



CONSTELLATION
ADVISERS, LLC

REGULATORY NOTICE 20-05: FORM ADV, PART 3

Investment advisers with retail investors must file Form ADV, Part 3 by **June 30, 2020**. This alert provides practical answers to questions that will help investment advisers determine if they have to comply with this regulatory requirement and what to expect next.

BACKGROUND

On April 2, 2020, U.S. Securities and Exchange Commission ("SEC") Chairman Jay Clayton announced that the SEC will not extend the compliance date for either Regulation Best Interest or Form ADV, Part 3 (aka Form CRS) beyond the current June 30, 2020 compliance date.^[1] Click [here](#) to see Chairman Clayton's statement.

On April 7, 2020, the Office of Compliance Inspections and Examinations ("OCIE") published two risk alerts regarding examinations focusing on compliance with Regulation Best Interest and the rules relating to the new Form ADV, Part 3.

[2]

[1] For more information regarding Regulation Best Interest and Form CRS requirements, see our 2019 Client Alert, "[The 8 Questions You Need to Ask Yourself About Regulation Best Interest and Form CRS](#)." Even though this alert is focused on investment advisers, our prior alert provides helpful information for both broker-dealers and investment advisers.

[2] The SEC also refers to Form ADV, Part 3 and Form CRS as a "client relationship summary", "customer relationship summary", and "relationship summary" in various applicable releases and guidance.

COMMON QUESTIONS

How does an investment adviser determine whether it needs to file a Form ADV, Part 3?

As a general matter, investment advisers should look at their Form ADV, Part 1A. If the firm has indicated in Item 5.D (type of client table) that it has (a) individuals (other than high net worth individuals) or (b) high net worth individuals, then the firm likely has an obligation to prepare, file and deliver Form ADV, Part 3 to these natural persons who meet the definition of a retail investor.^[3]

What if an investment adviser only advises pooled investment vehicles, such as hedge funds, private equity funds and venture capital funds, and the investors in these funds include natural persons who may be retail investors?

The SEC indicated that pooled investment vehicles, such as hedge funds, private equity funds and venture capital funds would **not** meet the definition of a “retail investor”, and thus an adviser to these pooled vehicles would **not** have a Form CRS delivery requirement. The instructions to Form ADV, Part 3 state that advisers are not required to file or prepare a Form CRS if they do not have any retail investors to whom they must deliver a relationship summary. Accordingly, pursuant to SEC guidance and the form’s instructions, the Form ADV, Part 3 requirements would not apply to advisers to hedge funds, private equity funds or venture capital funds.

WHAT TO EXPECT NEXT

What will be the SEC staff’s focus when examining Form ADV, Part 3 related issues?

In the Form CRS Risk Alert noted above, OCIE indicated that it expects to begin examinations after the initial June 30, 2020 compliance date; and that exams over the next year or so will assess whether firms have made a “good faith” effort to be in compliance.

The Risk Alert outlines examples of areas to be reviewed:

- **Delivery and Filing:**
 - Confirm that the firm has filed the Form ADV, Part 3 with the SEC and has posted Form ADV, Part 3 to its website, if any;
 - Evaluate the firm’s process for delivering the Form ADV, Part 3 to existing and new retail investors; and
 - Review records of the dates that each Form ADV, Part 3 was provided to retail investors and confirm that the firm complied with the requirements for delivery to new and existing retail investors.

- **Content:** Assess whether the Form ADV, Part 3 contains all required information and is true, accurate and does not omit any material information. In particular, the staff may review how the firm describes its relationships with retail investors, and, among other things, how it describes fees, costs, and compensation arrangements.
- **Format:** Assess whether the Form ADV, Part 3 complies with formatting requirements, e.g., whether it includes particular wording where required, uses text features where required, and is written in plain English.
- **Policies and Procedures:** Assess the firm’s policies and procedures regarding compliance with Form ADV, Part 3 requirements, record-keeping, delivery processes and dates, as well as updates to the Form ADV, Part 3.

[3] “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.” The definition of retail investor includes non-professional legal representatives (e.g., a non-professional trustee that represents the assets of a natural person and similar representatives such as executors, conservators, and persons holding a power of attorney for a natural person). See also the SEC’s [Frequently Asked Questions](#).

TAKE ACTION!

Clients Should:

- Review their files to determine whether they have any retail investors and, therefore, are required to prepare, file and deliver Form ADV, Part 3 to any of its clients. If the investment adviser has client types not covered in this alert and is unsure as to whether its particular circumstances would trigger a Form ADV, Part 3 filing obligation, then those advisers are encouraged to reach out to their counsel or their compliance team.^[4]
- Document any determination that Form ADV, Part 3 requirements are not applicable to the firm.
- If Form ADV, Part 3 is applicable, investment advisers should:
 - be prepared to file the Form ADV, Part 3 by the compliance date, June 30, 2020;
 - post the Form ADV, Part 3 to the firm’s website, if any;
 - have procedures in place for delivering the Form ADV, Part 3 to all existing retail customers within 30 days after filing the Form ADV, Part 3 with the SEC, and to all new and prospective retail investors consistent with Form ADV delivery obligations; and
 - review and/or revise their policies and procedures so that they are reasonably designed to ensure compliance with the regulations.

[4] In this Client Alert, Constellation is providing its observations, advice, and recommendations. Constellation did not and does not provide legal advice regarding its services nor did it or does it provide any assurance regarding the outcome of any future audit or regulatory examination or other regulatory action. It is further understood that recipients of this Client Alert have responsibility for, among other things, identifying and confirming compliance with laws and regulations applicable to their activities, and for establishing and maintaining effective internal controls to confirm such compliance.

***Please contact a member of Constellation's compliance team
for assistance with any regulatory and compliance needs at
compliance@constellationadvisers.com.***

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