) Disciplinary History

- Use the heading: “Do you or your financial professionals have legal or disciplinary history?”
- State “Yes” if you or any of your financial professionals currently disclose, or are required to disclose, the following information:
  - (i) Disciplinary information in your Form ADV (Item 11 of Part 1A or Item 9 of Part 2A).
  - (ii) Legal or disciplinary history in your Form BD (Items 11 A–K) (except to the extent such information is not released to BrokerCheck, pursuant to FINRA Rule 8312).
  - (iii) Disclosures for any of your financial professionals in Items 14 A–M on Form U4 (Uniform Application for Securities Industry Registration or Transfer), or in Items 7A or 7C–F of Form U5 (Uniform Termination Notice for Securities Industry Registration), or on Form U6 (Uniform Disciplinary Action Reporting Form) (except to the extent such information is not released to BrokerCheck, pursuant to FINRA Rule 8312).

## Item 4 of Form ADV, Part 3 (Continue) Disciplinary History

- Search Tool: Direct the retail investor to visit [Investor.gov/CRS](http://Investor.gov/CRS) for a free and simple search tool to research you and your financial professionals.
- Conversation Starter: Include the following questions for a retail investor to ask a financial professional and start a conversation about the financial professional's disciplinary history: *“As a financial professional, do you have any disciplinary history? For what type of conduct?”*

## Item 5 of Form ADV, Part 3 (Continue) Additional Information

- State where the retail investor can find additional information about your brokerage or investment advisory services and request a copy of the relationship 18 summary. This information should be disclosed prominently at the end of the relationship summary.
- Include a telephone number where retail investors can request up-to-date information and request a copy of the relationship summary.

## Item 5 of Form ADV, Part 3 (Continue) Additional Information

Conversation Starter: Include the following questions for a retail investor to ask a financial professional and start a conversation about the contacts and complaints:

*“Who is my primary contact person? Is he or she a representative of an investment adviser or a broker-dealer? Who can I talk to if I have concerns about how this person is treating me?”*

## SEC Exam – Filing & Delivery

- Timely Filed Form ADV Part 3/CRS & Amendments with SEC via IARD System
- Posted Form ADV Part 3/CRS on Investment Adviser's Website
- Verify New and Existing Investment Advisory Clients Who Are Retail Investors Are Receiving Form ADV Part 3/CRS
  - SEC Will Review Specific Dates Form ADV Part 3/CRS Delivered

## SEC Exam – Filing & Delivery

- Verify New and Existing Investment Advisory Clients Who Are Retail Investors Are Receiving Form ADV Part 3/CRS
  - SEC Will Review Specific Dates Form ADV Part 3/CRS Delivered

## SEC Exam – Filing & Delivery

- Existing Investment Advisory Clients Who Are Retail Investors
  - Initial Delivery = 7/30/2020
  - Exceptions – Initial Delivery Before or at Time of
    - Opening a New Account
    - Rollover of Assets to IRA
    - Recommending New Investment Advisory Service or an Investment Not to Be Held in Existing Account
- New Investment Advisory Clients (After 6/30/2020)
  - Initial Delivery Before or at Time of Entering into a Written or Oral Investment Advisory Contract



## SEC Exam – Filing & Delivery

- Review Policies & Procedures to Assess Whether Address Form ADV Part 3/CRS Delivery Process & Deadlines

## SEC Exam – Content

- Review content of Form ADV Part 3 as to whether
  - Includes All Required Info
  - Contains True & Accurate Info & No Material Omissions

## SEC Exam – Content

- Review Examples
  - How Does Investment Adviser Firm Describe the Relationships & Services It Offers Retail Investors Including Account Monitoring & Investment Authority

## SEC Exam – Content

### How the Investment Adviser Firm Describes Its Fees and Costs Including Disclosures

- Principal Fees and Costs that Retail Investors Will Incur
- Costs Related to Services and Investments that Retail Investors Will Pay Directly or Indirectly,
- Examples of Categories of the Most Common Fees and Costs Applicable to the Investment Adviser Firm's Retail Investors (e.g., custodian fees, account maintenance fees, fees related to mutual funds and variable annuities, and other transactional fees and product-level fees).

## SEC Exam – Content

- How the Investment Adviser Firm Describes the Manner in Which Its Investment Adviser Representatives Are Compensated Including Cash and Non-Cash Compensation and Conflicts of Interest Those Payments Create

## SEC Exam – Content

- How the Investment Adviser Firm Describes its Conflicts of Interest, Including Incentives Related to Proprietary Products, Third-Party Payments, Revenue Sharing and Proprietary Products
- Whether the Investment Adviser Firm Accurately Discloses the Firm or Representative's Legal and Disciplinary History

# SEC Exam – Format

- Specific Wording Required
- Text Features Where Required
- Written in Plain English

# SEC Exam – Updates

- Review an Investment Adviser Firm's P&P for Updating the Form ADV Part 3/CRS
  - Assess How & Whether Firm Updates & Files Form ADV Part 3/CRS within 30 Days of Info Becoming Inaccurate
  - Assess How & Whether Firm Communicates Changes to Retail Investors within 60 Days After Updates Are Required to Be Made
  - Assess Firm's Process for Highlighting Most Recent Changes Including an Exhibit Highlighting or Summarizing Material Changes



# SEC Exam – Recordkeeping

- Review Records Related to Delivery
- Review P&P Related to Record Keeping of Form ADV Part 3 and Delivery Obligations

# Next Steps for Drafting

- Verify that Form ADV Part 2A Is Up-to-Date and Accurate
  - Check Fees & Expense Disclosures – Cross-Reference Agreements & Actual Practices
  - Re-Review Whether All Conflicts Identified & Adequately Disclosed
- Carefully Review Form ADV Part 3 Instructions
- Use Format Headings & Conversation Starters
- Write in Plain English
- Answer What's Asked
- Refer Back to Form ADV Part 2A with URL
- Carefully Review Any 3<sup>rd</sup> Party's Draft for You

## Risks Associated with Form ADV, Part 3

- Lengthy Answers Which Exceed Page Limitations
- Inaccurate Answers
- Unresponsive Answers
- Conflicts of Interest
  - Failure to identify, describe & mitigate conflict of interest
- Failure to Timely Deliver Form ADV Part 3
- Failure to Document Timely Delivery
- Failure to Timely Update, File & Deliver ADV Part 3

## Resources

*Form ADV General Instructions:*

<https://www.sec.gov/rules/final/2019/34-86032-appendix-a.pdf>

*Instructions to Form CRS:*

<https://www.sec.gov/rules/final/2019/34-86032-appendix-b.pdf>

*Commission Interpretation Regarding Standard of Conduct for Investment Advisers:*

<https://www.sec.gov/rules/interp/2019/ia-5248.pdf>

*Frequently Asked Questions on Form CRS*

<https://www.sec.gov/investment/form-crs-faq#retail>

*SEC Risk Alert: Examinations that Focus on Compliance with Form CRS*

<https://www.sec.gov/files/Risk%20Alert%20-%20Form%20CRS%20Exams.pdf>

## Sample Forms

We offer over 140 sample forms and checklists to help investment advisers implement and document their compliance programs.

For a complete list of sample forms available go to [www.ria-compliance-consultants.com](http://www.ria-compliance-consultants.com) under the Compliance Tools tab and select Sample Forms.

RCC clients that have signed-up for one of our Annual Compliance Program Packages should visit their online subscription account to see the sample forms already available to you.

# Client Relationship Summary – Form ADV Part 3

Form ADV Part 3 Drafting Service - \$695

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



[ria-compliance-consultants.com/conference\\_2020](http://ria-compliance-consultants.com/conference_2020)

# Annual Compliance Program Packages

- Bronze - \$240
- Silver - \$295
- Gold – Starting at \$525 (Must speak with an RCC Consultant to determine the package and price fit for your firm.)
- Platinum – Customize a package to fit your firm’s needs. Starting at \$10,000.

For complete details regarding our annual compliance program packages, go to [www.ria-compliance-consultants.com](http://www.ria-compliance-consultants.com) under the Our Services tab and select Annual Compliance Programs.



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# Schedule Introductory Call via Online Appointment System

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

# Thank You

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