PRUDENTIAL

PRUDENTIAL PLC
GROUP COMPLIANCE
12 ARTHUR STREET
LONDON EC4R 9AQ

TEL 020 7220 7588
FAX 020 7548 3995
www.prudential.co.uk

22 June 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-10-10; Establishment of Large Trader Reporting System

Dear Ms. Murphy,

Prudential plc appreciates the opportunity to comment on Release No. 34-61908 (the "Release") issued by the Securities and Exchange Commission (the "Commission") regarding proposed Rule 13h-1 (the "Proposed Rule") and Form 13H to establish a large trader reporting system pursuant to Section 13(h) of the Securities Exchange Act of 1934, as amended.[1] We support the Commission's efforts to detect and deter trading abuses through the creation of a large trader reporting system. However, we have some concerns about the way in which the Proposed Rule and Form 13H would work in practice, as discussed below, and we propose some clarifications and changes that we believe would better accomplish the Commission's goal. Our comments relate to proposed requirements relating to (i) the definition of "large trader" and the manner in which trades are aggregated across entities, (ii) Form 13H, (iii) potentially duplicative reporting for broker-dealers, (iv) the response time for Commission requests, and (v) the need for additional time to file initial Forms 13H.

Prudential plc

Prudential plc is an international financial services group with significant insurance and other operations in the U.S., the U.K. and Asia. We serve approximately 25 million customers and have £290 billion of assets under management (as at 31 December 2009).[2] One subsidiary, Jackson National Life Insurance Company ("Jackson"), has 2.8 million life insurance policies and retirement savings contracts in force and is one of the top five providers of total annuities, variable annuities and fixed index annuities in the U.S.

Jackson's subsidiaries in the U.S. include Curian Capital, a registered investment adviser that provides a fee-based separately managed account (SMA) platform to retail customers through third party financial professionals. Curian Clearing, a registered broker-dealer, provides brokerage execution and clearing for these customers.

Another Prudential plc subsidiary in the U.S., PPM America, Inc., also a registered investment adviser, manages assets and provides investment advisory services primarily for Prudential's plc's U.S. affiliates, including Jackson, as well as for U.K. and Asian affiliates. Prudential plc also indirectly owns several dually-registered investment advisers and broker-dealers.

Curian Capital and PPM America would likely fall within the definition of "large trader" based on current trading volumes, and a few other Prudential plc affiliates may as well. However, Prudential plc also has a

---

1 Large Trader Reporting System, Securities Exchange Act Release No. 34-61908 (April 14, 2010), 75 Fed. Reg. 21456 (April 23, 2010).

2 Prudential plc is not affiliated in any manner with Prudential Financial, Inc., a company whose principal place of business is in the U.S.

number of subsidiaries around the world that hold, or that exercise investment discretion over accounts that hold, NMS securities, but that would not fall within the definition of "large trader" in the Proposed Rule. Other Prudential plc subsidiaries do not normally hold or invest in NMS securities, or exercise investment discretion over accounts.

Aggregation and groups

The Proposed Rule defines "large trader" as "any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level." The Release contemplates that an entity exercises investment discretion when managing its own assets. Under the proposed definition, a parent company (including a holding company) may itself be a large trader if it has two subsidiaries that each is a large trader.

The definition also appears to include a parent that has two subsidiaries, neither of which meets the definition of large trader, if in the aggregate the NMS securities traded in those accounts meet the qualifying thresholds in the Proposed Rule. This requirement will distort the data collected under the Proposed Rule in two ways that will undermine the Commission's objectives:

First, in Prudential plc's case, its Form 13H filing would sweep up a number of subsidiaries that are not themselves large traders and that operate independently from their parent and other subsidiaries. The inclusion of non-large trader subsidiaries such as these in a parent's Form 13H filing and the inclusion of their trading data in a broker-dealer's large trader records (assuming that the executing broker to whom the trade is given up for execution by the local, foreign broker is in the U.S. and had access to the large trader number for Prudential plc) would obscure, through aggregation, the meaningful data of subsidiaries that are in fact large traders and impede the Commission's ability to monitor the activities of genuine large traders.[3] Second, many of these subsidiaries operate outside the U.S. and often provide orders for execution in NMS securities to broker-dealers located outside the U.S. Because the foreign local broker would not be subject to the Proposed Rule, the U.S. executing broker will not know the large trader identity number of the Prudential subsidiary because the foreign broker-dealer will not be required to attach the number to the order.[4]

We request that the Commission clarify that a parent is required to report on Form 13H only with respect to those subsidiaries that individually meet the definition of large trader.[5] We further request that non-large trader subsidiaries of large trader parents not be required to obtain and provide a Large Trader Identification Number (LTID) to broker-dealers.

The Commission also proposed that large trader subsidiaries be permitted to file their own Forms 13H. However, a parent would be required to file a Form 13H if a single subsidiary failed to file its own Form 13H. Further, the parent's Form 13H then would have to include all information filed by all of its subsidiaries, even those that had already filed a Form 13H. This approach would force some parent companies to exercise a measure of control over their subsidiaries' SEC filings they have not previously used. Parent companies may not have systems in place to monitor whether all of their subsidiaries have

---

[3] The Release notes that a parent company could seek to avoid filing Form 13H by causing its subsidiaries to send their trades to other subsidiaries. We think this is unlikely as it would require a degree of control over trading activities of subsidiaries – possibly at the cost of best execution – that many parents do not or cannot exercise and to which many subsidiaries would not accede.

[4] The Proposed Rule may have a third, unintended consequence. To the extent that U.S. broker-dealers incur higher costs as the result of the reporting requirements imposed by the Proposed Rule, brokerage business may be driven, by best-execution responsibilities, offshore to non-U.S. broker-dealers that will not be required to report large-trader data.

[5] *See, e.g.*, "For example, a parent holding company generally would file a Form 13H on behalf of itself and *each of its large trader subsidiaries*." (Release at 19) (emphasis added).

complied with various filing requirements in multiple jurisdictions, and many have justifiably placed this responsibility on the filing subsidiary. We also note that the Commission has not taken this approach in administering Form 13F. We urge the Commission to reconsider placing the filing burden on parents that in good faith have delegated filing responsibility to their large trader subsidiaries.

One assumption that is implicit in the Release is that parent companies for investment advisers and other entities that exercise investment discretion control the trading of their subsidiaries. In our experience, that simply is not the case much of the time. In many financial services organizations, parents do not take part in the day-to-day activities of their subsidiaries. As a result, requiring a parent to report trading activity that occurs at the subsidiary level does not make sense because the parent company employees will not know anything about the trading activity or be in a position to answer questions from the Staff regarding the activity. In addition, reporting may undermine existing information barriers used to ensure that trading strategies or customer information does not leak from one subsidiary to another subsidiary. The filing of a combined Form 13H may also create the impression that these barriers are ineffective. We suggest that large traders be permitted, on Form 13H, to disclaim control over the trading activities of their large trader subsidiaries and that large trader numbers be assigned exclusively at the level of the entity that exercises trading discretion rather than at the level of an entity that "controls" subsidiaries that exercise trading discretion.

Finally, the Commission proposes to define "control" of an entity as arising upon acquisition of 25% of its voting securities. Thus, a parent that controls a large trader could be required to provide its LTID for use by a minority-owned subsidiary and report certain information about the entity on Form 13H. This requirement poses two problems. First, it is likely to be difficult if not impossible to implement in many cases. A company that owns a minority stake in another (for example, purely as an investment) will often be unable to obtain the information and consent necessary to file a large trader report that includes the entity. For example, a large trader that has a 25% joint venture interest in another company that trades in NMS securities is unlikely to be able to require that joint venture to provide it with the data it needs to fill out its 13H. The problem is even greater in the case of a 25% interest in a private investment fund. Our experience is that private funds simply will not provide the type of information required by Schedule 6 of Form 13H to investors. For these reasons, we suggest that a parent be permitted to shift the reporting burden under Form 13H to any minority-owned (less than 50%) subsidiary that does not wish to share information with its parent. The parent would indicate the name of the subsidiary on its Form 13H and note that the subsidiary would be reporting on its own Form 13H. This would be very similar to the procedure some parent companies currently use with respect to compliance with the filing obligations on Form 13F. Alternatively, the "parent" should be able to disclaim control as to that minority-owned entity.

Second, the data collected under the Proposed Rule could be duplicative and could thus further distort the results of the reporting regime. For certain investment funds, for example, the "control" definition could result in up to four otherwise completely unrelated entities that invest in a private fund being required to include that fund in their reports. The fund's trades would thus be reported four times.

Form 13H

We recommend two changes to the proposed Form 13H to be used by large trader applicants. First, we recommend adding a *de minimis* exception for small accounts to Schedule 6 of the Form. Some large traders manage thousands of small accounts, including wrap program accounts, and add and drop accounts weekly.[6] Under the current proposed Form, large traders would need to update their Forms 13H extensively each quarter, which we believe would be a significant expense the utility of which would not be justified. Based on the statements in the Release suggesting that a primary purpose of the proposal is to "analyze significant market events," we do not believe that the Commission intends to focus on management of accounts for purely retail investors. We suggest that the Commission establish a *de*

[6] Curian Capital had over 35,000 advisory accounts as of March 31, 2010; 92% of those accounts had balances under $250,000.

minimis exception so that firms exercising investment discretion would not be required to report on Schedule 6 accounts with less than $250,000 as of the end of any calendar quarter.

Second, Item 3(c) of the Form calls for disclosure of the "insurance regulator" of each large trader that is, or is affiliated with, an insurance company, and Item 3(d) requires disclosure of the "foreign regulator" of each large trader and its affiliates. Listing all applicable regulators is likely to lead to creation of very extensive lists in the case of a diversified financial services company. For example, under this standard, Prudential plc would be required to list approximately fifty insurance regulators for Jackson alone and more than 25 foreign regulators for its non-U.S. affiliates. Further, Items 2 and 3 require disclosure about *all* affiliates of a large trader, even if they are not themselves large traders. We see no need for the Commission to collect information about affiliates of large traders whose activities do not appear to present the potential for trading abuses that the Proposed Rule and Form 13H are designed to detect and prevent.

We believe that the Commission would be able adequately to monitor the activities of large traders if Items 3(c) and 3(d) were applied only to large traders and their large trader affiliates, and required only the name of the *primary* regulator of these large trader affiliates.

Duplicative regulatory burden on broker-dealers

Much if not all of the requested information proposed to be collected by broker-dealers is already available to the Commission under existing or other proposed rules. The Commission itself stated in issuing the Proposed Rule that "[t]he only additional items of information that this proposal would capture beyond what is currently captured by the existing EBS system are (1) LTID and (2) transaction execution time." We respectfully request the Commission consider simply enhancing existing market data already submitted to the SROs and the Commission rather than creating a new, costly, duplicative and burdensome reporting structure for large traders and broker-dealers.

For instance, under Regulation ATS, firms are already required to file:

> "...a list of all persons granted, denied, or limited access to the alternative trading system during the period covered by this report, designating for each person (a) whether they were granted, denied, or limited access; (b) the date the alternative trading system took such action; (c) the effective date of such action; and (d) the nature of any denial on limitation of access."

Under FINRA's Order Audit Trail rules, firms are required daily to file order information from order entry through execution.[7] The Commission recently proposed a rule that would require the self-regulatory organizations (SROs) to establish a consolidated audit trail system that would require broker-dealers to report information in real time to a new central repository and enable regulators to track information related to trading order received and executed across the securities markets.[8]
The proposed audit trail requirements could be enhanced to capture the data elements not already included in these reports. Enhancing the audit trail would also address the Commission's need for obtaining the data in a timely manner.

Response time for Commission requests

Under the Proposed Rule, if requested by the Commission, a broker-dealer that executes qualifying orders for large traders would be required to retain and store and, upon request of the Commission, to provide the required information to the Commission. Qualifying orders will include each transaction by a large trader or an unidentified large trader in NMS securities of 100 shares or more. The broker-dealer must provide the information to the Commission by the close of business on the day on which the request is made.

---

7 *See* NASD Rules 6950-6957.

8 *See* Securities Exchange Act Release No. 62174 (May 26, 2010).

By contrast, the existing EBS reporting system does not require that broker-dealers provide information to the Commission by a definitive date. The Commission asserts that the current reporting system is often subject to lengthy delays and that the staff often must make multiple requests to receive the relevant trading data. However, transitioning from the EBS reporting system to the Proposed Rule's next-day reporting regime are likely to pose significant logistical difficulties if broker-dealers have to overhaul their existing data-collection systems to comply with the accelerated reporting requirement.

Because a broker-dealer would not know the amount of data a request may involve, it would not be able to determine if it could comply with a request in such a short time frame. Most regulatory requests allow for a minimum of 48 hours to provide the requested data. As noted in the Proposed Rule, a bluesheet request allows for ten days to respond to the request. Most broker-dealers only keep a certain amount of data available online before archiving it due to storage constraints. It is unclear how far back a Commission request might go, and it will inevitably take longer to extract archived data. For these reasons, we request that that Rule 13h-1(e) specify that a broker-dealer shall have two days to respond to a Commission request for transactional data.

Effective date – Form 13H reporting

If Prudential plc were deemed a large trader, it would be required to implement systems to collect the data required on Form 13H. The lead time to implement these systems would be significant, as would be the costs. The Commission's estimate of costs to large traders is based on the assumption that large traders will "utilize existing systems." In cases where a large trader is a parent company, the parent may not itself be carrying on any trading activity and, thus, will not have any systems to capture the information required on Form 13H. Systems implications will therefore impose significant build outs and cost to financial services companies. As described above, the proposal would also require the parent company to have detailed knowledge about its subsidiaries' trading and expertise about the methods of execution, which it typically would not, because the activity generally would not be one in which the parent would engage as part of its day-to-day business.

In addition, in light of the complexity of the implementation process, we respectfully request that the Commission extend the proposed effective date for the Proposed Rule from three months after adoption to twelve months or more. Regardless of how the Commission revises the Proposed Rule, compliance will involve significant build out by investment advisers, broker-dealers and their corporate parents.

We would be pleased to meet with the Staff to discuss our thoughts in respect of the Commission's proposals and the implementation considerations for a financial services company such as ours. Please feel free to contact the undersigned with any questions or comments.

Alternatively, please contact Monica Parry of Morgan, Lewis & Bockius LLP at 202.739.5692 or mparry@morganlewis.com, if you would like to discuss any questions or comments.

Yours sincerely

pp.

Lucy Williams
Group Compliance Director