



*Provided by Hardin Compliance Consulting LLC  
February 21, 2019*

## **How I Learned to Stop Worrying and Learned to Love Form ADV**

*By: Cari Hopfensperger, Senior Compliance Consultant*

After last year's material amendments to the Form ADV, investment advisers can breathe a sigh of relief; the SEC made no changes to the form this year. That said, completing the Form ADV remains a major data-gathering project with important regulatory implications. So, take a few deep breaths and read our tips for completing your annual update.

1. **Consider Business Changes Over the Past Year:** For example, did you launch new strategies or vehicles; change your billing practices (e.g., from in arrears to in advance); make material revisions to your compliance manual or code of ethics; or do you serve a new group of clients? Update your Form ADV – Parts 1 and 2 -- to reflect these changes. We recommend tracking these items throughout the year so you can easily include them in your update when March 31 rolls around.
2. **Don't Reinvent the Wheel:** Last year, the SEC required advisory firms to list the number of clients in specific categories and amount of Regulatory Assets Under Management ("RAUM") attributable to each type of client. The Form ADV Part 1 Instructions do not define "client" or each client type. Instead, the SEC [FAQ](#) advises firms to "count clients the way you normally count them for your firm." Leverage your existing processes for assigning clients within the requested types, and remember not to double count clients. As noted in the [Form ADV Part 1 Instructions](#), "if a client fits into more than one category, select the one that best that presents the nature of the client." Keep in mind that RAUM in this item must match the RAUM reported in Item 5.F.(2)(c). Finally, keep a record, such as a spreadsheet or other evidence, to support the calculation.

The same advice holds true for reporting the percentage of separately managed account assets that fall within the 12 categories specified in the instructions. Again, the instructions to the Form ADV permit advisers to use their own "consistently applied methodologies" to categorize the assets.

3. **You Can't Escape Custody:** The custody questions in Item 9.A. of the Form ADV Part 1A are just as confusing as ever. As a result of SEC guidance from 2017<sup>1</sup>, advisers with third-party Standing Letter of Authorization (SLOA) disbursement authority must now report the assets in those client accounts with SLOAs under Item 9.A.(1) and (2). This is an area where firms can benefit from documented procedures year-over-year and should be able to leverage back-up from last year's amendment as a starting place. For additional details on Form ADV questions related to custody and more practice tips, check out our blog post [Feeling your Pain: Advice Answering Form ADV's Trickier Questions](#).
4. **Spread the (ADV) Love:** We strongly recommend involving firm management in the Form ADV drafting and review process, rather than leaving it all to the CCO. Management should review the Form ADV carefully to ensure that the disclosure accurately represents current practices. Getting management involved helps demonstrate to those in and outside the firm that compliance is everyone's responsibility and should result in the most accurate finished product. The Form ADV is publicly available and Part 2A is provided to all clients, so firms should make sure it looks professional (i.e., no typos) and is easy to read. Some CCO's also require the president or chief executive officer to sign the Form ADV to ensure that he or she takes ownership of the document; this is an approach we endorse.

I recently attended a webinar that polled attendees about the top reasons for incomplete conflict disclosures on ADV Part 2A. Ineffective internal communication was one of the most common responses. Form ADV Part 2A disclosures typically include detailed information about a firm's business operations, including, but not limited to, billing, best execution, trade allocation and rotation, proxy voting, and account review practices. Requiring input from managers throughout the firm helps ensure that operating practices are consistent with disclosures. Finally, it's important for managers to be aware of what is disclosed so they are not surprised by questions from existing or prospective clients.

5. **Start Early and Plan Ahead:** March 31<sup>st</sup> falls on a Sunday in 2019. Although the system will be open to accept filings until 5:00 pm ET, who wants to be staring at the IARD website on a Sunday?!
6. **Don't look back:** Form ADV has been a source of confusion and consternation for years. During an examination, the SEC may question your responses and if, in the staff's view, you responded incorrectly, you will be asked to revise the Form ADV. In many situations, if a firm has a reasonable explanation for the response and had no intent to defraud, the issue will not go any further.
7. **Ask for Help:** The SEC has been more responsive to interpretive questions in recent years. Advisers can send an email to [IARDLIVE@sec.gov](mailto:IARDLIVE@sec.gov) or call the Investment Adviser Regulation Office at (202) 551-6999.

---

<sup>1</sup> The SEC's Division of Investment Management issued a [no-action letter](#), [an IM-Guidance Update](#), and an update to the [custody rule FAQs](#), which significantly changed prior interpretations of "custody".

8. **Learn from others:** Review other Form ADVs and ask colleagues at other firms how they handle specific disclosure issues. While potentially useful as a self-benchmarking tool, firms should take caution – borrowing disclosure language without sufficient customization can result in regulatory deficiencies.

### **Partner with Hardin Compliance**

HCC's expert consultants are well-versed in the nuances and intricacies of Form ADV, and we are here to help. Contact us any time with your questions related to Form ADV or any other compliance matters. Let us do the work, allowing you to enjoy peace-of-mind!

---

*Hardin Compliance Consulting provides links to other publicly-available legal and compliance websites for your convenience. These links have been selected because we believe they provide valuable information and guidance. The information in this e-newsletter is for general guidance only. It does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.*