



**By Electronic Mail ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

March 3, 2017

Ms. Heather Seidel  
Acting Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, NE Washington, D.C. 20549-1090

**Re: SEC Rule 13h-1 Large Trader Implementation Issues for Broker-Dealers  
Request for Phase III Extension**

Dear Ms. Seidel:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> submits this letter to the Securities and Exchange Commission (“Commission”) to request an extension of the exemptive relief that the Commission has granted in connection with Rule 13h-1 under the Securities Exchange Act of 1934 (“Exchange Act”). The Commission issued an order on October 30, 2015 (“October Order”) to exempt broker-dealers from certain recordkeeping and reporting requirements of Rule 13h-1 until November 1, 2017.<sup>2</sup> The compliance phase currently scheduled to take effect on November 1, 2017 is referred to in the October Order as “Phase III.”

SIFMA has previously described the significant implementation challenges that would have to be resolved to meet the compliance requirements of Phase III. In particular, SIFMA stated in its February 13, 2013 letter to the Commission that “it would require a massive restructuring of most of the current execution and clearing flows and systems at considerable

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<sup>1</sup> SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> Securities Exchange Act Release Nos. 76322 (October 30, 2013), 80 FR 68590 (November 5, 2015). *See Also* Securities Exchange Act Release Nos. 70150 (August 8, 2013), 78 FR 49556 (August 14, 2013) (the “August Order”) (establishing Phase Two and providing for Phase Three); 69281 (April 3, 2013), 78 FR 20960 (April 8, 2013) (extension of the compliance date); and 66839 (April 20, 2012), 77 FR 25007 (April 26, 2012) (establishing Phase One).

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cost to aggregate all of [the relevant reporting] information at one broker-dealer” and that “individual broker-dealers must make significant internal changes to their systems, the fundamental restructuring of certain industry standard clearing processes may be required, and concerted and coordinated development activities will be required throughout the broker-dealer industry.”<sup>3</sup> These challenges continue to persist and are no less burdensome today. SIFMA also noted in its 2013 letter that the reporting structure that would ultimately be developed and implemented under Phase III would become redundant when the Consolidated Audit Trail (CAT) is instituted.<sup>4</sup> This continues to be true.

Certain aspects of Phase III implementation continue to be infeasible except at a prohibitive cost and involving significant industry coordination for the development of new operational flows and processing standards that is disproportionate to the anticipated relatively short-lived corresponding benefit. Specifically, with the progress on CAT, discussed fully below, the useful life of a costly and specialized Phase III solution is now described in months.

Developments since the October Order argue strongly in favor of eliminating Phase III altogether or, in the alternative, materially postponing Phase III. Most notably, in November 2016 the Commission approved the CAT NMS Plan submitted by the Self-Regulatory Organizations (SROs), setting in motion the deadlines for CAT compliance and reporting. Specifically, pursuant to SEC Rule 316(a)(3), SROs and large broker dealers will be required to begin reporting data to CAT in or about November 2018, with all broker dealers required to report data to CAT in or about November 2019.<sup>5</sup> In the CAT NMS plan, the SROs have identified Rule 13h-1 as a reporting requirement that could reasonably be eliminated because it will be superseded by the CAT.<sup>6</sup> At this point, developing a costly and time consuming Phase III solution would require significant time and resources that would distract industry resources and focus from developing and implementing CAT compliance solutions. Further, Phase III implementation would require significant additional interpretive guidance, which we have requested from the Commission.<sup>7</sup>

With CAT development underway and compliance deadlines in sight, we believe that the Phase III compliance deadline should be eliminated or materially extended. The principal goals of Rule 13h-1 have been accomplished in Phases I & II, as the execution detail of broker dealer proprietary, direct market access, and sponsored access trading activity is now available to the SEC and other regulators via Electronic Blue Sheets. The Commission seemed to acknowledge this in its August 8, 2013 exemptive order on Rule 13h-1 when it indicated that it was providing “exemptive relief limiting short-term compliance costs of

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<sup>3</sup> SIFMA Request for Exemptive Relief from certain aspects of Rule 13h-1 (Large Trader Reporting), February 13, 2013 (available at <http://www.sec.gov/comments/s7-10-10/s71010-102.pdf>).

<sup>4</sup> SIFMA also raised a number of critical interpretive questions that we believe the Commission should address before broker-dealers can develop a compliance solution for Phase III.

<sup>5</sup> 17 C.F.R. 242.316(a)(3).

<sup>6</sup> Amended and Restated Consolidated Audit Trail National Market System Plan (CAT NMS Plan) Submission, Submitted February 27, 2015 (available at <http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p602500.pdf>).

<sup>7</sup> *Supra* note 4.

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[Rule 13h-1] to focus near-term compliance on the large trader information that is likely to be most useful to the Commission.”<sup>8</sup> Further, the Commission stated in its October Order that the extension would “give the Commission enough time to evaluate future developments, including any investment in or progress on a CAT.”<sup>9</sup> SIFMA believes that the investments in and progress on the CAT, discussed above, support the elimination or material delay of Phase III.

Based on the foregoing, we respectfully request that the Phase III be eliminated or materially extended to a date no sooner than the earlier of the date of the full implementation of the CAT or November 1, 2022. It is not necessary to build a compliance solution for Phase III when the work will be carried out separately through the development of the CAT. If Phase III is not eliminated, once the CAT is implemented the Commission should reassess the utility of Phase III and any remaining potential value Phase III may have. In any event, the November 1, 2017 compliance date is not feasible at this point given the remaining need for interpretive guidance, plus the significant systems issues that would have to be resolved for Phase III compliance.<sup>10</sup> As such, it is critical that the Commission act to extend or eliminate Phase III requirements consistent with our request as soon as possible, and in any event several months before the November 1, 2017 deadline.

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SIFMA appreciates the Commission’s consideration of this request. If you have any comments or questions, please do not hesitate to contact me at [REDACTED].

Respectfully submitted,



Thomas F. Price  
*Managing Director*  
Operations, Technology & BCP

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<sup>8</sup> Securities Exchange Act Release Nos. 70150 (August 8, 2013), 78 FR 49556 (August 14, 2013) (establishing Phase Two and providing for Phase Three).

<sup>9</sup> *Supra* note 2 at footnote 63.

<sup>10</sup> In its February 13, 2013 letter, SIFMA had pointed out that a prime broker or other carrying broker that is not acting as a self-clearing executing broker or clearing broker for the executing broker for a particular transaction (which can occur, for example, in Prime Brokerage, DTC ID, CMTA, and other bulk clearance flows) (an “indirect clearing carrying broker”) generally does not receive underlying disaggregated execution fill details in the ordinary course of performing its clearing activities. Accordingly, SIFMA requests that in connection with any relief issued by the Commission, the Commission also clarify that an indirect clearing carrying broker is not required during Phase II to keep records of, or report, Transaction Data with respect to disaggregated execution trade details (including disaggregated execution times, quantities, venues, and prices). SIFMA believes this clarification would be consistent with the logic behind the August Order’s exclusion of recordkeeping and reporting requirements for “execution time” by indirect clearing carrying brokers.

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cc: The Honorable Michael S. Piwowar, Acting Chair  
The Honorable Kara M. Stein, Commissioner

Gary Goldsholle, Deputy Director, Division of Trading and Markets  
David Shillman, Associate Director, Division of Trading and Markets  
Richard Holley, Associate Director, Division of Trading and Markets