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## 2015 Compliance Overview

### Upcoming Compliance Deadlines for 2015

With 2015 in full swing, it is important to take note of upcoming compliance-related obligations. The following is a list of reporting requirements for the upcoming year to help guide your firm. Not all listed obligations will apply to every investment adviser and broker dealer firm, but clients are encouraged to discuss any potential obligations with their Gordian compliance consultant, as well as with their Chief Compliance Officer, to assess if any action is required.

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### Investment Advisers

#### **Form ADV**

Form ADV for registered investment advisers and exempt reporting advisers (ERAs) with a December 31 fiscal year end must be updated and filed by **March 31, 2015** through the Investment Adviser Registration Depository (IARD) website.

Registered investment advisers must deliver updated brochures (Part 2A) and brochure supplements (Part 2B) to all clients within **120 days** after the end of the adviser's fiscal year along with the firm's privacy policy.

Although exempt from registration with the SEC, ERAs should continuously monitor their regulatory assets under management on a regular basis to ensure no additional reporting obligations are triggered.

#### **Form D**

Investment advisers conducting ongoing offerings of securities in reliance on Rule 506 of Regulation D are reminded that an amendment to Form D is required to be filed with the SEC **within 15 calendar days** after the date of first sale and **annually** thereafter on the anniversary of the date of initial filing. In addition, various states require that a filing (along with a filing fee in some states) be submitted annually or upon closure of any open offering.

#### **Form PF**

Advisers are responsible for filing a Form PF through the IARD website under the following conditions:

Large Hedge Fund Advisers (i.e. advisers with over \$1.5 billion in "hedge fund assets under management" must file Form PF **within 60 calendar days** after the end of each quarter, or by **March 2, 2015** (as March 1, 2015 falls on a Sunday) for the quarter ended December 31, 2014.

Investment advisers registered with the SEC, managing private funds, and with at least \$150

million in regulatory assets under management attributable to “private fund assets” must file Form PF annually, **within 120 days** of the end of their fiscal year, or by **April 30, 2015** for advisers with a December 31 fiscal year end.

All other advisers must file annually within 120 days of the end of their fiscal year, or by **April 30, 2015**.

### **Form 13F**

Advisers are responsible for a 13F filing if, in the previous calendar year, the adviser has \$100 million under management in 13F securities traded on U.S. securities exchanges (including NASDAQ).

13F filings are due **within 45 days** after the end of each calendar quarter. The first of such filings for this year must be made by **February 16, 2015** (as February 14, 2015 falls on a Saturday).

### **Form 13G**

The SEC permits “qualified institutional investors” (such as registered advisers) and “passive investors” (which may include non-registered advisers) who have 5% or greater beneficial ownership of a class of registered equity securities to report this ownership on Schedule 13G.

For Qualified Institutional Investors, 13G must be filed **within 45 days** after the end of the calendar year if as of the end of the calendar year its beneficial ownership exceeds 5% (i.e. by **February 16, 2015** (as February 14, 2015 falls on a Saturday) with respect to positions from calendar year 2014). Additionally, a registered adviser who files Schedule 13G as a qualified institutional investor must notify any person (such as a client) on whose behalf it holds 5% beneficial ownership of any transaction that such person may be required to report.

For Passive Investors, 13G filing must be submitted **within 10 days** of the event that triggers the filing requirement.

### **Annual Amendments to 13G**

With respect to both “qualified institutional investors” and “passive investors” an annual amendment is required to be **filed within 45 days after the end of each calendar year** to report any change in holdings for that year (i.e. by **February 16, 2015**, as February 14, 2015 falls on a Saturday). The annual amendment should report holdings as of December 31. A copy of such filing should also be sent to the issuer.

### **Form 13H Filings**

Form 13H filings are required to be made by a “large trader,” which is defined as a:

1. Person or entity who directly or indirectly exercises investment discretion over one or more accounts; and
2. Effects transactions in an aggregate amount equal to or greater than the “identifying activity level.”
3. The identifying activity level is defined as aggregate transactions in “NMS securities” that equal or exceed two million shares or \$20 million during any calendar day, or 20 million shares or \$200 million during any calendar month. The term “NMS securities” refers generally to exchange-listed securities, including equities and options.

Large traders must submit a 13H **within 10 days** of reaching the identifying activity level. An amended filing must be submitted no later than the end of the calendar quarter. Otherwise, large traders must make annual filings **no later than 45 days** after the calendar year end.

## **Commodity Trading Advisers And Commodity Pool Operators**

### **Form PQR**

Registered Commodity Pool Operators (“CPOs”) must file NFA Form PQR through the EasyFile system on the National Futures Association (“NFA”) website **within 60 days** after the end of the

quarters ending March, June and September, and a year-end report **within 90 days** of the calendar year end.

### **Form PR**

All registered Commodity Trading Advisers (“CTAs”) must file NFA Form PR through the EasyFile system on the NFA website **within 60 days** after the end of the quarters ending March, June and September, and a year-end report **within 90 days** of the calendar year end.

### **Exemption from CPO Registration - Annual Certification**

Fund managers relying on the exemption from registration as a commodity pool operator with the CFTC set forth in Rule 4.13(a)(3) (the so-called “de minimis exemption”) and those relying on the exemption from registration as a commodity trading adviser with the CFTC set forth in Rule 4.14(a) (8) must reaffirm their claim of exemption or exclusion from registration each year. The annual affirmation may be made through the NFA’s Exemption System and must be made **within 60 days** of the end of the calendar year, or by **March 2, 2015** (as March 1, 2015 falls on a Sunday).

### **Commodity Pool Operators Managing 4.7 Pools**

CPOs managing 4.7 pools must deliver to pool participants and file with the NFA certified annual reports that include audited financial statements **within 90 days** of the end of the fiscal year, or by **March 31, 2015** for advisers with a December 31 fiscal year end.

CPOs of fund of funds can request an **extension to up to 180 days** after the end of the fiscal year to deliver and file these reports. CPOs to 4.7 pools must also deliver quarterly account statements to participants.

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## **SEC Exam Priorities for 2015**

### **Cybersecurity: Ideas for Evaluating Your Firm’s Policies**

Cybersecurity is arguably the greatest current focal point of the SEC and state regulators for 2015. The SEC recently published two items this month centered on cybersecurity issues.[1] Below is a list of items to consider when evaluating your firm’s cybersecurity policy.

**Perform periodic, firm-wide, risk assessments and following through to correct the weaknesses found.** Several firms have already faced disciplinary action from the SEC and FINRA in 2014 for discovering risks during firm security audits and neglecting to take affirmative steps to mitigate discovered risks.

### **Conduct an Affirmative Assessment of Firm Hardware and Software.**

- Apply strict and robust password safeguards.
- Ensure only authorized personnel have access firm systems and data.
- Create an application “Whitelist”—a list of approved software for employee/firm use.
- Update firm operating systems to their most recent counterparts.
- Implement automatic software updates and periodic spot-checks—particularly with regards to anti-virus software. The SEC and FINRA have brought actions in 2014 based on this issue alone.
- Periodically assess and implement firm’s cloud or physical back-up system.
- Develop a clear policy on mobile devices for firm use, including but not limited, to password restrictions and data encryption. This is a developing issue, evidenced by FINRA’s \$300,000 enforcement action against a firm for failing to require the encryption of information on employee laptops.

**Purchase Insurance.** Firms may also want to consider purchasing insurance plans to help mitigate the financial burden in the event of data breaches and/or hardware failure.

Cybersecurity is just one of the areas that the SEC is focused on for 2015. The SEC is also going to be focusing on leverage, liquidity and valuation policies for large fund advisers. Please visit our website at [www.gordiancompliance.com](http://www.gordiancompliance.com) for more details on the SEC's exam priorities for 2015.

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[1] **SEC's Examination Sweep Policy Risk Alert** culls together findings from over 100 SEC examinations of investment advisors and broker dealers—assessing cybersecurity risks, and the tracking the successful development/implementation of firm cybersecurity policies. **SEC's Office of Investor Education and Advocacy** just released a publication targeted at investor safety and security. The biggest takeaway was on the SEC's emphasis of a two-step verification process for safeguarding online investment accounts.

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### **FINRA Exam Priorities for 2015**

In early January, FINRA released its 2015 Exam Priorities, which highlighted several areas of recurring challenges for FINRA member firms. Below is a list of areas that FINRA noted as recurring challenges for broker-dealer firms, which will help guide the in their exam priorities for 2015.

1. **Priority of customer interests.** FINRA recognized the harm caused to investors when the firm does not put its customers first and the lasting consequences for the investor when poor advice is given.
2. **Firm culture.** FINRA highlighted the responsibility of the boards and senior executives to articulate and practice high standards of ethical behavior that are visible throughout the organization and embedded in the firm's incentives.
3. **Supervision, risk management and control.** Noting that a strong supervisory and risk management system prevents inadvertent harm to customers, FINRA also recognized the importance of such controls to defend against deliberate acts of malfeasance.
4. **Products and Services offerings.** The sale of novel products and services remains a regulatory hot button issue. FINRA highlighted the need for firms to conduct rigorous new product reviews and assess reasonable basis and customer-specific suitability prior to offerings.
5. **Conflicts of interest.** In 2015, FINRA will continue to focus on fee and compensation structures that lie at the heart of many conflicts of interest.

#### **In 2015, FINRA will be focusing the following areas:**

1. Cybersecurity Risk Management;
2. Sales practices;
3. Outsourcing;
4. Sales to customers involving FDIC Insured products or tax-exempt securities
5. Abusive algorithms and deficient supervision for potential manipulation;
6. Order routing practices, best execution and disclosure; and
7. Valuing non-high-quality liquid assets.

For a complete list of FINRA's exam priorities, please visit the FINRA website



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