

CCO TASK SUPPORT

Please be sure to check your SmartRIA CCO portal to keep up with your monthly Compliance tasks.
Please contact the following for:

- **Task Related Questions:**

Nancy Harry:	nharry@thecomplianceresource.com
Stacie Craddock:	scraddock@thecomplianceresource.com
Sara Sparks:	ssparks@thecomplianceresource.com
- **Login and Portal Requests:**

Sara Sparks:	ssparks@thecomplianceresource.com
--------------	--

CCO TOOLS INCLUDED THIS MONTH:

- **ADV Annual Amendment Checklist** - During March, our team will continue to work with firms to schedule a time to review and update your firm's ADV Part 1A, 2A and Form CRS. Please complete and return the Annual ADV Amendment Checklist if you would like CRP to assist with your annual filing. **Checklists are due back to CRP by March 15th to guarantee the filing be completed before the March 31st deadline.**
- **CCO Checklist** – Complete the attached CCO Checklist for the month of March 2022.
- **SAMPLE Crypto Currency Attestation** – For Firms to use with clients with exposure to Crypto Currency.

CRP AGREEMENT UPDATES TO RETIREMENT PLAN 3-38 OR 3-21

CCO ACTION: Update **Highlighted sections in your current Retirement Plan Sponsor Agreements for use going forward with client. Please tailor to your firm – each firm operates differently so consider modifying to fit your firm's practices.**

Updates to sections UNDER ***Client acknowledgements and representations:***

- h) Client is the “responsible plan fiduciary” for the control and/or management of the assets of the Plan, and for the selection and monitoring of service providers for the Plan, in accordance with the requirements of ERISA. Adviser is entitled to rely upon this statement until notified in writing to the contrary. With respect to the Adviser’s obligation to provide the Plan with an initial, and ongoing, diversified platform of Plan investment options, including specific asset allocation programs devised by the Adviser, Adviser is a “fiduciary” to the plan as defined under ERISA. Adviser’s fiduciary duty does not, and will not, extend to the participant’s investment decision making process as to how he/she chooses to allocate any portion of his/her Plan assets among any investment plan alternative, including (to the extent applicable) Adviser’s asset allocation programs, it being understood that the participant retains all such investment decision making authority and responsibility.

Updates to Section 8. d) *Adviser Liability and e) Arbitration:*

d) **Adviser Liability.** Except as may otherwise be provided by law, Adviser will not be liable to the Plan for: (i) any loss that the Plan may suffer by reason of any investment recommendation or decision made, or other action taken or omitted in good faith by Adviser with that degree of care, skill, prudence, and diligence under the circumstances that a prudent person acting in a fiduciary capacity would use; or (ii) any loss arising from Adviser's adherence to the Plan's instructions; or (iii) any error in judgment with respect to the Plan investments, provided such recommendation or other act or failure to act does not constitute a breach of Adviser's fiduciary duty to the Plan or Adviser's negligence; or (iv) any act or failure to act by the qualified custodian, third party administrator, record keeper, any broker-dealer that undertakes transactions for the Plan assets, or by any other service provider to the Plan.

The Plan shall indemnify and defend the Adviser and its members, employees, and affiliates, and hold them harmless from and against any and all claims, losses, damages, liabilities and expenses, as they are incurred, by reason of any act or omission of the Plan, broker-dealer/custodian, agent or other third party selected by the Plan, except to the extent that it arises from Adviser's breach of fiduciary duty to the Plan or Adviser's negligence. No portion of the above shall constitute a waiver or limitation of any rights which the Plan may have under any federal or state securities laws, ERISA, or under the rules promulgated by the Employee Benefits Security Administration and/or the Department of Labor.

e) **Arbitration.** Subject to the conditions and exceptions noted below, and to the extent not inconsistent with applicable law, in the event of any dispute pertaining to Adviser's services under this Agreement, both Adviser and the Sponsor agree to submit the dispute to arbitration in accordance with the auspices and rules of the American Arbitration Association ("AAA"), provided that the AAA accepts jurisdiction. Adviser and Sponsor understand that such arbitration shall be final and binding, and that by agreeing to arbitration, both Adviser and Sponsor are waiving their respective rights to seek remedies in court, including the right to a jury trial. Sponsor acknowledges that it has had a reasonable opportunity to review and consider this arbitration provision prior to the execution of this Agreement.

SEC – FIRST GLIMPSE OF CRYPTO DEFINITION

Within the SEC's Form PF proposal issued in February 2022, the SEC (for the first time) has tried to define Cryptocurrencies formally. The 236-page notice used the phrase "digital assets" only five times but listed the term as follows in the glossary: "asset that is issued and/or transferred using distributed ledger or blockchain technology ('distributed ledger technology') including but not limited to, so called 'virtual currencies,' 'coins' and 'tokens'. The SEC has used the exact phrase in 2019 and also appeared in the Division of Examinations Risk later in May 2020.

We have seen an uptick in firms inquiring about use of crypto but are worried about Compliance issues. Some things to consider if your firm has been considering the use in client portfolios:

- **Reach out to experts and become knowledgeable in the space:** Attend webinars, conduct due diligence and reach out to experts in the field so you are not re-inventing the wheel. Gemini and Coinbase are over-the-counter exchange that works with institution investors.
- **Measure Risk:** Do you want to hold crypto or provide exposure through indirect investments available at your current Custodian?
- **Disclosure, Disclosure:** Be sure to have adequate disclosure of risks to clients. This risk language should be included in your Firm Brochure as well as a separate client acknowledgment about risk levels when investing in this space. **Refer to a sample Crypto Currency Attestation for use with clients.**