

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81993)

October 31, 2017

Order Temporarily Exempting Certain Broker-Dealers From Specified Provisions of the Recordkeeping, Reporting, and Monitoring Responsibilities of Rule 13h-1 Under the Securities Exchange Act of 1934

I. Introduction

On July 27, 2011, the Securities and Exchange Commission (“Commission”) adopted Rule 13h-1 (“Rule 13h-1” or the “Rule”) under the Securities Exchange Act of 1934 (“Exchange Act”)¹ to assist the Commission in both identifying and obtaining information on market participants that conduct a substantial amount of trading activity, as measured by volume or market value, in national market system (“NMS”) securities (such persons are referred to as “large traders”).² The Rule requires certain large traders to identify themselves to the Commission on Form 13H. The Rule also requires, among other things, certain broker-dealers to maintain records of large trader transaction information and to report such information to the Commission upon request. Since December 1, 2011, persons whose trading activity reached or exceeded the identifying activity level specified in the Rule have been required to identify themselves to the Commission by filing Form 13H through the Commission’s EDGAR system. The Commission has implemented the broker-dealer recordkeeping, reporting, and monitoring requirements of the Rule in phases through a series of exemptive orders establishing certain

¹ 17 CFR 240.13h-1.

² See Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46960 (August 3, 2011) (“Large Trader Adopting Release”). The effective date of Rule 13h-1 was October 3, 2011. See also Exchange Act Rule 600(b)(46) of Regulation NMS (defining “NMS security”).

delayed compliance dates.³ Currently, certain broker-dealers are required to keep records of and report to the Commission upon request transaction data for certain of their customers that are either a large trader or an Unidentified Large Trader.⁴ Most recently, the Commission provided a temporary exemption from specified provisions of the Rule for certain broker-dealers (“Phase Three”)—provisions which otherwise would have fully implemented the entirety of the recordkeeping and reporting responsibilities of Rule 13h-1 by, in particular, requiring the capture and reporting of execution time on trades of all large traders—until November 1, 2017.⁵

The Financial Information Forum (“FIF”) and Securities Industry and Financial Markets Association (“SIFMA,” and, together with FIF, the “Industry Organizations”) have asked the Commission to eliminate Phase Three of the Rule, which would impose the remaining requirements on all broker-dealers and all large trader customers.⁶ Alternatively, the Industry

³ See Securities Exchange Act Release Nos. 66839 (April 20, 2012), 77 FR 25007 (April 26, 2012) (“Phase One Order”) (establishing Phase One); 69281 (April 3, 2013), 78 FR 20960 (April 8, 2013) (“Phase Two Extension Order”) (extending the compliance date for Phase Two to November 1, 2013); 70150 (August 8, 2013), 78 FR 49556 (August 14, 2013) (“Phases Two and Three Order”) (modifying Phase Two and providing for Phase Three); and 76322 (October 30, 2015), 80 FR 68590 (November 5, 2015) (“Phase Three Extension Order”) (extension of compliance date for Phase Three until November 1, 2017).

⁴ Rule 13h-1(a)(9) defines “Unidentified Large Trader” as “each person who has not complied with the [large trader identification requirements of the Rule] that a registered broker-dealer knows or has reason to know is a large trader.” The Rule provides that, for purposes of determining whether a registered broker-dealer has reason to know that a person is a large trader, “a registered broker-dealer need take into account only transactions in NMS securities effected by or through such broker-dealer.” Rule 13h-1(a)(9).

⁵ See Phase Three Extension Order, supra note 3 (extending the Phase Three compliance date until November 1, 2017). See also Phases Two and Three Order, supra note 3, 78 FR at 49560.

⁶ See Undated letter from William H. Herbert, Managing Director, FIF, to Heather Seidel, Acting Director, Division of Trading and Markets (“Division”), Commission (“FIF I”), available at <https://www.sec.gov/comments/s7-10-10/s71010-1558852-131535.pdf>;

Organizations have asked the Commission to extend the compliance date for Phase Three for an additional period of three or five years.⁷

For the reasons discussed below, the Commission believes that it is consistent with the purposes of the Exchange Act to grant a limited extension of the compliance date for Phase Three by temporarily exempting broker-dealers until November 15, 2018 from the recordkeeping and reporting obligations of the Rule that would otherwise have been implemented in Phase Three on November 1, 2017. As discussed below, the Commission approved the Consolidated Audit Trail (“CAT NMS Plan”)⁸ submitted by FINRA and the national securities exchanges (collectively, the “SROs”) pursuant to Rule 613 under the Exchange Act.⁹ In adopting Rule 613

Letter from Thomas F. Price, Managing Director, Operations, Technology, and BCP, SIFMA, to Heather Seidel, Acting Director, Division, Commission, dated March 3, 2017 (“SIFMA Letter”), available at <https://www.sec.gov/comments/s7-10-10/s71010-1610783-135970.pdf>; and Letter from William H. Herbert, Managing Director, FIF, to Heather Seidel, Acting Director, Division, Commission, dated September 14, 2017 (“FIF II”), available at <https://www.sec.gov/comments/s7-10-10/s71010-2445134-161065.pdf>. and In the alternative, FIF “recommends postponing the compliance date for five years” and SIFMA requests an extension “to a date no sooner than the earlier of the date of the full implementation of the CAT or November 1, 2022.” See FIF I at 2; and SIFMA Letter at 3. In a subsequent letter, FIF requested that the Commission eliminate Phase Three or, alternatively, extend the compliance date for Phase Three to November 1, 2020 to allow for the implementation of CAT Phase 1. See FIF II at 3.

⁷ See FIF II at 3 (asking the Commission, if it chooses not to eliminate Phase Three, to extend the compliance date for Phase Three until November 1, 2020 “to allow full implementation of CAT Phase 1 for both Large and Small Industry Members”); FIF I at 2 (stating that “If it is not possible to eliminate Phase 3 of the Rule, FIF recommends postponing the compliance date for five years”); and SIFMA Letter at 3 (requesting an extension “to a date no sooner than the earlier of the date of the full implementation of the CAT or November 1, 2022”).

⁸ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (File No. 4-698) (“CAT NMS Plan Order”).

⁹ 17 CFR 242.613 (“Rule 613”). See also Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (“Rule 613 Adopting Release”). Rule 613 requires the SROs to submit a national market system (“NMS”) plan to create, implement, and maintain a consolidated audit trail (“CAT”) that would capture customer

and later when it approved the CAT NMS Plan, the Commission contemplated that the CAT would be duplicative of the reporting requirements of Rule 13h-1 under the Exchange Act.¹⁰ To focus broker-dealer attention and resources on implementing the CAT in the near term, the Commission hereby is exempting temporarily, until November 15, 2018, broker-dealers from the remaining recordkeeping and reporting obligations of Rule 13h-1, beyond those previously implemented in Phases One and Two.¹¹ During that time, the Commission will consider progress in implementing the CAT as it determines implementation of Phase Three.

and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single, consolidated data source. See Rule 613(a)(1), (c)(1), and (c)(7). Specifically, Rule 613 requires the SROs to “jointly file . . . a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and Central Repository.” See Rule 613(a)(1). As described more fully in the CAT NMS Plan Order, supra note 8, to satisfy the requirements of Rule 613, the SROs in February 2015 filed an NMS plan governing the CAT (the “CAT NMS Plan”) that replaced and amended an earlier version of the plan. The Commission approved the CAT NMS Plan, as amended, in November 2016. See CAT NMS Plan Order, supra note 8. The purpose of the CAT NMS Plan, and the creation, implementation, and maintenance of a comprehensive audit trail for the U.S. securities markets, is to “substantially enhance the ability of the SROs and the Commission to oversee today’s securities markets and fulfill their responsibilities under the federal securities laws.” See Rule 613 Adopting Release, supra note 9, 77 FR at 45726. As contemplated by Rule 613, the CAT “will allow for the prompt and accurate recording of material information about all orders in NMS securities, including the identity of customers, as these orders are generated and then routed throughout the U.S. markets until execution, cancellation, or modification. This information will be consolidated and made readily available to regulators in a uniform electronic format.” See id.

¹⁰ See Rule 613 Adopting Release, supra note 9, 77 FR at 45734; and CAT NMS Plan Order, supra note 8, 81 FR at 84777.

¹¹ See infra notes 24-27 and accompanying text (describing Phases One and Two).

II. Background

A. Large Trader Status

Rule 13h-1 defines a large trader as a person who “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 National Market System (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” (emphasis added), or voluntarily registers as such.¹² The term “identifying activity level” is defined in the Rule to mean aggregate transactions in NMS securities that are equal to or greater than (1) during a calendar day, either 2 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.¹³

B. The Requirements of Rule 13h-1

1. Large Trader Self-Identification

The Rule requires large traders to self-identify to the Commission on Form 13H and to periodically update their Form 13H submission,¹⁴ obtain a unique large trader identification number (“LTID”) from the Commission,¹⁵ and provide this number to their broker-dealers and

¹² See Rule 13h-1(a)(1).

¹³ See Rule 13h-1(a)(7). See also Phase Three Extension Order, supra note 3 (establishing an alternative “premium paid” methodology for calculating equity options value).

¹⁴ See Rule 13h-1(b)(1)(i)-(iii). Form 13H and all updates to it are filed electronically through the Commission’s EDGAR system.

¹⁵ When a large trader files its initial Form 13H filing through EDGAR, the system sends an automatically generated confirmation email acknowledging acceptance of the filing. That email also contains the unique 8-digit LTID number assigned to the large trader.

identify each account to which the LTID applies.¹⁶ These large trader responsibilities are referred to collectively as the “Self-Identification Requirements.”

2. Broker-Dealers’ Recordkeeping and Reporting Responsibilities Regarding Unidentified Large Traders and the Customer Monitoring Safe Harbor

Under Rules 13h-1(d) and (e), registered broker-dealers are responsible for, among other things, maintaining records of certain transaction information and information relating to Unidentified Large Traders and then reporting such information to the Commission upon request. Specifically, Rule 13h-1 requires that every registered broker-dealer maintain records of information specified in paragraphs (d)(2) and (d)(3) of the Rule (“Transaction Data”), including, among other things, the applicable LTID(s) and execution time of each trade, for all transactions effected directly or indirectly by or through: (1) an account such broker-dealer carries for a large trader or an Unidentified Large Trader; or (2) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader under the Rule, the broker-dealer effecting transactions directly or indirectly for such large trader or Unidentified Large Trader must maintain records of all Transaction Data.¹⁷ These recordkeeping obligations are referred to collectively as the “Recordkeeping Responsibilities.”

The Rule also requires that, upon Commission request, every registered broker-dealer that is itself a large trader or carries an account for a large trader or an Unidentified Large Trader

¹⁶ See Rule 13h-1(b)(2). See also Large Trader Adopting Release, *supra* note 2, 76 FR at 46971 (“the requirements that a large trader provide its LTID to all registered broker-dealers who effect transactions on its behalf, and identify each account to which it applies, are ongoing responsibilities that must be discharged promptly”).

¹⁷ See Rule 13h-1(d)(1)(iii).

must electronically report Transaction Data to the Commission through the Electronic Blue Sheets (“EBS”) system for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders or Unidentified Large Traders equal to or greater than the reporting activity level.¹⁸ Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting such transactions directly or indirectly for the large trader or Unidentified Large Trader must electronically report Transaction Data to the Commission through the EBS system for such transactions equal to or greater than the reporting activity level.¹⁹ The Rule requires that reporting broker-dealers submit the requested Transaction Data no later than the day and time specified in the Commission’s request.²⁰ These reporting obligations are referred to collectively as the “Reporting Responsibilities.”

Rule 13h-1(f) provides a safe harbor that is designed to reduce broker-dealers’ recordkeeping and reporting burdens with respect to Unidentified Large Traders by, among other things, providing relief for when a broker-dealer shall be deemed to know or have reason to know that a person is a large trader and thus subject to reporting obligations related to Unidentified Large Traders under Rule 13h-1. Under the safe harbor, a registered broker-dealer is deemed not to know or have reason to know that a person is a large trader if the broker-dealer does not have actual knowledge that a person is a large trader and it establishes policies and procedures reasonably designed to identify customers whose transactions effected through an account or group of accounts carried by such broker-dealer or through which such broker-dealer

¹⁸ See Rule 13h-1(e).

¹⁹ See id.

²⁰ See id.

executes transactions, as applicable, equal or exceed the identifying activity level and, if so, to treat such persons as Unidentified Large Traders and notify them of their potential reporting obligations under this Rule.²¹

C. Phased Implementation of Rule 13h-1

When the Commission adopted the Rule, it characterized the large trader reporting requirements as “relatively modest steps” to “address the Commission’s near-term need for access to more information about large traders and their trading activities”²² After the Commission adopted the Rule, industry commenters began to identify specific implementation challenges and offered more detailed estimates of the cost of compliance for broker-dealers with the Recordkeeping and Reporting Responsibilities.²³ Such concerns led the Commission to implement the Recordkeeping and Reporting Responsibilities in phases.²⁴

In Phase One, which began on November 30, 2012, the Commission temporarily exempted from the Recordkeeping and Reporting Responsibilities all broker-dealers, except clearing brokers for large traders (including the large trader itself if it is a self-clearing broker-dealer), with respect to large trader transactions that were either (1) proprietary trades by a U.S. registered broker-dealer, or (2) effected through a “sponsored access” arrangement.²⁵ In Phase Two, which began on November 1, 2013, the Commission further implemented the Rule by

²¹ See Rule 13h-1(f).

²² See Large Trader Adopting Release, supra note 2, 76 FR at 46963.

²³ See, e.g., Phase Three Extension Order, supra note 3, 80 FR at 68594.

²⁴ See id. See also supra note 3 (citing to the applicable releases).

²⁵ See Phase One Order, supra note 3, 77 FR at 25008-9. A “sponsored access” arrangement is an arrangement where a broker-dealer permits a customer to enter orders into a trading center without using the broker-dealer’s trading system (i.e., using the customer’s own technology or that of a third party provider).

subjecting transactions effected pursuant to “direct market access” arrangements to the Recordkeeping and Reporting Responsibilities.²⁶ Specifically, Phase Two temporarily exempted broker-dealers, until November 1, 2015, from the Recordkeeping and Reporting Responsibilities, except for: (1) the clearing broker-dealer for a large trader, with respect to (a) proprietary transactions by the large trader broker-dealer; (b) transactions effected pursuant to a “sponsored access” arrangement; and (c) transactions effected pursuant to a “direct market access” arrangement; and (2) a broker-dealer that carries an account for a large trader, with respect to transactions other than those set forth above, and for Transaction Data other than the execution time.²⁷ In other words, the Recordkeeping and Reporting Responsibilities under Phase Two require capture and reporting of LTID numbers for all large traders, but require capture and reporting of execution time only for the three specific categories of large trader activity outlined above.

Phase Three, scheduled to commence on November 1, 2017, would require compliance with the entirety of the Recordkeeping and Reporting Responsibilities for all broker-dealers, covering the remaining types of large traders and transactions not covered by Phases One and Two.²⁸ Notably, implementation of Phase Three would require the capture and reporting of execution time for all large trader transactions, not just for the three specific categories of large trader activity already implemented through Phases One and Two.

²⁶ See Phases Two and Three Order, supra note 3, 78 FR at 49559-60. See also Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792, 69793 (November 15, 2010) (File No. S7-03-10) (“Generally, direct market access refers to an arrangement whereby a broker-dealer permits customers to enter orders into a trading center but such orders flow through the broker-dealer’s trading systems prior to reaching the trading center.”).

²⁷ See Phases Two and Three Order, supra note 3, 78 FR at 49558-9.

²⁸ See id. at 78 FR at 49560; and Phase Three Extension Order, supra note 3.

D. Adoption of Rule 613 and Implementation of the CAT

The Commission adopted Rule 613 to create a CAT that would allow regulators to more efficiently and accurately track activity in NMS securities.²⁹ Rule 613 requires the SROs to jointly submit an NMS plan to create, implement and maintain a consolidated audit trail.³⁰ In November 2016, the Commission approved the SROs' proposed CAT NMS Plan.³¹

When the Commission adopted Rule 613 it stated that, while certain aspects of Rule 13h-1 are not addressed by Rule 613, Rule 613 may supersede certain of the broker-dealer Recordkeeping and Reporting Responsibilities of Rule 13h-1.³² Specifically, the Commission stated “[t]o the extent that . . . data reported to the central repository under Rule 613 obviates the need for the EBS system, the Commission expects that the separate [trade] reporting requirements of Rule 13h-1 related to the EBS system would be eliminated.”³³ Further, when it approved the CAT NMS Plan, the Commission noted that “CAT will provide Commission Staff with much of the equity and option data that is currently obtained through equity and option cleared reports and EBS, including the additional transaction data captured in connection with Rule 13h-1 concerning large traders.”³⁴

²⁹ See Rule 613 Adopting Release, supra note 9.

³⁰ See Rule 613(a)(1).

³¹ See CAT NMS Plan Order, supra note 8.

³² See Rule 613 Adopting Release, supra note 9, 77 FR at 45734.

³³ Id. at text accompanying n.95.

³⁴ See CAT NMS Plan Order, supra note 8, 81 FR at 84777 (citations omitted).

III. Exemptive Relief

Pursuant to Section 13(h)(6) of the Exchange Act and Rule 13h-1(g) thereunder,³⁵ 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.

As noted above, the Industry Organizations have requested that the Commission eliminate Phase Three of the implementation of the Rule.³⁶ In the alternative, FIF recommends postponing the compliance date for Phase Three for five years³⁷ or until November 1, 2020,³⁸ and SIFMA requested an extension of the compliance date until the earlier of full implementation of the CAT or November 1, 2022.³⁹ The Industry Organizations both expressed the view that granting exemptive relief would allow the industry to focus resources on implementing the CAT.⁴⁰ In addition, SIFMA asserted that “the reporting structure that would ultimately be developed and implemented under Phase III would become redundant when the Consolidated Audit Trail (CAT) is instituted.”⁴¹ SIFMA further stated that “[c]ertain aspects of Phase III implementation continue to be infeasible except at a prohibitive cost and involving significant

³⁵ See 15 U.S.C. 78m and Rule 13h-1(g), respectively.

³⁶ See FIF I, supra note 6, at 2; and SIFMA Letter, supra note 6, at 3.

³⁷ See FIF I, supra note 6, at 2.

³⁸ See FIF II, supra note 6, at 3.

³⁹ See SIFMA Letter, supra note 6, at 3.

⁴⁰ See FIF I, supra note 6, at 1-2; and SIFMA Letter, supra note 6, at 2. See also FIF II, supra note 6, at 1 (stating that mandating implementation of Phase Three would “divert scarce resources from the [i]mplementation of CAT”).

⁴¹ SIFMA Letter, supra note 6, at 2. See also FIF II at 2 (expressing the view that the implementation of Phase Three “would be redundant of the CAT initiative”).

industry coordination for the development of new operational flows and processing standards that is disproportionate to the anticipated relatively short-lived corresponding benefit.

Specifically, with the progress on CAT... the useful life of a costly and specialized Phase III solution is now described in months.”⁴² FIF stated that the implementation of Phase Three would represent “significant duplicative costs to the broker-dealer community because [the Phase Three] recordkeeping and reporting obligations are already included in the CAT.”⁴³

The Commission notes that there has been significant progress on the implementation of the CAT since it issued the Phase Three Extension Order on October 30, 2015. As noted above, the Commission approved the CAT NMS Plan submitted by the SROs on November 15, 2016,⁴⁴ and to date the SROs have taken a series of steps to implement the CAT in accordance with the CAT NMS Plan. Among other things, the Plan Processor for the CAT NMS Plan has been

⁴² SIFMA Letter, supra note 6, at 2. SIFMA stated that it had previously described the significant implementation challenges that would need to be resolved to meet the compliance requirements of Phase Three. Id. at 1. Quoting its February 13, 2013, letter to the Commission, SIFMA stated that “it would require a massive restructuring of most of the current execution and clearing flows and systems at considerable cost to aggregate all of [the relevant reporting] information at one broker-dealer’ and that ‘individual broker-dealers must make significant internal changes to their systems, the fundamental restructuring of certain industry standard clearing processes may be required, and concerted and coordinated development activities will be required throughout the broker-dealer industry.’” Id. at 1-2, citing Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to David S. Shillman, Associate Director, Division, Commission, dated February 13, 2013, available at <https://www.sec.gov/comments/s7-10-10/s71010-102.pdf>. SIFMA stated that “[t]hese challenges continue to persist and are no less burdensome today,” and asserted that the reporting structure that would be developed and implemented under Phase Three would become redundant when the CAT is instituted. SIFMA Letter, supra note 6, at 2. See also FIF II, supra note 6, at 2 (referencing FIF’s previous descriptions of the implementation challenges associated with Phase Three).

⁴³ See FIF II, supra note 6, at 2.

⁴⁴ See CAT NMS Plan Order, supra note 8.

selected,⁴⁵ draft technical specifications for the SROs' submission of order and quote data to the CAT have been developed,⁴⁶ and compliance rules requiring SRO members to synchronize their business clocks used to report information required under the CAT NMS Plan to within 50 milliseconds of the time maintained by the National Institute of Standards and Technology have been adopted.⁴⁷ In addition, the SROs have adopted rules requiring member compliance with relevant portions of the CAT NMS Plan,⁴⁸ and they have filed proposed rule changes that are designed to eliminate systems that are duplicative of the CAT.⁴⁹

⁴⁵ See Letter from the Selection Committee of the CAT NMS Plan to Brent J. Fields, Secretary, Commission, dated January 18, 2017, available at <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

⁴⁶ See CAT NMS Plan, Appendix C, Section 10(b).

⁴⁷ See, e.g., NYSE Rules 6820(a) and 6895(b), CBOE Rules 6.86(a) and 6.96(b), and Nasdaq Rules 6820(a) and 6895(b). In accordance with an exemption to the CAT NMS Plan, the SROs' compliance rules require members that were capturing time in milliseconds on March 8, 2017, to have synchronized their business clocks on or before March 15, 2017. The compliance rules require members that did not capture time in milliseconds on March 8, 2017, to synchronize their business clocks on or before February 19, 2018. See Securities Exchange Act Release No. 80142 (March 2, 2017), 82 FR 13034 (March 8, 2017) (Order Granting Limited Exemptive Relief from the CAT NMS Plan requirement that members synchronize their business clocks no later than March 15, 2017).

⁴⁸ See Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (order approving File Nos. SR-BatsBYX-2017-02; SR-BatsBZX-2017-08; SR-BatsEDGA-2017-03; SR-BatsEDGX-2017-08; SR-BOX-2017-07; SR-C2-2017-007; SR-CBOE-2017-012; SR-CHX-2017-03; SR-ISE-2017-08; SR-IEX-2017-04; SR-ISEGemini-2017-04; SR-ISEMercury-2017-03; SR-MIAX-2017-03; SR-PEARL-2017-04; SR-NASDAQ-2017-008; SRBX-2017-007; SR-PHLX-2017-07; SR-NYSE-2017-01; SR-NYSEArca-2017-03; SR-NYSEArca-2017-04; SR-NYSEMKT-2017-02; and SR-NSX-2017-03).

⁴⁹ See, e.g., Securities Exchange Act Release Nos. 80783 (May 26, 2017), 82 FR 2542 (June 1, 2017) (SR-FINRA-2017-13); 80789 (May 26, 2017), 82 FR 25492 (June 1, 2017) (SR-BOX-2017-17); 80813 (May 30, 2017), 82 FR 25820 (June 5, 2017) (SR-Nasdaq-2017-055).

In light of the fact that the CAT NMS Plan has now been approved and the CAT is being built and implemented, the Commission believes that it is appropriate to issue this temporary exemption so that broker-dealer resources can be focused on CAT.⁵⁰ Reporting pursuant to the CAT NMS Plan will provide the Commission with information concerning the trading in equity and listed options transactions of all types of large traders that would otherwise be reported pursuant to Rule 13h-1. In particular, the CAT will capture detailed information on each order, including the time of execution for orders executed in whole or in part⁵¹ as well as information concerning allocation to subaccounts.⁵² Accordingly, because the CAT will capture the order execution information that would be covered in Phase Three, the Commission believes that a temporary exemption is appropriate to defer the burdens that would be imposed on the industry to implement Phase Three and instead focus finite broker-dealer resources on completing and implementing the CAT in the near term. The Commission notes that, prior to the Commission's issuance of the Phase Three Extension Order, FIF and SIFMA requested a permanent exemption or alternatively a five year deferment of the compliance date for Phase Three.⁵³ In the Phase Three Extension Order, the Commission provided a two year exemption, until November 1, 2017. At that time, the Commission stated its belief that "two years will give the Commission

⁵⁰ This order does not affect Rule 13h-1 requirements implemented in Phases One and Two.

⁵¹ See Rule 613(c)(7)(v)(C) (requiring, for an order executed in whole or in part, "[t]ime of execution"). See also CAT NMS Plan, *supra* note 8, at Section 6.3(d)(v).

⁵² See CAT NMS Plan Order, *supra* note 8, 81 FR at 84777 (citations omitted); and CAT NMS Plan, *supra* note 8, at Section 6.4(d)(ii)(A)(1) (concerning Allocation Reports).

⁵³ See Phase Three Extension Order at note 62 (citing Letter from Mary Lou VonKaenel, Managing Director, FIF, to Stephen Luparello, Director, Division, Commission, dated March 27, 2015, available at <http://www.sec.gov/comments/s7-10-10/s71010.shtml> and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Stephen Luparello, Director, Division, Commission, dated April 9, 2015, available at <http://www.sec.gov/comments/s7-10-10/s71010.shtml>).

enough time to evaluate future developments, including any investment in or progress on a CAT.” Further, FIF and SIFMA now have requested a permanent exemption, or alternatively a three or five year deferment of the compliance date for Phase Three.⁵⁴ The Commission believes at this time that an extension to November 15, 2018 responds to requests from FIF and SIFMA to extend the Phase Three compliance date, but having a short exemption instead will allow broker-dealers to focus on implementing the CAT in the near term and will allow the Commission to revisit the implementation of Phase Three as it evaluates future developments during this period, including progress in implementing the CAT.⁵⁵ During that time, the Commission will consider progress in implementing the CAT as it determines implementation of Phase Three.

Accordingly, the Commission finds that it is consistent with the purposes of the Exchange Act to extend the compliance date for Phase Three by temporarily exempting broker-dealers until November 15, 2018 from compliance with specified provisions of the Rule. Thus, the Recordkeeping and Reporting Responsibilities under Rule 13h-1 will continue to apply with respect to: (1) the clearing broker-dealer for a large trader, with respect to (a) proprietary transactions by a large trader broker-dealer; (b) transactions effected pursuant to a “sponsored access” arrangement; and (c) transactions effected pursuant to a “direct market access” arrangement; and (2) broker-dealers that carry an account for a large trader for Transaction Data other than execution time.

⁵⁴ See supra note 7 (citing to the SIFMA and FIF letters).

⁵⁵ The Commission notes that November 15, 2018 currently is the date by which large industry SRO members are required to begin reporting to the CAT central repository. See CAT NMS Plan Order, supra note 8, at Ex. A, Sec. 6.7(a)(v), 81 FR at 84963.

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 13(h)(6) of the Exchange Act and Rule 13h-1(g) thereunder, that broker-dealers are exempted temporarily until November 15, 2018 from the recordkeeping and reporting requirements of Rule 13h-1(d) and (e) except for: (1) clearing broker-dealers for large traders with respect to (a) proprietary transactions by a large trader broker-dealer, (b) transactions effected pursuant to a “sponsored access” arrangement, and (c) transactions effected pursuant to a “direct market access” arrangement; and, for other types of transactions, (2) broker-dealers that carry an account for a large trader for Transaction Data other than execution time.

By the Commission.

Jill M. Peterson
Assistant Secretary