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BY FEDEX

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

Re: File Number S7-10-10 (Comments on Proposed New Rule 13h-1 and Form 13H)

Dear Ms. Murphy:

We appreciate the opportunity to comment on proposed new Rule 13h-1. This letter reflects our consideration of the Proposed Rule and feedback we have received from our clients.

Background of Proposed Rule

The Securities and Exchange Commission ("Commission") has proposed new Rule 13h-1 (the "Proposed Rule") and Form 13H under Section 13(h) of the Securities Exchange Act of 1934 ("Exchange Act") to establish a large trader reporting system. According to the Commission, the Proposed Rule is intended to assist in the identification and collection of trading information about traders that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets. The Commission has stated that the Proposed Rule and the large trader reporting system is designed to facilitate its ability to assess the impact of large trader activity on the securities markets, to reconstruct trading activity following periods of unusual market volatility, and to analyze significant market events for regulatory purposes. The Commission has stated further that the system should also enhance its ability to detect and deter fraudulent and manipulative activity and other trading abuses.

Form 13H Disclosure Requirements

Lowenstein Sandler has considered the Proposed Rule and has received feedback from clients who might be required to file reports pursuant thereto. While generally supportive of the Proposed Rule and the Commission's efforts to adopt rulemaking aimed at promoting fairness and efficiency throughout the financial system, we are concerned about the scope of the content required to be disclosed on proposed Form 13H (Information Regarding Large Traders Pursuant

to Section 13(h) of the Securities and Exchange Act of 1934 and the Rules thereunder). In its current form, the Proposed Rule contemplates that “large trader”¹ filers (each, a “Filer”) would be required to disclose certain identifying information including, among other things:

- (1) Name of Large Trader
- (2) Large Trader Identification Number (LTID)
- (3) Taxpayer Identification Number (TIN)²
- (4) Business Address
- (5) Telephone Number
- (6) Facsimile Number
- (7) E-mail

Further, on Item 2 of Schedule 6 of Form 13H, the Proposed Rule contemplates that each Filer would be required to provide, among other information, the following:

- (1) Broker Dealer
- (2) Broker Dealer Account Number
- (3) Account Name
- (4) LTID of Other Large Traders that Exercise Investment Discretion Over the Account

According to the Commission, the information that a Filer would be required to disclose on Form 13H, or provide in response to a Commission request, would be exempt from disclosure under FOIA. In addition, any transaction information that a registered broker-dealer would report under the Proposed Rule would also be exempt from disclosure under FOIA.

Objection to Rule 13-h Taxpayer Identification Number and Broker-Dealer Account Number(s) Disclosure Requirement

Despite the FOIA exemptions and any protective measures which may be undertaken by the Commission or broker-dealers to preserve the confidentiality of the Filer’s identifying information, we believe that the purposes of the Proposed Rule can be served without requiring the disclosure of the Filer’s TIN and broker-dealer account number(s). Our position that the TIN and broker-dealer account number(s) should be omitted from Form 13H disclosure is entirely consistent with recent legislation and rulemaking regarding investor privacy that requires, among

¹ Under the proposed rule, a “large trader” would be defined as a person whose transactions in NMS securities equal or exceed (i) two million shares or \$20 million during any calendar day, or (ii) 20 million shares or \$200 million during any calendar month.

² The proposed instructions for the Form 13H require that all filings, other than the “Initial Filing,” must indicate the applicable LTID assigned by the Commission and the TIN of the Large Trader.

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other things, the adoption of physical, electronic and procedural safeguards to protect non-public personal information of various market participants.

We believe that the possibility for abuse and bad acts, such as identity theft, unauthorized trading and fraud, significantly outweighs the benefits to the Commission of having the TIN and broker-dealer account number(s) appear on Form 13H. We also believe that the inclusion of the TIN and broker-dealer account numbers(s) is superfluous in light of the other pertinent identifying information and account information on the form (including the assigned LTID and the account name(s), among the other items listed above). Finally, we believe that the requirement puts undue pressure on the Commission's own systems, policies and procedures which it maintains to protect non-public personal information and guard against the abuses described above. By requiring the disclosure of this additional information on Form 13H, the Commission is effectively providing potential bad actors with "one stop shopping" for all of the information required to impersonate a Filer, assume its identity, establish false accounts and/or effect transactions or engage in other nefarious activities in the name or accounts of the Filer.

Conclusion

As discussed above, Lowenstein Sandler is supportive of the goals of proposed Rule 13h-1 which will enhance the Commission's ability to collect and analyze the activities of large traders in connection with the continuing enhancement of the Commission's market surveillance function. We encourage the Commission to proceed with implementation of the Proposed Rule in a manner that allows for the effective collection and analysis of data, but does not subject the Filer to the pitfalls associated with identity theft, fraud and misappropriation of identifying information and account number(s), any of which may result in significant financial or reputational damage to the Filer.

We appreciate your consideration of our position and would welcome the opportunity to answer any questions you may have in response to our analysis and recommendations.

Very truly yours,



David L. Gore

DLG:stb

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