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

Re: Large Trader Reporting System, File Number S7-10-10, 75 Federal Register 21456 (April 23, 2010).

Dear Ms. Murphy:

The American Bankers Association (ABA) appreciates the opportunity to provide comments on the Securities and Exchange Commission's (Commission) proposed new Rule 13h-1 and Form 13H to establish a large trader reporting system. The proposal would require a "large trader" to identify themselves and to make certain disclosures to the Commission on proposed Form 13H. Upon completion of the form, the large trader will receive a Large Trader Identification Number (LTID number) which must be provided to any registered broker-dealer the large trader uses. Registered broker-dealers would be required to maintain transaction records for each large trader, and would be required to report that information to the Commission upon request. The proposed large trader reporting system is designed to facilitate the Commission's ability to assess the impact of large trader activity on the securities markets, as well as to reconstruct trading activity following periods of unusual market volatility, and to analyze significant market events for regulatory purposes.

In the proposal, "large trader" is defined as a person who, in exercising investment discretion, effects transactions in NMS securities in an amount equal to or greater than (1) during a calendar day, either two million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either 20 million shares or shares with a fair market value of $200 million. ABA represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. The proposal is of interest to those of our members who exercise investment discretion and effect transactions on behalf of accounts that in aggregate meet the identifying activity level threshold.

The Commission's focus on a large trader reporting has a long history, dating back to the late 1980s and early 1990s and ABA has twice submitted comments to the Commission on proposals for large trader reporting in 1991 and 1994. We are pleased that the Commission has addressed some of the issues we raised in our earlier comment letters. Specifically, we previously had raised concerns about the inclusion of custodial accounts in any large trading reporting regime and the Commission, in its most recent proposal, has determined to focus only on those large traders that exercise investment discretion.

While we have identified some concerns with the proposal, which we express below, we are concerned that given the regulatory restructuring efforts in Congress, our members were unable to give the proposal the proper attention that is needed. We hope the SEC will consider any issues that we may subsequently bring to its attention.

Regulatory Burden

Primarily, we are concerned about the regulatory burdens associated with this proposal. Each year, commercial banks are being increasingly burdened with new regulations and reporting obligations, which are imposed by various regulators without consideration of their cumulative burden. In a letter submitted to Treasury Secretary Timothy Geithner, ABA President and Chief Executive Officer Edward L. Yingling listed fifty new or expanded regulations imposed over just the last two years (list is attached to letter). These regulations cause significant burden for banks and their employees and this proposal is yet another significant burden for banking institutions. The institutions potentially affected would need to implement systems to track their daily and monthly trading activities to determine whether the institution meets the "identifying level" of trading required to self-identify to the Commission. While some institutions will regularly cross over these threshold amounts, other institutions may only reach these thresholds on a rare occasion due to a particularly active month, or even a particularly active day.

In particular, Item 6 imposes burdensome information collection requirements. It requires a large trader to list all brokerage accounts, including account numbers and names, over which it exercises investment discretion. We believe this requirement is unduly burdensome, because it may require the reporting of potentially thousands of brokerage accounts. In addition, this list must be revised quarterly to account for any changes to these accounts.

Given these burdens, we urge the Commission to modify the proposal to require institutions to maintain, rather than submit, the requested brokerage account information which could then be made available upon request by the Commission.

Lastly, Item 2 to the Form 13H requires information that the Commission already has available to it through a simple computer cross-reference. Another item on the form - Item 4 - includes information that is available with the entities' primary regulator (e.g., the federal banking regulators). While we believe the information is unnecessary to meet the proposal's underlying purpose, should the Commission believe this information is important they should seek this information from the federal banking regulators.

Clarification on the Definition of "Account"

We would also seek clarification regarding the term "account". We assume that the term "account" in the proposed regulation only refers to those brokerage accounts through which the large trader with investment discretion effects transactions. However, because there may be some confusion by potential large traders as to its meaning, we request that the Commission clearly state in the proposed regulation and proposed Form 13H that it is not seeking underlying client account information.

Should you have any question or comments with respect to the issues raised in this letter, please contact the undersigned at (202) 663-5479.

Sincerely,

Lisa Bleier

RECENTLY IMPOSED REGULATORY BURDEN

The banking industry already is in the midst of one of the most radically transformational periods in its history – even if Congress never passes any regulatory reform legislation. Below is a list of 50 new burdens that have been imposed on the industry over the past two years. The rules described below, and the many more that are on the drawing boards, are imposing daunting new burdens on almost every facet of operating a bank. As Congress and the regulators consider new initiatives, they would do well to keep in mind the reform already well underway and the enormous new burdens that are being piled on almost literally every day.

Accounting

1. FAS 166/167 Impact on Regulatory Capital. Banks have to consolidate on their balance sheets securitized assets that previously were treated as off-balance sheet exposures. (Effective 1/1/2010). (Effective for fiscal years beginning after 11/15/2009)

Application Security

2. OCC Application Security Guidance. National banks must implement enhanced security risk assessment and mitigation processes, especially for Internet-based applications. (Issued 5/08/2008)

Armored Car Service

3. FINCEN Ruling FIN-2009-R002. Banks have to obtain new information on the driver of an armored car service that contracts with the bank's customer to bring currency to the bank. (Effective 7/2/2009)

Bank Deposit Insurance

4. Large-Bank Deposit Insurance Determination Modernization. Large banks must give the FDIC deposit account and other customer information if the bank fails and allow the FDIC to place holds on accounts. (Effective 2/19/2010)

Capital

5. Asset-backed commercial paper. Certain consolidated asset-backed commercial paper are to be included in risk-weighted assets and consolidated for risk-based capital purposes even if not consolidated for accounting purposes. (Effective for fiscal years beginning after 11/15/2009)

6. SBA loans. Banks participating in the SBA loan program that sell the guaranteed portion of loans to third parties with recourse have to wait until the recourse period ends before they can recognize the sale. Banks also must hold capital during the recourse period. (Effective for fiscal years beginning after 11/15/2009)

Check processing

7. Consolidation of processing centers. The Federal Reserve consolidated all check processing and eliminated "non-local" holds on checks, requiring banks to revise and make operational changes in check hold procedures and systems. (Effective 2/26/2010)

Corporate Governance

8. Say-on-Pay for TARP Recipients. Say-on-pay is required for SEC registrants that are TARP recipients in proxies solicited during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding. (Effective 2/18/10)

9. Proxy Disclosure. Banks that are SEC registrants will have to provide significant new disclosures regarding the compensation and governance structures of banks. (Effective 2/28/10)

10. Compensation Plans. Banks have to demonstrate how incentive compensation plans do not encourage excessive risk. (Published 10/27/2009)

Correspondent Bank Concentration Risks

11. Guidance on Correspondent Concentration Risks. Banks with correspondent relationships that exceed specified thresholds will be required to have heightened risk management controls, including new tracking and monitoring requirements. (Effective 5/4/2010)

Credit Cards

12. FRB Final Rule amending Regulation Z (Truth in Lending). Banks have new substantive requirements and disclosures for open-end consumer credit. The changes affect fees, rate changes, and the marketing and issuing of credit cards to consumers under age 21. (Effective 2/22/2010)

FACT Act

13. ID Theft Detection Guidelines. Creditors have to establish reasonable policies and procedures to implement ID theft guidelines, including performing a risk assessment, training staff on identifying red flags, and verifying the legitimacy of address changes. (Effective 11/1/2008)

14. Affiliate marketing. Banks must permit consumers to opt out of affiliate marketing. (Effective 10/1/2008)

15. Risk-Based Pricing Notice. A bank must give consumers notice if it uses a credit report to provide credit on terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers. (Effective 1/1/2011)

16. Accuracy and Integrity Guidelines and Regulations. Banks must identify patterns, practices, and activity that compromise the accuracy and integrity of consumer information they provide to credit reporting agencies, ensure the accuracy and integrity of information, and correct inaccurate information. (Effective 7/1/2009)

17. Dispute Resolution. Banks must give customers information on consumer disputes, including information regarding reinvestigating complaints, the content of direct dispute forms, and banks' duties after receiving a dispute. (Effective 7/1/2010)

Flood Insurance

18. Revised Interagency Questions and Answers Regarding Flood Insurance. Banks have to review and revise their flood insurance policies, procedures and controls for: (1) loans, participations, and syndications, and (2) resolving flood zone discrepancies. (Effective 9/21/2009)

Gift Cards

19. Amendments to Regulation E. Issuers of consumer gift cards may not charge dormancy, inactivity, and service fees unless certain conditions exist, and the gift cards must not expire for five years. Issuers have to give fee disclosures and contact information enabling consumers to obtain fee information or replacement cards. (Effective 8/22/2010)

Interest Rate Risk

20. Federal Financial Regulatory Agencies Interest Rate Risk (IRR) Advisory. Banks must manage interest rate risks through effective corporate governance, risk measuring and monitoring systems, stress testing, and internal controls for IRR exposures. (Issued 1/7/2010)

Internet Gambling

21. Amendments to Regulation GG. Banks must perform additional screening of commercial customers at account opening, identify and prevent prohibited debit and credit card transactions, and give notice to commercial customers that certain transactions are prohibited. (Effective 6/1/2010)

Liquidity

22. Liquidity guidance. Banks must prepare cash flow projections, have diversified funding sources, stress test the funding sources, have a cushion of liquid assets, and have contingency plans. (Effective 5/21/2010)

Money Laundering and Terrorist Activity

23. Information-sharing requirements. Banks must respond to revised Bank Secrecy Act (BSA) information sharing rules that allow certain law enforcement agencies to submit BSA requests for information to banks. (Effective 2/10/2010)

Mortgage Lending

24. Regulation C—Home Mortgage Disclosure Act. New rules expand requirements for reporting APR information on “higher-priced” mortgage loans subject to the HMDA. Lenders have to report the spread between the loan's APR and a survey-based estimate of APRs currently offered on prime mortgages of a comparable type. (Effective 10/1/2009)

25. Regulation Z – Home Ownership and Equity Protection Act. Lenders have to comply with expanded consumer protection rules for “higher-priced” mortgage loans. The rules affect appraisals, mortgage servicing, disclosures, advertising practices, and escrow accounts. (Effective 10/1/2009, except for escrow rules.)

26. Regulation X – Real Estate Settlement Procedures Act. Banks have to give new consumer cost disclosures, including amended RESPA core disclosure forms. (Effective 1/2010)

27. Regulation Z – Mortgage Disclosure Improvement Act (MDIA). Banks have to comply with new requirements for initial and final Truth in Lending Act (TILA) disclosures, re-disclosures when fees change, and disclosures for loans secured by second homes. (Effective 7/2009)

28. Home Valuation Code of Conduct. Lenders that do business with GSEs have to comply with requirements governing their relationship with appraisers and must give new consumer disclosures. (Effective 5/2009)

29. Notification of Transfer of Mortgage Loans. Transferees of mortgage loans have to give consumers information on changes in ownership of their mortgages. (Effective 5/2009)

30. Department of Labor Interpretation on Overtime. Banks may be required to pay mortgage loan officers overtime under the Fair Labor Standards Act. (Issued 3/24/2010)

Overdrafts

31. Regulation DD – Truth in Savings. Banks have to disclose fees and practices for overdraft services, and revise automated systems to permit access only to the amount of funds available for a consumer's immediate use. (Effective 1/1/2010)

32. Regulation E – Electronic Funds Transfer. Banks' ability to assess an overdraft fee for paying ATM and one-time debit card transactions that overdraw a consumer's account are limited, unless the member affirmatively consents. (Effective 7/1/2010)

Pandemics

33. Interagency Guidance for Minimizing a Pandemic's Potential Adverse Effects. Institutions' business continuity plan should address pandemics and provide a preventive program and a response strategy. (Issued 2/06/08)

Payment Processor Relationships

34. Guidance on Payment Processor Relationships. Banks will have to follow FDIC risk management principles for risks associated with relationships with entities that process payments for telemarketers and other merchant clients. (Issued 11/07/08)

Payments Systems Rules

35. Authorization and Returns. New disclosure standards apply to a consumer debit authorization. (Effective 3/19/2010)

36. Direct Access Registration Rule. NACHA has imposed new registration, disclosure, and processing rules regarding a bank's origination of automated clearing house (ACH) debit entries. (Effective 6/18/2010)

37. Revised Retail Payment Systems Examination Handbook. Banks have to follow revised Retail Payment Systems guidance related to remote deposit capture, ACH risk and controls, and merchant card processing. (Issued 2/25/2010)

Regulatory Reporting

38. Call Report changes. Banks have to report data on small business and small farm lending on each Call Report and Thrift Financial Report quarterly instead of annually. (Effective for 3/31/2010 reports)

Remote Deposit Capture (RDC)

39. Changes in risk procedures. FFIEC guidance imposes new burdens on a bank's RDC risk management process. (Issued 1/14/09)

Reserve requirements

40. Changes to Regulation D. Banks may now make up to six transactions from a savings account to a third party, instead of only three such transactions, requiring banks to change their monitoring systems for excess transactions, revise account opening disclosures, and give notice to customers who exceed those limits. (Effective 7/2/2009)

Student lending

41. New disclosure requirements. Lenders of private education loans must give new disclosures during the lending process. (Effective 2/14/2010)

Sweep Account disclosures

42. Processing of Deposit Accounts in the Event of a Bank Failure. Banks must provide sweep account customers information on whether their swept funds are deposits. If funds are not deposits, the bank must further disclose the status such funds would have if the bank were to fail. (Effective 7/1/2009)

Tax Issues

43. Trust Tax Return Filing Extensions. The IRS shortened the filing extension period for trust tax returns from 6 to 5 months. (Effective 7/1/2008)

44. Information Reporting of Certain Payments. New information returns are required for reporting gross payments made to participating merchants in settlement of card transactions. (Effective for payments made after 12/31/2010)

45. Corporate Information Reporting. Banks have to report information on payments for goods and services made to corporations. (Effective for payments made after 12/31/2011)

46. Foreign Account Tax Compliance Act. Banks must withhold taxes on certain payments made to foreign financial institutions and foreign entities. (Generally effective for payments made after 12/31/2012)

Trusts and Securities

47. Cost Basis Reporting. Starting in 2011, banks will have increased tracking and reporting requirements for their clients' securities transactions.

48. Form 5500, Schedule C. Banks in the retirement plan business now have to track all flow of compensation, whether direct or indirect. (Effective in 2010)

49. Regulation R. Recordkeeping is required to show that an institution is not receiving compensation from non-traditional banking activities. (Effective on first day of fiscal year commencing after 9/30/2008)

50. Custody Services - SEC Final Rule amending Registered Investment Advisers (RIA) custody requirements. Banks that provide custodial services to affiliate registered investment advisers must undergo a surprise verification examination of the assets held in custody, as well as a review by an independent public accountant on the bank's internal control over custodial services. (Effective 3/12/2010)