

# THIS MONTH IN COMPLIANCE

## PPP LOANS, BCP Lessons Learned

### MAY COMPLIANCE TASKS

#### **SMART RIA**

Please be sure to check your SmartRIA CCO portal to keep up with your monthly Compliance tasks.

**If you are not using the SmartRIA portal, please let us know so we can find you a more effective solution!  
Contact Sara Sparks at 303-797-0550, Ext. 3.**

#### **CCO CHECKLIST ATTACHED**

Finding it hard to login and document your monthly tasks and review oversight on SmartRIA? We have a solution! Refer to the attached checklist- Just print it out, and work through the task reminders. Be sure to retain this checklist in your "Testing" Compliance Files.

### FOLLOW-UP ON DISCLOSURE OF PPP LOANS

Earlier this week, SEC released guidance regarding the disclosure of firms receiving a PPP loan. If your firm was approved and received funding based on PPP loan, please read the SEC guidance. [Refer here to SEC FAQ on COVID -19](#) for more questions....

**For Firms in receipt of PPP loans prompting an Item 18 disclosure –CRP will need the following information within 20 days of receipt of the funds in order to comply with the 30 day notification and update to your Firm’s ADV:**

- **Please describe the circumstances that led the firm to seek the PPP loan.**
- **Please describe how the loan has impacted your business**
- **What was the amount of the loan?**

Here is the specific question and answer directly from the SEC FAQ:

#### **Question II.4.**

**Q.** I am a small advisory firm that meets the requirements of the Paycheck Protection Program (PPP) established by the U.S. Small Business Administration in connection with COVID-19. If I receive or have received a PPP loan, what are my regulatory reporting obligations under the Investment Advisers Act of 1940 to my firm’s clients?

**A.** As a fiduciary under federal law, you must make full and fair disclosure to your clients of all material facts relating to the advisory relationship. If the circumstances leading you to seek a PPP loan or other type of financial assistance constitute material facts relating to your advisory relationship with clients, it is the staff’s view that your firm should provide disclosure of, for example, the nature, amounts and effects of such assistance. If, for instance, you require such assistance to pay the salaries of your employees who are primarily responsible for performing advisory functions for your clients, it is the staff’s view that you would need to disclose this fact. In addition, if your firm is experiencing conditions that are reasonably likely to impair its ability to meet contractual commitments to its clients, ***you may be required to disclose this financial condition in response to Item 18 (Financial Information) of Part 2A of Form ADV (brochure), or as part of Part 2A, Appendix 1 of Form ADV*** (wrap fee program brochure). (Posted April 27, 2020)

If your firm received approval for the PPP loan, you will need to evaluate your firm’s circumstances as to why your firm applied for financial assistance, if those circumstances warrant material facts relating to your advisory relationships or your firm required the assistance to pay your personnel to perform advisory functions to your clients. We strongly recommend firms disclose the receipt of the PPP loan if the facts and circumstances warrant disclosure. If your firm determines Item 18 disclosure is not warranted, we stress the importance of documenting

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the rationale of why the firm determined the loan was not disclosable under Item 18 (Financial Information) of Part 2A of Form ADV (brochure), or as part of Part 2A, Appendix 1 of Form ADV (wrap fee program brochure). If your firm determines Item 18 disclosure is not warranted, the firm will have the burden of proof when questioned by regulators.

STATE REGISTERED ADVISERS: Please check with your state on disclosure requirements.

**The State of Colorado** took the position that an Item 18 disclosure is required, given their understanding that a small business is under financial hardship if the PPP was warranted. For that same reason, the State also takes the position that it is a material change and should be disclosed accordingly, and that it stays in Item 18 until paid off or forgiven and until the financial hardship, or impairment has been remedied/eliminated.

### **BUSINESS CONTINUITY PLAN REVIEW – LESSONS LEARNED**

With recent events and implementation of Business Continuity Plans, it's important to review and **document** the lessons learned from the recent implementation of remote office and disruption of office operations due to COVID-19. We anticipate that the regulators will look back to this time and audit firms on their response to remote supervision, implementation of the BCP, and failures and successes of operations during this period of "shelter in place".

#### **ACTION ITEM:**

- **ASSESS HOW WELL FIRM OPERATIONS TRANSITIONED OVER THE LAST 2 MONTHS**
- **CREATE MEMO FOR THE COMPLIANCE FILE**
- **UPDATE BCP WITH LANGUAGE TO INCLUDE:**
  - "In the event of a flu pandemic or other form of viral outbreak, depending on the circumstances involved, this Firm could disperse main office personnel to other locations in the [Name of City] or surrounding areas, provide employees with electronic access to work from their homes, and/or assess ways to make the main office facilities more biohazard resistant."

#### **QUESTIONS TO CONSIDER IN THE REVIEW OF YOUR BCP & LESSONS LEARNED:**

- Was a response plan in place prior to the disruption of operations due to COVID-19?
- Was the existing BCP effective in outlining a response in light of the COVID-19?
  - Employees working from home?
  - Client Communication and virtual meetings?
  - Trading operations?
  - Was the Firm able to sustain business operations?
  - Did any events (due to remote office operations) affect any client issues?
  - What communications were sent to clients, communications to employees?
- Were BCP procedures updated in light of the COVID-19 Shelter at Home?
- Does the firm require additional needs and services in light of the recent events and operating from remote locations, such as:
  - Training for IARs?
  - Additional Services for the Firm?
  - IT or Cyber services?
  - Phone?
- Were any complaints received? If so, were they documented and reported to Compliance following proper firm policies and procedures?

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## **FORM CRS – COMPLIANCE BY JUNE 30<sup>TH</sup>**

Be sure to Complete attached “FORM CRS Checklist” and return to your CRP Partner to begin. Before June 15, 2020 CRP will finalize your Firm’s Form CRS.