



# 2020 Investment Management Compliance Testing Survey Results

June 25, 2020

# Speakers



**Enrique Alvarez**

Senior Principal Consultant  
ACA Compliance Group



**Sarah Buescher**

Associate General Counsel  
Investment Adviser  
Association



**Amy Yuter**

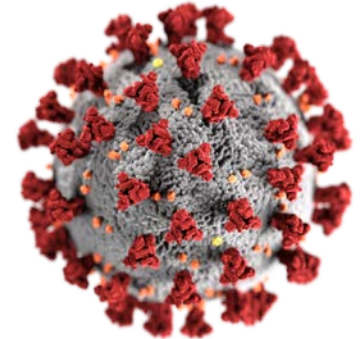
Chief Compliance Officer  
BrightSphere  
Investment Group

# Survey Areas

- Survey Demographics & Compliance Program Statistics
- Business Continuity Planning
- Form CRS
- Anti Bribery and Corruption
- Cybersecurity and Data Privacy
- Trend Update: “Hot” Compliance Topics

# Notable Findings

- Good to see our proactive industry – with over **70%** (vs. over **50%** in 2019) of **respondents conducting or planning to conduct a mock audit**; shift in more completing.
- Most firms experienced **a successful BCP test** with COVID-19; vast majority reported that the pandemic had **no material impact!** Managing human resources remotely was the top focus area for many.
- **BCP surpassed Cybersecurity** as the hottest compliance topic for 2020 – no surprise as we all are focused on COVID-19; Cybersecurity had been #1 for 6 years!
- **79%** plan to make **no material enhancements to BCP**; Majority of respondents (**69%**) that **included plans for responding to a pandemic** in their BCP did so prior to the outbreak.
- **62%** **filing a Form CRS**; most firms are changing or making changes to their P&P.
- Just over **50%** of firms **adopted FCPA policies** with majority (**66%**) not providing advice outside the US; caution firms to consider **IF** they do biz outside the US.



# Survey Demographics & Compliance Program Statistics

# Survey Demographics

- **384** firms completed the survey. Thank you for your participation!
- **43%** of respondents had regulatory assets under management (RAUM) between \$1 billion and \$10 billion. The other respondents were relatively evenly represented:
  - **14%** Under \$500 Million
  - **14%** \$500 Million to Under \$1 Billion
  - **43%** \$1 Billion to Under \$10 Billion
  - **11%** 10 Billion to \$20 Billion
  - **17%** Over \$20 Billion
- **46%** of respondents have between 11 and 50 employees.

***Survey Note:***  
*These results are substantially similar to those of last 3 years.*

# Survey Demographics

Respondents serve a wide variety of clients (2020 | 2019)

- 36% | 36% Retail Individuals (typical account size of \$1mm or less)
- 59% | 62% High Net Worth Individuals (typical account size of \$1mm or more)
- 24% | 22% Family Office
- 64% | 62% Institutional Clients
- 43% | 52% ERISA Assets/Pension Consultants
- 32% | 36% Registered Investment Companies
- 55% | 51% Private funds (e.g., private partnerships, hedge funds, private equity funds)
- 5% | 8% Other (foundations, wrap, sovereign wealth funds, UCITS/SICAV)

**Survey Note:**  
*These results are substantially similar to those of last 3 years.*

# Survey Demographics

## Private Fund Clients:

- **33%** Private Equity Funds (including energy, infrastructure)
- **33%** Long Only Funds
- **25%** Long/Short Funds
- **24%** Fund-of-Funds
- **17%** Credit Funds (public or private)
- **11%** Real Estate
- **11%** Other (commodity pools, multi-strategy)





# Compliance Program: Testing

Respondents that have done a mock SEC exam (2020 | 2019)

- ↑ • 55% | 39% Yes
- 17% | 17% Plan to, but have not done so yet

Top 10 Areas of Increased Testing (2020 | 2019)

- 70% | 70% Cybersecurity (*tied 3<sup>rd</sup> in material breaches*)
- 67% | NEW BCP (COVID-19)
- 40% | 31% BCP (all other)
- 40% | 43% Advertising/marketing (*tied 3<sup>rd</sup> in material breaches*)
- 36% | 32% Electronic communications surveillance (*2<sup>nd</sup> in material breaches*)
- 33% | NEW Conflicts of interest
- 25% | 27% Personal trading/code of ethics
- ↓ • 25% | 38% Best execution
- ↑ • 25% | NEW Liquidity management
- ↑ • 25% | 16% Privacy
- ↓ • 24% | 34% Fee calculation/billing (*tied 3<sup>rd</sup> in material breaches*)
- 24% | 24% Social media
- 24% | NEW ESG/Sustainability

**Continuing Trend:**  
Majority of respondents did not decrease testing in any area.

**Increased testing in new focus areas:**

- BCP/COVID-19
- Liquidity
- ESG
- Privacy

# Compliance Program: Resources

## Compliance Staffing Size (Compliance/Legal)

- **20%** reported that they employed more than 6
- **39%** of firms reported employing between 2 to 5
- **36%** employ only 1

### **Survey Note:**

*These results are substantially similar to those of last 3 years.*

## CCO's Hats

- **40%** Solely a CCO
- **25%** CCO + General Counsel/legal counsel
- **41%** CCO has 2 or more hats and performs other non-CCO/legal roles

### **New Data:**

- *19% COO/operational functions*
- *14% CFO/accounting functions*
- *8% Portfolio Manager/investment management functions*

# Compliance Program: Budget

## Budget as a percentage of revenue

- **46%** Under 5%
- **21%** 5% to under 10%
- **4%** Over 10%
- **29%** Did not know

**Survey Note:**  
*These results are substantially similar to those of last 3 years.*

## What makes up 20% or more of your compliance budget

- **87%** Compliance personnel
- **40%** Technology
- **37%** Third-party compliance consultants
- **29%** Outside legal counsel

# Business Continuity Planning

# BCP: Common Features

Common features of respondents' Business Continuity Planning ("BCP") (2020 | 2017)

- **99%** | **96%** Have a BCP
- **98%** | **97%** Facility-wide outages (e.g., electrical outage, blackouts, fire)
- **94%** | **95%** Temporary interruption of discrete services (e.g., telephone or internet services, file server, real-time data feeds)
- **91%** | **91%** Natural disasters (e.g., hurricane, earthquake, flood)
- **81%** | **73%** Identification of critical third-party service providers
- ↑ • **79%** | **68%** Cyber attack
- **62%** | **54%** Terrorist attack
- ↑ • **53%** | **37%** Contagious diseases (e.g., pandemic flu, COVID-19)
- **46%** | **39%** Succession planning due to death, disability, or departure of key personnel
- **11%** | **11%** Transitioning of client assets to another firm in connection with winding down operations (i.e., dissolution)

# BCP: Testing Annually vs Ad Hoc

\* Ability to conform to regulatory requirements

\* Employees understand BCP roles & responsibilities

\* Vendors, service providers, software and equipment

Full test (all aspects of BCP at one time)

Current contact information

Availability of copies of the plan

Ability to recover data

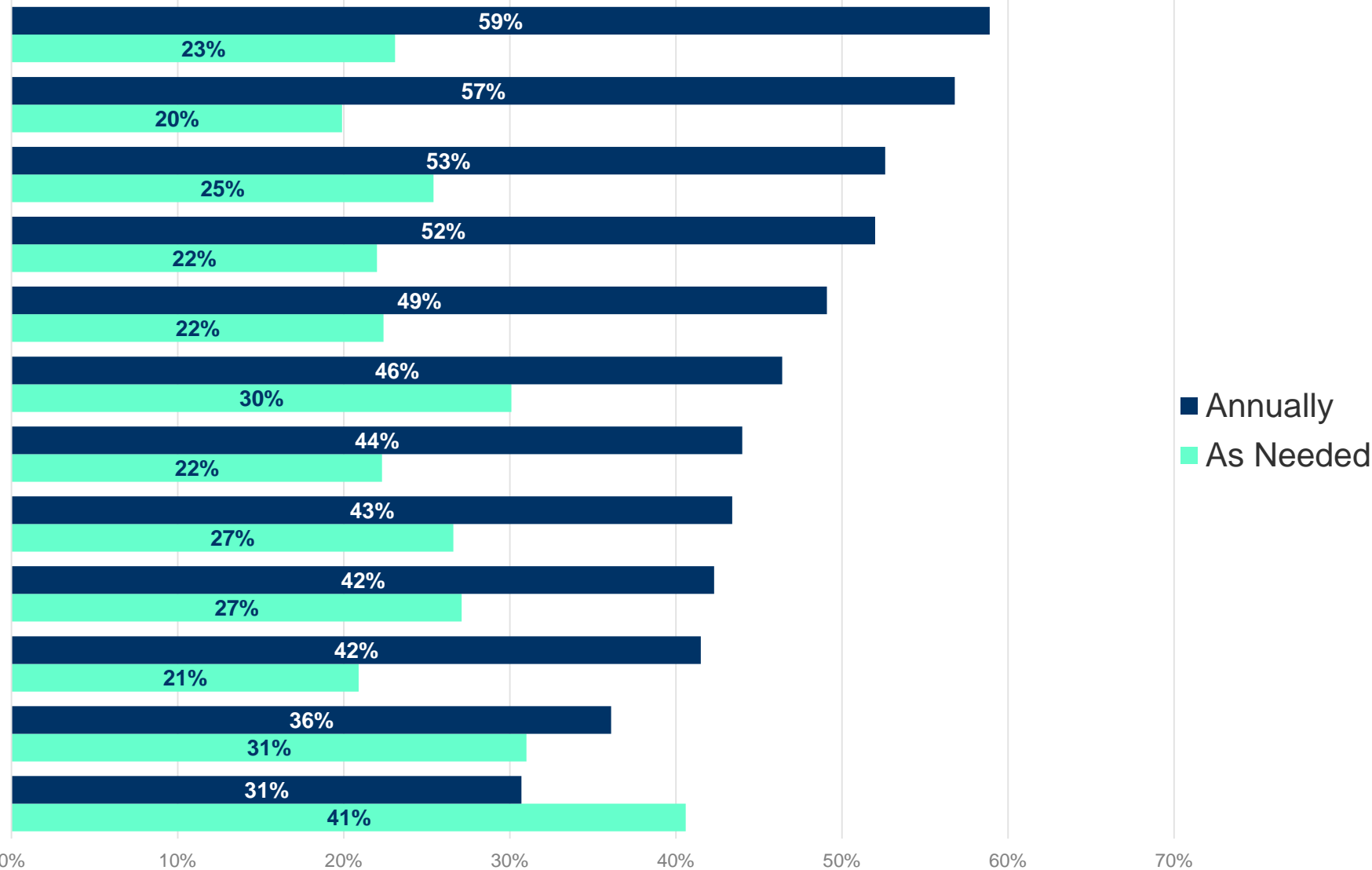
Access to back-up records

Communication with Employees

Hardware at hot sites

Remote work (key personnel)

Remote work (all personnel)



**\*Survey Note:**  
*Nearly exclusively annually or ad hoc, all other frequencies (never, monthly, quarterly, biannually, and biennially) averaged to about 4%.*



# BCP: Notable Exceptions to Testing

## Never tested:

- **16%** Full test (all aspects of BCP at one time)
- **16%** Hardware at hot sites
- **15%** Availability of copies of the plan

## Monthly:

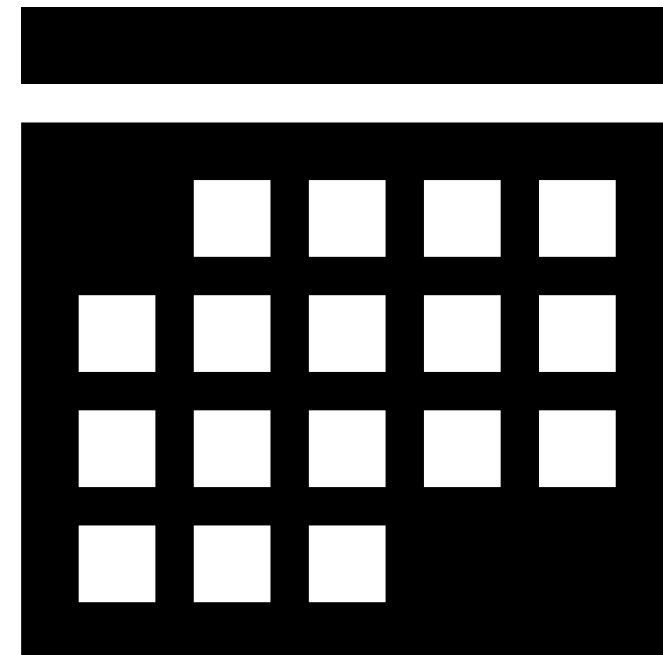
- **16%** Remote work (key personnel)
- **11%** Remote work (all personnel)
- **10%** Access to back-up records

## Quarterly:

- **12%** Employees understand BCP roles & responsibilities
- **11%** Ability to recover data

## Biannually:

- **12%** Ability to inform and communicate with employees



# BCP: Critical Vendors

11% of respondents did not test or review critical vendors' BCP, but for those that did methodology of testing of critical vendors is largely unchanged from previous survey (**2020** | [2017](#)):

- ↑ • **65%** | [54%](#) Due diligence questionnaires
- **64%** | [63%](#) Review a summary of the service provider's BCP
- **42%** | [34%](#) Assurance report on controls by an independent party
- **29%** | [30%](#) Onsite visits
- **29%** | [26%](#) Policies and procedures
- **27%** | [23%](#) Certifications
- **2%** | [ND](#) Other: Calls with the critical vendors
- **1%** | [ND](#) Other: Third-party provider reviews critical vendors



# COVID-19: The Impact Summary

- **93%** of BCPs that **did include** pandemics found their BCP to be effective
  - **69%** Had pandemics included in their BCP pre Jan 2020
- **96%** of BCPs that **did not include** pandemics but still found their BCP to be effective
  - **68%** Plan on updating BCP to include pandemics
- Only **12%** of respondents had a material impact due to COVID-19, of those respondents:
  - **76%** Operational aspects of the firm
  - **69%** Employee management
  - **43%** Client/investor management and communication (**33%** issues with communication and **33%** increased client communications)
  - **14%** Issues with portfolio management and/or trading of client accounts
  - **7%** Delay in regulatory obligations, communication with a regulatory agency, or material regulatory issue(s)

# COVID-19: The Good News

No respondents reported any:

- Privacy breaches
- Delays in reporting/delivering Form ADV
- Material cybersecurity event

Minimal impact:

- Material guideline issues (x2) and trading issues (x1)
- Delay in Form PF submission (x1), delay in other regulatory filings (x1), material regulatory filing (x1), contact from a regulator (x1)
- Material vendor issues (x2)
- Employees not following BCP (x2) or other policies and procedures (x2)
- **79% will make no material** enhancements to their BCP vs **13%** that **will make material** enhancements

# COVID-19: Biggest Impact

By far the most commonly stated impact was employees working from home and managing new technologies, supervision, and morale (represented via nearly every write in answer).

- **60%** Temporarily closed office(s)
- **81%** Had all employees work from home
  - **11%** Certain employees worked from home depending on their health status
  - **24%** Certain employees worked from home depending on their responsibilities and ability to work from home
- **32%** Engaged with significant vendors regarding their BCP execution
- **2%** Used a pre-arranged alternate physical location due to office shut down

Of those that had material impact to operations or employee management:

- **41%** Noted material enhancements were made to the BCP.
- **28%** Had material internal operational issues.
- **14%** Key person loss for the firm or department(s) as a result of health-related issues (including caregiving)

# Form CRS

# Form CRS: Background

## What is Form CRS?

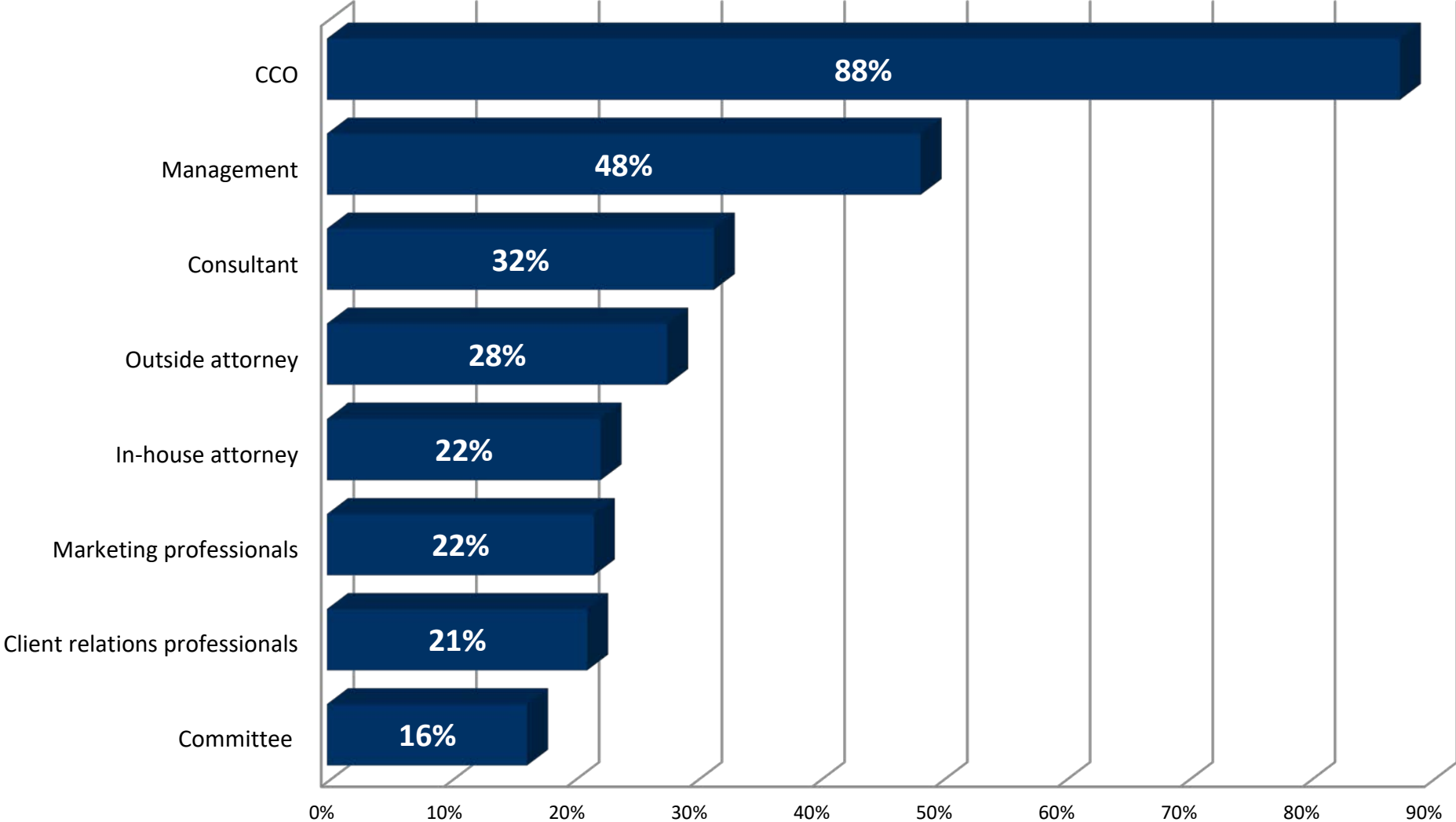
- Stated Objectives: reduce investor confusion and facilitate comparison
- Intended for “retail” investors
- RIAs, BDs, and dual-registrants
- New disclosure in addition to RIA brochure (ADV Part 3)
- Prepare and file by June 30, 2020
- Deliver to new and existing “retail” clients
- OCIE examinations planned (Risk Alert, April 7)

# Form CRS: Early Data

- **3%** unsure regarding definition of “retail”
  - Lack of clarity in certain circumstances (e.g., family offices, wrap programs, sub-advisory relationships)
- **41% deliver to all** clients (including non-retail)
- **45%** training regarding conversation starters, but not written scripts or talking points
- Disciplinary history of FPs:
  - *Reporting and monitoring*: **41%** questionnaire; **40%** certify
  - *Updating*: **51%** training; **51%** questionnaire; **32%** certify

# Form CRS: Drafting Participation

Which of the following participated in preparing your firm's Form CRS?



# Anti Bribery and Corruption



# Anti-Bribery and Corruption

- Just over **50%** have **adopted Foreign Corrupt Practices Act Policies and Procedures**
- **66%** responded they **do not provide advice outside the US**
- Those that haven't adopted:
  - In process of adopting
  - Do not believe needed due to biz model
  - Relying on foreign parent for FCPA measures
- If you market outside the US and don't have FCPA policy, at **high risk of SEC finding under CPR**
- **Just over ½ have as stand alone policy** or broader financial crime policy
- **40%** include as **part of Code of Ethics**



***Practical Considerations:***  
*As you go global, consider impacts to your compliance program.*

# Anti-Bribery and Corruption

Top controls relating to Anti-bribery and Corruption:

- **92%** Written P&Ps
- **77%** Conduct Annual Training
- **74%** Conduct New Employee Training
- **60%** Require annual attestation of compliance with policy
- **60%** Conduct background checks of employees
- **52%** Require bribery incidents and corruption to be reported internally
- **44%** Require preclearance for expenditures involving all public officials
- **39%** Institute anonymous whistleblowing line for incidents to be reported
- **38%** Perform initial due diligence of third-party solicitors (**29%** perform on-going DD)
- **37%** Require preclearance for expenditures involving foreign public officials
- **36%** Require accounting team to question unusual payments

## ***Underused Controls:***

- *Only 22% sharing enforcement cases with distribution team*
- *Just 9% requiring solicitor certifications*

# Anti-Bribery and Corruption

Top tests relating to Anti-bribery and Corruption:

- **50%** Periodically review accounting ledgers for inappropriate/foreign prospect related payments
- **32%** Review contracts with third-party consultants to ensure appropriate provisions are included
- **22%** Engage a third-party to review compliance with our policies and procedures

## ***Practical Considerations:***

- *Adding new testing ideas*
- *Change up testing periodically*

## ***Underused Tests:***

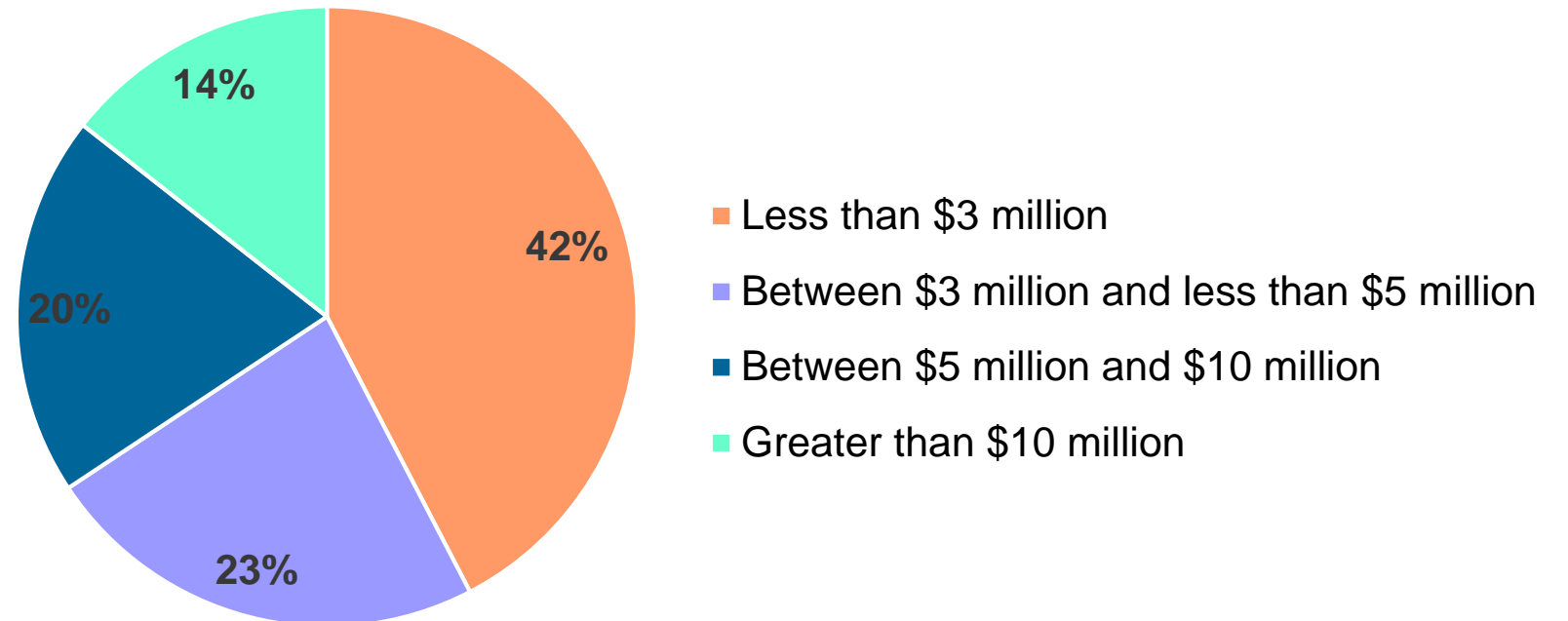
- *Just 8% randomly interviewing distribution personnel understanding of P&P*
- *Just 7% interview following travel abroad*
- *Only ½ reviewing accounting ledgers periodically and only 12% following new account onboarding – potential tests that examiners are employing*

# Cybersecurity and Data Privacy

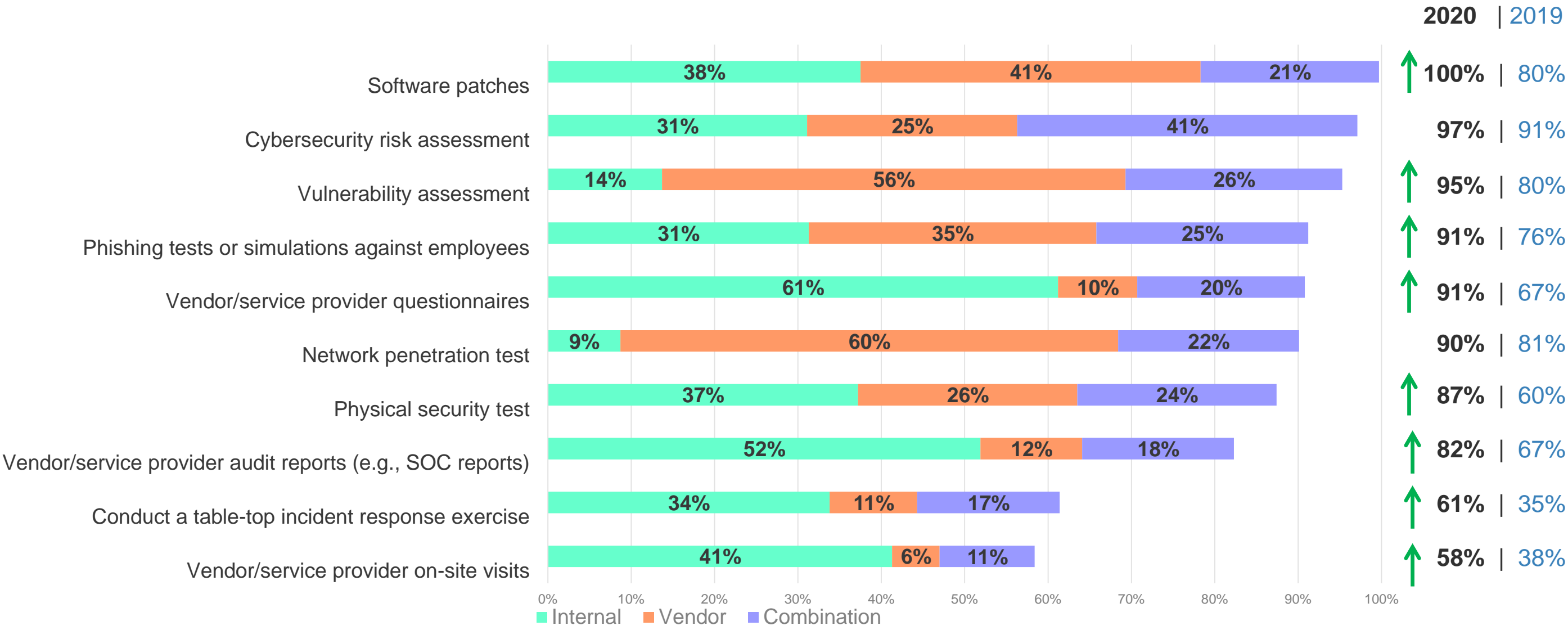
# Cybersecurity

The results regarding cybersecurity programs continue **several year upward trend** of adoption and increased robustness (**2020** | **2019**):

- **94%** | **87%** Formal cybersecurity program
- ↑ • **77%** | **66%** Have cybersecurity insurance (**4%** didn't know if they did or what the coverage amount is)
- Strong relationship between insurance coverage and RAUM and employee count of respondents.
  - More RAUM → more coverage
  - More employees → more coverage



# Cybersecurity: Assessments/Tasks



# Data Privacy: Risk Mitigants Large Movers

- 18% Utilize employee offboarding checklist that accounts for termination of access to third-party hosted systems used by employees
- 18% Physically and/or electronically destroy hard drives and memory drives of obsolete machines
- 17% Require employees to log off computers if they will be away for a period of time
- 15% Firm office computers are encrypted
- 15% Mobile devices that have access to firm emails utilize two-factor authentication
- 14% Clients/investors utilize password-protected website/portal for personal information
- 14% Office key passcards/codes are tested and codes for terminated employees are deactivated promptly
- 14% Track state regulations of data breach and privacy regulations
- 14% Firm laptops are encrypted
- 13% Policies and procedures regarding reporting lost or stolen laptops, wireless devices, and/or flash drives
- 13% Maintain an inventory of software used by employees
- 12% Remote access to firm data or resources requires two-factor authentication
- 12% Maintain an inventory of third-party hosted systems used by employees
- 11% Log potential privacy breaches
- 11% Periodically check copiers, faxes, conference rooms, etc. for confidential client data

**Survey Note:**  
*Top 10 and Bottom 10 risks mitigants were substantially similar to those in 2019*

# Data Privacy: CCPA

- Over half of respondents (**56%**) are not subject to CCPA while **12%** are in the process of fully complying.
- **92%** have **not** had any inbound requests to remove or delete data per CCPA, while **7%** had less than 10 requests and only **1%** had between 11 and 50 requests.
- Changes made due to CCPA:
  - **26%** Updated privacy notice
  - **26%** Identified location and inventoried consumers' personal information
  - **21%** Added P&P for processing consumer requests for information, requests for deletion, and requests to opt out of having their information shared
  - **16%** Updated website (if website existed **before** CCPA)
  - **9%** Periodic due diligence on vendors about their controls relating to CCPA requirements
  - **7%** Established a toll-free telephone number (if **no** toll-free number before CCPA)
  - **4%** Updated toll-free telephone number (if **had** toll-free number before CCPA)
  - **1%** Established a website (if website was created **after** CCPA)

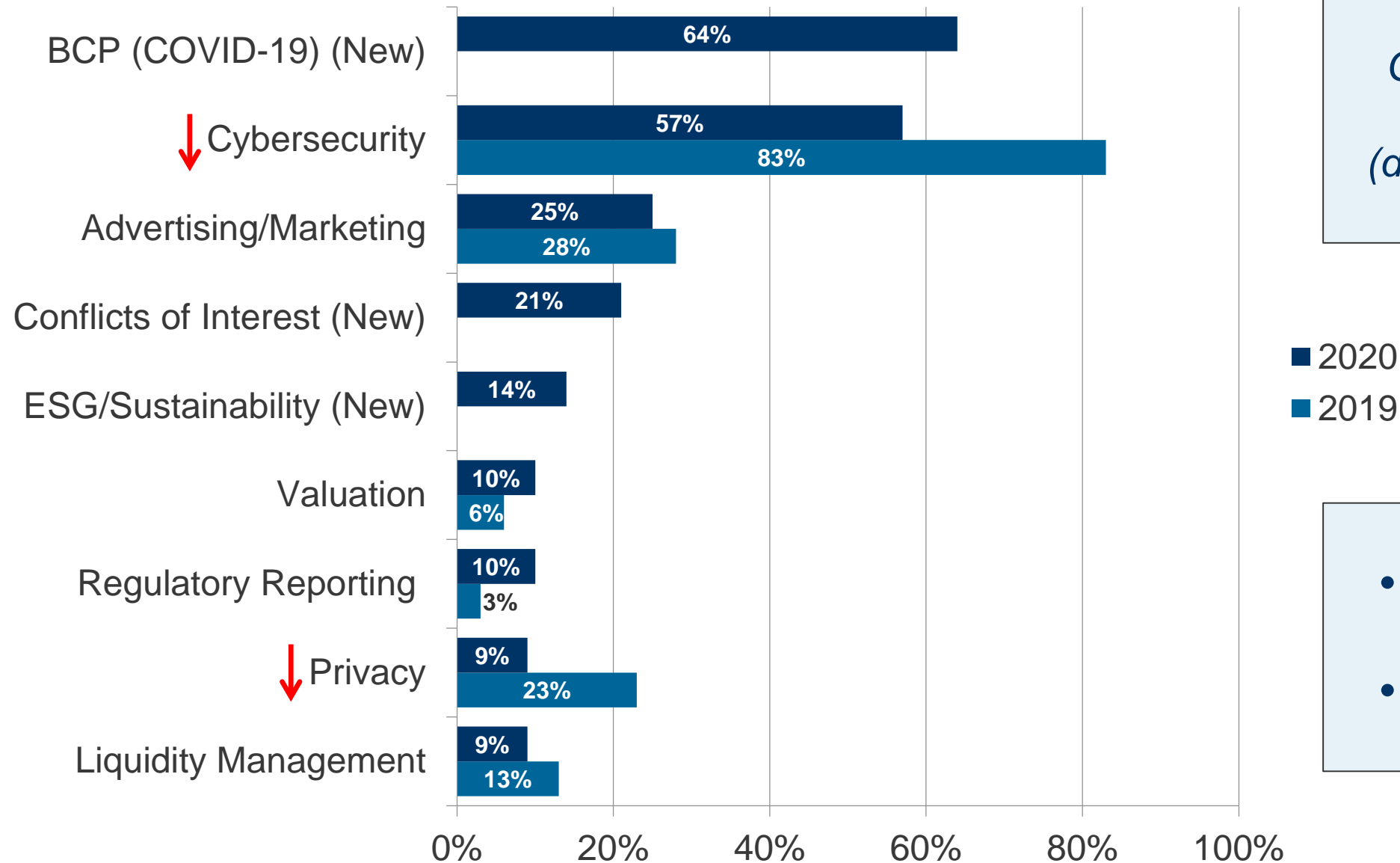




# Trend Update:

“Hot” Compliance Topics

# Trend Update: “Hot” Topics



**Notable Changes:**  
*Cybersecurity and Privacy had the largest net changes vs 2019 (decreased interests by of 26 and 14 percentage points respectively).*

■ 2020  
 ■ 2019

**Notable Absences:**

- *Best Execution only 3% in 2020 vs 16% (4<sup>th</sup>) in 2019.*
- *Custody only 4% in 2020 vs 13% (5<sup>th</sup>) in 2019.*



# Questions

# Contact Us

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## **Enrique Alvarez**

Senior Principal Consultant

### **ACA Compliance Group**

*ealvarez@acacompliancegroup.com*

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## **Amy Yuter**

Chief Compliance Officer

### **BrightSphere Investment Group**

*ayuter@bsig.com*

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## **Sarah Buescher**

Associate General Counsel

### **Investment Adviser Association**

*sarah.buescher@investmentadviser.org*

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## **Enrique Carlos Alvarez**

Senior Principal Consultant  
ACA Compliance Group

Enrique Alvarez joined ACA in July 2007 as a Compliance Trading Analyst and now serves as a Senior Principal Consultant working out of Charlotte, North Carolina. He has led or participated in over 225 client engagements that include SEC inspection responses, annual compliance reviews, mock examinations, compliance manual development, initial SEC registration, focused email and marketing reviews, fee recalculation audits, and training presentations of investment advisers (including hedge funds, private equity funds, family offices, and separate account managers).



## **Sarah Buescher**

Associate General Counsel  
Investment Adviser Association

Sarah joined the IAA in October 2017. She is responsible for core Investment Advisers Act issues as well as ERISA and pension issues. Before joining the IAA, Sarah served as a Branch Chief in the Investment Adviser Regulation Office in the SEC's Division of Investment Management. She also worked in the SEC's Office of the General Counsel and started her legal career in the SEC's Division of Investment Management. Sarah also has industry experience. Between 1999 and 2009, she worked at Vanguard, first in the Legal Department as Associate Counsel and Senior Counsel, and later as Manager of International Compliance in Vanguard's Compliance Department. Sarah earned her B.S. in Communication Studies from Northwestern University in 1989, and her J.D. from the University of Notre Dame Law School in 1994. She is a member of the District of Columbia Bar.



## Amy Yuter

Chief Compliance Officer

BrightSphere Investment Group (BSIG)

Amy Yuter is Chief Compliance Officer of BrightSphere Investment Group. She has over 25 years of experience in securities law compliance. Her responsibilities have included oversight of investment advisers, investment companies, transfer agents, broker-dealers, and private funds. Prior to joining the BrightSphere organization in 1995, Amy was a Securities Compliance Examiner with the U.S. Securities and Exchange Commission. Amy received her MBA and BBA from Temple University and earned a Certification in Public and Administrative Law from the Philadelphia Institute. Amy previously served as a Director of the National Society of Compliance Professionals, has participated as a member of various committees at the Investment Adviser Association and the Investment Company Institute and organized the Philadelphia Compliance Roundtable and the annual Investment Management Compliance Testing Survey.



Thank you!