

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-69281)**

**April 3, 2013**

**Order Temporarily Exempting Certain Broker-Dealers from the Recordkeeping, Reporting, and Monitoring Requirements of Rule 13h-1 under the Securities Exchange Act of 1934**

On July 27, 2011, the Securities and Exchange Commission (“Commission”) adopted Rule 13h-1 under the Securities Exchange Act of 1934 (“Exchange Act”) concerning large trader reporting to assist the Commission in both identifying, and obtaining trade information for, market participants that conduct a substantial amount of trading activity, as measured by volume or market value, in U.S. securities (such persons are referred to as “large traders”).<sup>1</sup>

In addition to requiring large traders to register with the Commission by filing and periodically updating Form 13H, Rule 13h-1 requires certain broker-dealers to, among other things, maintain specified records of transactions that they effect, directly or indirectly, for large traders, and to report to the Commission, upon request of the Commission, such records in electronic format.

Initially, the compliance date for the broker-dealer recordkeeping and reporting requirements of Rule 13h-1(d) and (e), respectively, as well as the requirement under Rule 13h-1(f) for broker-dealers to monitor their customers’ accounts for activity that may trigger the large trader identification requirements of Rule 13h-1, was April 30, 2012. The Financial Information

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<sup>1</sup> See Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46960 (Aug. 3, 2011) (“Rule 13h-1 Adopting Release”). The effective date of Rule 13h-1 was October 3, 2011.

Forum (“FIF”)<sup>2</sup> and the Securities Industry and Financial Markets Association (“SIFMA”)<sup>3</sup> previously requested that the Commission grant certain substantive relief and temporarily exempt registered broker-dealers from the recordkeeping, reporting, and monitoring requirements of the Rule to provide them with additional time to comply.<sup>4</sup>

Pursuant to Exchange Act Section 13(h)(6) and Rule 13h-1(g) thereunder,<sup>5</sup> the Commission, by order, may exempt from the provisions of Rule 13h-1, upon specified terms and conditions or for stated periods, any person or class of persons or any transaction or class of transactions from the provisions of Rule 13h-1 to the extent that such exemption is consistent with the purposes of the Exchange Act.

In response to FIF’s and SIFMA’s requests, the Commission temporarily exempted broker-dealers from the recordkeeping, reporting, and monitoring requirements, thereby establishing a two-phased approach to implementation.<sup>6</sup> In the first phase, the Commission provided a temporary exemption to extend the compliance date from April 30, 2012 to November 30, 2012 for the broker-dealer recordkeeping and reporting requirements of Rule 13h-1 with respect to a clearing broker-dealer for a large trader where the large trader: (1) is a U.S.-

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<sup>2</sup> See Letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Robert Cook, Director, and David Shillman, Associate Director, Division of Trading and Markets, Commission, dated January 25, 2012 (“FIF Letter”), available at: <http://www.sec.gov/comments/s7-10-10/s71010.shtml>.

<sup>3</sup> See Letter from Ann L. Vlcek, Managing Director and Associate General Counsel, SIFMA, to David S. Shillman, Associate Director, Division, Commission, dated March 29, 2012, available at: <http://www.sec.gov/comments/s7-10-10/s71010.shtml>.

<sup>4</sup> See Securities Exchange Act Release No. 66839 (April 20, 2012), 77 FR 25007 (April 26, 2012) (“April Exemptive Order”).

<sup>5</sup> See 15 U.S.C. 78m(h)(6) and 17 CFR 240.13h-1(g), respectively.

<sup>6</sup> The April Exemptive Order also provided an exemption for certain transactions from the definition of the term “transaction” provided in Rule 13h-1(a)(6) for the purpose of determining whether a person is a large trader. See April Exemptive Order, supra note 4.

registered broker-dealer,<sup>7</sup> or (2) trades through a sponsored access arrangement<sup>8</sup> (“Phase One”). In the second phase, which concerned the remaining portions of the rule, the Commission provided a temporary exemption to extend the compliance date for the additional broker-dealer recordkeeping, reporting, and monitoring requirements of Rule 13h-1 from April 30, 2012, to May 1, 2013 (“Phase Two”).

With Phase One fully implemented, the Commission now is focusing its attention on FIF’s and SIFMA’s relief requests concerning Phase Two. On February 13, 2013, SIFMA submitted a supplemental letter that outlined its members’ experience in implementing Phase One and also provided additional detail on implementation issues relating to the Phase Two deadline.<sup>9</sup> Because many of the issues presented in Phase One also are implicated in the Phase Two relief request, such as the issues concerning average price account processing and the transmission of execution time information on disaggregated trades, the Commission currently is considering the industry’s experience with Phase One implementation in evaluating the requests for relief concerning Phase Two.

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<sup>7</sup> The reportable activity would include proprietary trading by a large trader broker-dealer where the large trader is trading for its own account.

<sup>8</sup> A “sponsored access arrangement” in this context refers to an arrangement in which a broker-dealer permits a large trader customer to enter orders directly to a trading center where such orders are not processed through the broker-dealer’s own trading system (other than any risk management controls established for purposes of compliance with Rule 15c3-5 under the Exchange Act) and where the orders are routed directly to a trading center, in some cases supported by a service bureau or other third party technology provider. See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (S7-03-10).

<sup>9</sup> See Letter from Theodore Lazo, Managing Director and Associate General Counsel, SIFMA, to David S. Shillman, Associate Director, Division, Commission, dated February 13, 2013, available at: <http://www.sec.gov/comments/s7-10-10/s71010.shtml>.

The Commission believes that it is appropriate and consistent with the purposes of the Exchange Act to provide a temporary exemption from the Phase Two broker-dealer recordkeeping, reporting, and monitoring requirements of Rule 13h-1 to further extend the compliance date for Phase Two. This temporary exemption from the Rule's requirements should provide the Commission with the necessary time to complete its review of the implementation issues raised by FIF and SIFMA, assess the appropriateness of the requested exemptive relief, announce its response thereto, and allow broker-dealers time to develop, test, and implement any necessary systems changes once the Commission's review is complete.

Accordingly, the Commission is providing a temporary exemption to extend the compliance date to November 1, 2013, solely for the Phase Two broker-dealer recordkeeping, reporting, and monitoring requirements of Rule 13h-1.<sup>10</sup>

IT IS HEREBY ORDERED, pursuant to Exchange Act Section 13(h)(6) and Rule 13h-1(g) thereunder, that broker-dealers subject to the recordkeeping, reporting, and monitoring requirements of Rule 13h-1 (other than clearing broker-dealers for a large trader that either (1) is a U.S.-registered broker-dealer, or (2) trades through a sponsored access arrangement) are temporarily exempted from those requirements until November 1, 2013.

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>10</sup> The effective date for Rule 13h-1 remains October 3, 2011. The compliance date for the requirement on large traders to identify to the Commission pursuant to Rule 13h-1(b) was December 1, 2011. The compliance date for Phase One was November 30, 2012.