

Advisers moving too fast can check “yes” because they’re focused on AUM.

Top Ten Mistakes Advisers Make on Their Form ADV

Form ADV was substantively amended by the Dodd-Frank Act and has been a major focus of legal and compliance man-hours in the run up to the filing deadline.

At the recent **ACA Compliance Group/ACA Insight** Spring Compliance Conference, a panel of experts described the top ten mistakes advisers are making on Part 1A of their revised Form ADVs.

1. All advisers should have filed a Form ADV by March 30.

Think you had more time based on your fiscal year end?

Think again. The deadline to file an updated Form ADV was March 30 across the board, regardless of FYE.

2. It is easy to overlook some places where the firm’s electronic records are held.

Item 1.L of Form ADV requires advisers to disclose where their electronic records are held. It is easy to overlook email archivers, for example, said **Vedder Price** counsel **Joseph Mannon**. And don’t neglect your administrator, which also stores firm records, said **Plural Investments** chief legal officer **Robert Ellis**.

3. The \$1 billion question in Item 1.O is asking about the adviser’s balance sheet, not assets under management.

This question is tricky, said Mannon. It asks whether the adviser has more than \$1 billion in assets, not assets under management. The answer is most likely “no.” Advisers moving too fast can check “yes” because they’re focused on AUM.

This question is a test, too, said Ellis. If a firm answers “yes” to Item 1.O when it really should have responded “no,” it is a flag to the SEC that other responses may be wrong as well and the filing is likely to get more scrutiny.

4. “Regulatory assets under management” is not your old AUM.

The Item 5 calculation includes non-typical AUM asset categories that can be overlooked but belong in the calculation, such as proprietary accounts, accounts
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managed without compensation, non-U.S. accounts, and all private funds.

5. Advisers exempt from registration as a commodity pool operator or a commodity trading adviser must still check the CPO/CTA box under Item 6.A.

Not required to register as a CPO/CTA? No matter, under Item 6.A, advisers who would otherwise meet the CPO/CTA criteria must check the box even if the adviser qualifies for an exemption. Even though the instructions note that exempt advisers should check the box, it doesn't always happen when it should. Checking the box doesn't in and of itself, have registration consequences.

6. Advisers must now identify any private fund GP or sponsor as a related party.

Item 7.A "used to require only financial affiliations, but now it is a much broader concept," said Mannon.

7. Custodians can show up in unsuspected places, and unaware advisers fail to include them under Item 7.B.1.

A common omission here relates to cash accounts for private funds. If your private fund utilizes cash accounts, that should be included under Item 7.B.1, said Mannon.

8. If you're still waiting for your audit opinion, you have a Form ADV updating requirement when you receive it.

Checking the box "not yet received" triggers the requirement to file an updating amendment when the firm receives its audit opinion, said Mannon.

If the adviser launched a special purpose vehicle any time in the previous fiscal year, chances are high that the adviser will not receive its audit opinion by the updating deadline, and will have to file an amendment, said Ellis.

9. Remember that sub-advisers to private funds have their own response item in Schedule D.

The fund's adviser responds under Item 7.B.1 on

Schedule D, and sub-advisers are instructed to submit their relevant information for the private fund under Item 7.B.2.

10. Advisers deemed to have custody over certain accounts must list the number of other (physical) custodians for such accounts, not the number of those accounts that they have.

The most common error advisers make in response to Item 9.F is putting down the number of accounts over which the adviser is deemed to have custody. The question really is asking for the number of the other custodians for accounts over which the adviser is deemed to have custody, said Mannon.

Good general advice regarding Form ADV:

If you make assumptions in your responses to esoteric questions on Form ADV, explain your assumptions under the "Miscellaneous" section of Schedule D, said Ellis. If that section of Schedule D is blank, think about the assumptions you brought to bear in answering the form, and add them, he said.

How much time does an adviser have when required to amend Form ADV "promptly?"

The industry norm is ten business days, said Mannon. If you're making a good faith effort to comply and you file on day eleven however, "I don't think the SEC is going to write you up," he said. ☞

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