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By Electronic Mail (TradingandMarkets@sec.gov)

September 17, 2018

Mr. Brett Redfearn
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 Mr. Redfearn:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ 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”). On August 27, 2018, as part of a public statement regarding the status of the Consolidated Audit Trail (“August Statement”),² the Commission requested feedback regarding the large trader exemption. Most recently, the Commission issued an order on October 31, 2017 (“October Order”) to exempt broker-dealers from certain recordkeeping and reporting requirements of Rule 13h-1 until November 15, 2018.³ The compliance phase currently scheduled to take effect on November 15, 2018 is referred to in the October Order as Phase Three Large Trader (hereinafter “LTID Phase III”).

¹ 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>.

² Public Statement of Brett Redfearn, Director, SEC Division of Trading and Markets, “Statement on Status of the Consolidated Audit Trail,” (August 27, 2018), available at <https://www.sec.gov/news/public-statement/tm-status-consolidated-audit-trail>.

³ Securities Exchange Act Release Nos. 81993 (October 31, 2017), 82 FR 51449 (November 6, 2017). *See Also* Securities Exchange Act Release Nos. 76322 (October 30, 2015), 80 FR 68590 (November 5, 2015); 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).

The below letter outlines the broker-dealer industry's support for the Consolidated Audit Trail ("CAT"), and the need for the industry to focus its development and technology expertise and resources on meeting the CAT timeline outlined in the Commission's August Statement, consistent with our July 13, 2018 letter requesting LTID Phase III relief.⁴ Further, we provide a chronology of relevant SIFMA LTID Advocacy outlining the impracticability of reporting granular LTID execution detail to Electronic Blue Sheets ("EBS") in certain scenarios, now contained in LTID Phase III.

Industry Focus on the Consolidated Audit Trail

SIFMA has supported and continues to support the development of the Consolidated Audit Trail. In this regard, SIFMA believes the August Statement, and the timeline contained therein, balance the challenges the Self-Regulatory Organizations ("SROs") and Thesys have faced building the CAT Processor with the need to bring CAT online as soon as possible. SIFMA members have spent enormous amounts of subject matter expert time working collaboratively with the SROs to work towards bringing CAT online and make it a success.⁵ With the release of draft CAT Reporting Technical Specifications for Industry Members on September 5, 2018,⁶ and continued dialogue to complete final specifications by October 30, 2018, the industry's collaborative efforts with the SROs and Thesys to meet the implementation timeline outlined in the August Statement will increase significantly.

Meeting the CAT implementation timeline outlined in the August Statement requires the focus of all interested stakeholders, including the SROs and the SEC along with the broker-dealer industry. As outlined in the below section, compliance with Large Trader Phase III – generally the reporting of granular trade information to EBS for certain trade scenarios where the execution of customer orders and custody of customer securities occurs at unrelated parties – is impractical except at prohibitive cost in terms of subject matter expert time and technology. The effort to build a costly and complicated solution for LTID Phase III would draw upon the same regulatory reporting and technology subject matter experts tasked with meeting the CAT timeline outlined in the August Statement. To stress, if broker-dealers are required to build a solution for LTID Phase III, it will negatively impact their ability to timely plan and build for CAT. Separately, any infrastructure designed and built to comply with

⁴ Available at <https://www.sec.gov/comments/s7-10-10/s71010-4323507-173247.pdf>.

⁵ SIFMA and its members are highly engaged in the development and implementation of CAT, expending tens of thousands of hours working with the SROs and SEC developing CAT since it was proposed in 2010. On dozens of occasions, SIFMA has answered SEC or SRO calls for input with fulsome written comments informed by industry subject matter expertise. Further, SIFMA and its members have populated forums designed to further the CAT development, including the and Development Advisory Group (DAG), which met regularly from March 2013 until just prior to the approval of the CAT National Market System plan, and the ongoing Industry Member Technical Specification Working Group, tasked with providing feedback on the technical specifications and other aspects surrounding CAT implementation. In addition, SIFMA and its members have engaged on an *ad hoc* bases with the SROs and SEC regarding technical and policy issues that regularly arise in a project the size of CAT.

⁶ Available at <https://www.catnmsplan.com/wp-content/uploads/2018/09/Industry-Member-Tech-Specs-Order-Events-v0.6.pdf>.

LTID Phase III would have a minimal useful life, as CAT, once implemented, will provide regulators with comprehensive order lifecycle information, including the execution detail LTID Phase III seeks.⁷ As outlined below, and as requested in our previous advocacy, we request LTID Phase III be materially extended to a date no sooner than the earlier date of the implementation of the CAT or November 15, 2020.

Chronology of Relevant SIFMA LTID Advocacy

SIFMA's comment letter in response to the 2010 Large Trader ID proposal⁸ outlined numerous operational issues related to the proposed rulemaking. One specific area of concern was – and continues to be – reporting execution detail, including execution time and other associated street side execution details, such as venue, quantity, execution price and contra broker, for average price transactions and clearing-only and prime brokerage transactions executed at other broker-dealers. As outlined in 2010, addressing the compression of trade executions into average price position movements between unrelated parties would “require significant, additional interpretative work” as well as require significant and onerous “new mechanisms for obtaining execution times” between such disparate parties. This continues to be true.

In April 2012, the Commission established Phase I of LTID reporting to begin on May 1, 2013.⁹ The Commission stated that the extension “will allow broker-dealers additional time to develop, test, and implement enhancements to their recordkeeping and reporting systems as required under Rule 13h-1 and, for those broker-dealer requirements for which the compliance date has been extended to May 1, 2013, for the Commission to consider requests for relief from certain provisions of the Rule.” Importantly, the Commission also stated that, “[i]n connection with any potential relief that the Commission may grant on or before the new May 1, 2013 date, the Commission would consider the appropriateness of an implementation period as well as a systems testing schedule beyond May 1, 2013.”

On February 13, 2013, SIFMA submitted a letter as a follow up to a meeting with Trading and Markets staff on January 16, 2013.¹⁰ In that letter, we described challenges that firms were facing in implementing what was then Phase II of LTID implementation (including the activity now in Phase III), and we set forth specific requests for interpretive guidance that would be necessary for full implementation of systems to report under the LTID rules. To date, we have not received that guidance.

Subsequently, on August 8, 2013, the Commission modified Phase II of LTID implementation and established a new Phase III with a compliance date of November 1,

⁷ See Financial Information Forum (FIF) CAT Discussion document, “CAT/Large Trader Phase 3 Discussion,” (March 20, 2014), available at <https://fif.com/fif-working-groups/consolidated-audit-trail/member-resources/archive-documents> (requires registration).

⁸ Available at <https://www.sec.gov/comments/s7-10-10/s71010-86.pdf>.

⁹ See 77 FR 25007 (April 26, 2012) (establishing Phase One).

¹⁰ Available at <https://www.sec.gov/comments/s7-10-10/s71010-102.pdf>.

2015.¹¹ At that time, the Commission stated that it was providing “exemptive relief limiting short-term compliance costs of [Rule 13h-1] to focus near-term compliance on the large trader information that is likely to be most useful to the Commission.”

On April 9, 2015, SIFMA again requested relief regarding Phase III implementation.¹² SIFMA again stressed that certain aspects of Phase III implementation are infeasible except at a prohibitive cost and involve significant industry coordination for the development of new operational flows and processing standards disproportionate to the short-lived corresponding benefit. In addition, we reiterated the fact that LTID Phase III implementation would require significant additional interpretive guidance which we had requested from the Commission.

On October 30, 2015, the Commission extended Phase III for another two years.¹³ In granting this extension, the Commission stated that, “[i]n light of the fact that there is no approved CAT NMS plan, the Commission is hesitant at this time to require broker-dealers to incur the costs associated with the remaining Phase Three Large Trader data while the timing of a CAT remains unclear.”

On March 3, 2017, SIFMA requested another extension of the Phase III implementation.¹⁴ This request noted the progress on the CAT, which ultimately will provide the execution detail Phase III is seeking. SIFMA’s request also outlined that 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.

On October 31, 2017, the Commission extended LTID Phase III implementation until November 15, 2018, which, at the time, aligned with the date large broker-dealers were to begin reporting to the CAT.¹⁵

In our July 13, 2018 request for LTID Phase III relief,¹⁶ SIFMA acknowledged the delays in CAT implementation, but we also noted that the broker-dealers subject to Rule 13h-1 are not responsible for those delays.

Conclusion

Based on the foregoing, we respectfully request that LTID Phase III be materially extended to a date no sooner than the earlier date of the implementation of the CAT or November 15, 2020, at which time the SEC can re-evaluate the progress of the CAT implementation and

¹¹ See 78 FR 20960 (April 8, 2013) (extension of the compliance date).

¹² Available at <https://www.sec.gov/comments/s7-10-10/s71010-104.pdf>.

¹³ 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).

¹⁴ Available at <https://www.sec.gov/comments/s7-10-10/s71010-1610783-135970.pdf>.

¹⁵ Securities Exchange Act Release Nos. 81993 (October 31, 2017), 82 FR 51449 (November 6, 2017).

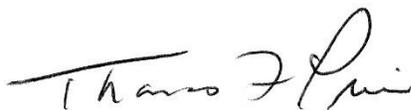
¹⁶ *Supra* note 4.

extend this relief further or provide permanent relief. Simply put, the November 15, 2018 compliance date is not feasible given the remaining need for interpretive guidance, plus the significant systems issues that would have to be resolved for Phase III compliance.¹⁷ Broker-dealers have not engaged in the systems changes necessary for Phase III because of the Commission's previous statements that it would evaluate progress on the CAT before moving forward with Phase III. In addition, any effort to comply with LTID Phase III will draw upon finite industry resources currently allocated to meeting CAT compliance deadlines and will have a negative impact the industry's ability to meet those CAT deadlines. As such, SIFMA urges the Commission to extend Phase III requirements consistent with our request as soon as possible.

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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 the undersigned at [REDACTED].

Respectfully submitted,



Thomas F. Price
Managing Director
Operations, Technology & BCP

cc: Jay Clayton, Chairman, SEC
Kara M. Stein, Commissioner, SEC
Robert J. Jackson Jr., Commissioner, SEC
Hester M. Peirce, Commissioner, SEC
Elad Roisman, Commissioner, SEC

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

¹⁷ 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.