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On April 23, 2010, Proposed Rule 13h-1 was published for public comment in the Federal Register.<sup>3</sup> The Commission received 87 comment letters on the proposal from investment advisers, broker-dealers, institutional and individual investors, industry trade groups, and other market participants.<sup>4</sup> Commenters generally supported the goals of the proposal. As further discussed below, however, some commenters expressed concern about certain aspects of the proposal and recommended that the proposal be amended or clarified in certain respects.

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<sup>1</sup> On May 6, 2010, the prices of many U.S.-based equity products experienced an extraordinarily rapid decline and recovery. See Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues at <http://www.sec.gov/news/studies/2010/marketevents-report.pdf>. See also Preliminary Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues at <http://www.sec.gov/sec-cftc-prelimreport.pdf>.

<sup>2</sup> Longer term, the Commission expects the consolidated audit trail proposal, if adopted, to further enhance access by the Commission and self-regulatory organizations to order and trade data from all market participants. See Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010) (proposed Consolidated Audit Trail) (File No. S7-11-10) ("CAT Proposal"). As discussed further below, the aspects of the large trader reporting rule that enable the collection of information on the identity of large traders, including a large trader identification number, would not be replicated or superseded by the consolidated audit trail and would remain as a key tool in the Commission's oversight of the markets for the long term.

<sup>3</sup> See Securities Exchange Act Release No. 61908 (April 14, 2010), 75 FR 21456 (April 23, 2010) (File No. S7-10-10) ("Proposing Release").

<sup>4</sup> Copies of comments received on the proposal are available on the Commission's website at <http://www.sec.gov/comments/s7-10-10/s71010.shtml>.





over a limited period of time.<sup>11</sup> However, the EBS system lacks two important data elements that limit its usefulness when reconstructing market activity: time of execution for the order and a uniform identifier to identify the participant that effected the trade.<sup>12</sup> In addition, EBS does not require, as is contemplated by the large trader reporting system outlined by Section 13(h)(2) of the Exchange Act,<sup>13</sup> that transaction data be available on a next-day basis, which can delay the Commission’s ability to promptly collect and begin to analyze transaction data following a market event. The Commission’s adoption today of Rule 13h-1 and Form 13H is designed to address certain of these limitations of EBS.

**A. The Market Reform Act**

Following declines in the U.S. securities markets in October 1987 and October 1989, Congress recognized that the Commission’s ability to analyze the causes of a market crisis was impeded by its lack of authority to gather trading information.<sup>14</sup> To address this concern,

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<sup>11</sup> The difficulties in collecting trading data for analysis are reflected in the Commission’s preliminary report on the events of May 6, 2010. See Preliminary Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, May 18, 2010, at 1 (“The reconstruction of even a few hours of trading during an extremely active trading day in markets as broad and complex as ours—involving thousands of products, millions of trades and hundreds of millions of data points—is an enormous undertaking. Although trading now occurs in microseconds, the framework and processes for creating, formatting, and collecting data across various types of market participants, products and trading venues is neither standardized nor fully automated. Once collected, this data must be carefully validated and analyzed.”)

<sup>12</sup> The shortcomings of the EBS system were noted by the Senate Committee on Banking, Housing and Urban Affairs in the Senate Report accompanying the Market Reform Act of 1990. See Senate Report, infra note 14, at 48.

<sup>13</sup> See 15 U.S.C. 78m(h)(2) (“...records shall be available for reporting to the Commission... on the morning of the day following the day the transactions were effected....”).

<sup>14</sup> The legislative history accompanying the Market Reform Act also noted the Commission’s limited ability to analyze the causes of the market declines of October 1987 and 1989. See generally Senate Comm. on Banking, Housing, and Urban Affairs, Report to accompany the Market Reform Act of 1990, S. Rep. No. 300, 101<sup>st</sup> Cong. 2d Sess. (May 22, 1990) (reporting S. 648) (“Senate Report”) and House Comm. on Energy and Commerce, Report to accompany the Securities Market Reform Act of 1990, H.R. Rep. No. 524, 101<sup>st</sup> Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657) (“House Report”).































aggregate together those figures when measuring its overall activity against the applicable trading activity threshold.

#### **A. Use of LTID Suffixes**

Some commenters questioned the utility of the information that would be collected if large traders were identified at the parent company level, including whether grouping together persons who make trading decisions independently of each other would cloud the Commission's view when investigating for certain trading behavior, such as manipulation.<sup>47</sup> As an alternative, some commenters suggested that the Rule permit, but not compel, identification at the parent company level.<sup>48</sup> Another commenter suggested eliminating the requirement that an LTID be affixed to the trades of affiliates that do not independently qualify as large traders.<sup>49</sup> With respect to the concern about the Commission's ability to identify trading activity within a large trader with more particularity, as discussed further below,<sup>50</sup> Item 4(d) of Form 13H permits a large trader to assign LTID suffixes to sub-identify persons, divisions, groups, and entities under its control. For example, a large trader may choose to assign a suffix to each independent division within the large trader. Use of suffixes to identify various sub-groups within a large trader could facilitate a large trader's ability to accurately and efficiently track with more particularity the trading for which it exercises investment discretion, and as a consequence, could facilitate the ability of a large trader to respond to any Commission request to further identify accounts or disaggregate trading data, as discussed below. To the extent large traders utilize LTID suffixes, the need for the Commission to contact large traders for assistance in further

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<sup>47</sup> See, e.g., Prudential Letter at 2 and Investment Adviser Association Letter at 4.

<sup>48</sup> See Investment Company Institute Letter at 6 and Prudential Letter at 3.

<sup>49</sup> See Investment Adviser Association Letter at 5.

<sup>50</sup> See infra Section III.A.3.d.

identifying their accounts should be diminished. Accordingly, the Commission encourages large traders to utilize LTID suffixes.

The Commission notes that, ultimately, the information limitation identified by commenters may be addressed by the Commission's separate rulemaking for a consolidated audit trail which, if adopted as proposed, would require collection of information about the person with investment discretion for each order as well as information to identify the beneficial owner for each order.<sup>51</sup> In the meantime, allowing a parent company to comply on behalf of related entities should provide the Commission with important information at lower cost to the industry, by reducing the complexity and burdens of the large trader reporting requirements – such as those proposed by the Commission during the 1990s – that could have required reporting at multiple levels within a control group. At the same time, this provision addresses the Commission's near-term need for access to more information about large traders and their trading activities, which will enable the Commission to more efficiently analyze market events.

#### **B. Control and Minority-Owned Entities**

With respect to which persons under a parent company's control should be considered in determining the parent company's large trader status, Rule 13h-1(a)(3) defines "control" (and the terms "controlling," "controlled by," and "under common control with") as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of securities, by contract, or otherwise. For purposes of this rule only, any person that directly or indirectly has the right to vote or direct the vote of 25% or more of a class of voting securities of an entity or has the power to sell or direct the sale of 25% or more of a class of voting securities of such entity, or in the case of a partnership, has the

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<sup>51</sup> See CAT Proposal, supra note 2, 75 FR at 32572.

right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity.”

One commenter stated that including minority-owned entities would be problematic because it may be difficult for a large trader to obtain the information from a minority-owned entity that would be necessary for it to complete Form 13H.<sup>52</sup> Furthermore, according to this commenter, the minority-owned entity may resist attaching the large trader’s LTID to its trades.<sup>53</sup> Another commenter suggested attributing to a large trader only the activity of majority-owned entities that are actual operating subsidiaries, and not attributing the activity of more remote, partially-owned entities.<sup>54</sup> After considering the comments received, the Commission has decided to adopt as proposed the definition of control solely for purposes of this Rule. In particular, the Commission continues to believe that a minority shareholder holding at least 25% of the ownership interests of an entity would be in a position to exercise the influence necessary to secure that entity’s cooperation in facilitating a large trader’s compliance with the federal securities laws, especially given that all that this entails for the controlled entity would be providing its registered broker-dealers with the large trader’s LTID and the accounts to which it applies. In addition, if the controlled entity refuses to cooperate, the large trader itself may be able to notify the broker-dealer of its LTID. The Commission also continues to believe that the definition of control is appropriate and will allow the Commission to identify, and obtain trading

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<sup>52</sup> See Prudential Letter at 3. The Commission notes that proposed Form 13H would have required a large trader to identify its accounts and disclose for each account the LTID of any unaffiliated large trader with whom it shares investment discretion. As discussed below, the Commission has not adopted the provisions in the Form relating to the identification of accounts, and, as a consequence, a large trader would not need to obtain the LTID of any unaffiliated large trader for purposes of completing the Form.

<sup>53</sup> See Prudential Letter at 3.

<sup>54</sup> See SIFMA Letter at 18.



data from, controlled persons for whom a large trader is in a position to materially influence the investment decisions made by such person.<sup>55</sup>

**b. Identifying Activity Level**

Rule 13h-1(a)(7) defines the term “identifying activity level” as “aggregate transactions in NMS securities that are 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 twenty million shares or shares with a fair market value of \$200 million.” One commenter expressly supported these threshold levels.<sup>56</sup> Another commenter recommended increasing the daily threshold limit to shares with a fair market value of \$100 million during any calendar day.<sup>57</sup> Others advocated increased thresholds, but did not identify a particular level or provide empirical support for their recommendations.<sup>58</sup>

Some commenters thought that the proposed identifying activity level would capture infrequent traders, who they believe should not attract regulatory interest under a large trader reporting rule.<sup>59</sup> The Commission notes that nothing in Section 13(h) of the Exchange Act suggests that the Commission should focus its attention only on those large traders that are frequent traders. The statute permits the Commission to monitor the impact on the securities

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<sup>55</sup> The Commission considered other thresholds for control and determined that a 25% threshold would be the appropriate level for purposes of new Rule 13h-1. As discussed in the Proposing Release, the Commission notes that the definition of control is similar to the definition of control contained in Form 1 (Application for Registration or Exemption from Registration as a National Securities Exchange). See Proposing Release, supra note 3, 75 FR at 24161. Cf. Rule 19h-1(f)(2) under the Exchange Act, 17 CFR 240.19h-1(f)(2) (featuring a 10% threshold with respect to the right to vote 10% or more of the voting securities or receive 10% or more of the net profits).

<sup>56</sup> See T. Rowe Price Letter at 2.

<sup>57</sup> See Financial Engines Letter at 7.

<sup>58</sup> See, e.g., Managed Funds Association Letter at 2.

<sup>59</sup> See Investment Adviser Association Letter at 10; Howard Hughes Medical Institute Letter at 1; Managed Funds Association Letter at 2; and SIFMA Letter at 8.

markets of securities transactions involving a substantial volume or a large fair market value or exercise value. While frequency of trading is one factor that the Commission considered in defining who is a large trader, it was not the only factor. In explaining why it proposed to exclude certain transactions, the Commission stated that the proposed exclusions were designed to exclude certain small and otherwise infrequent traders from the definition of a large trader, but also stated: “the proposed excepted transactions are not effected with an intent that is commonly associated with an arm’s length purchase or sale of securities in the secondary market and therefore do not fall within the types of transactions that are characterized by the exercise of investment discretion.”<sup>60</sup> To the extent that a market participant trades only infrequently, but does so in large volume in the course of exercising investment discretion, the Commission seeks to identify that participant as a large trader. Nevertheless, the Commission recognizes the filing burden that could be placed on a trader whose activity only on very rare occasions meets the identifying activity threshold. These persons may be eligible for Inactive Status, a concept which is discussed below.

The Commission continues to believe that the identifying activity level is appropriate because it will identify large traders that engage in a substantial amount of trading activity relative to overall market volume – specifically, approximately 0.01% of the daily volume and market value of trading in NMS securities.<sup>61</sup> Moreover, as discussed below, Inactive Status is available for large traders whose trading activity reaches the identifying activity level infrequently.

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<sup>60</sup> See Proposing Release, supra note 3, 75 FR at 21463.

<sup>61</sup> See Proposing Release, supra note 3, 75 FR 21463-64. An “NMS security” is “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” 17 CFR 242.600(b)(46). The term refers generally to exchange-listed securities, including equities and options.



















traders will need to have or obtain permission to access and file through EDGAR, and can obtain the necessary access codes, if they do not already have them, by filing a Form ID (Uniform Application for Access Codes to File on EDGAR).<sup>81</sup> Among other things, large traders will be given a Central Index Key (“CIK”) number that uniquely identifies each filer and allows them to submit filings through EDGAR. While Form 13H filings will be processed through the Commission’s EDGAR system, once filed, the Form 13H filings will not be accessible through the Commission’s website or otherwise be publicly available.

**i. Initial Filings – Who Must File?**

Except as provided below, each large trader must file a Form 13H “Initial Filing” to identify itself to the Commission.<sup>82</sup> In complex organizations, more than one related entity can qualify as a large trader. Consider the following example:

- Holding Company owns a 100% ownership interest in Broker-Dealer and Investment Adviser. However, as a practical matter, Holding Company is not engaged in the day-to-day operation of either entity.
- Broker-Dealer owns a 33% ownership interest in Proprietary Trading Firm. None of the firm’s other investors own a controlling interest of 25% or more of the firm,

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Commission noted the possibility in the Proposing Release that paper filings might be required for a limited period of time. See T. Rowe Price Letter at 3. See also Proposing Release, supra note 3, 75 FR at 21465, n. 80. The Commission shares the concern expressed by the commenter. Form 13H will be a web-based application and will be submitted through EDGAR, a secure web interface, on the applicable compliance date.

<sup>80</sup> See generally 17 CFR 232 (Regulation S-T – General Rules and Regulations for Electronic Filings).

<sup>81</sup> An applicant must file Form ID in electronic format via the Commission’s EDGAR Filer Management website. See 17 CFR 232 (Regulation S-T) and the EDGAR Filer Manual for instructions on how to file electronically, including how to use the access codes.

<sup>82</sup> See new Rule 13h-1(b)(1).































Item 2 of the Form requires the large trader to indicate whether it or any of its Securities Affiliates files any other forms with the Commission.<sup>121</sup> If so, Item 2 requires identification of each filing entity, the form(s) filed, and the CIK number.

The Commission is narrowing the scope of Item 2 from the proposal to require the large trader to disclose whether it or any of its affiliates that exercise investment discretion over NMS securities (as distinguished from all of its affiliates) file any forms with the Commission. Additionally, rather than disclosing the filers' Central Registration Depository ("CRD") Numbers<sup>122</sup> and SEC File Numbers<sup>123</sup> as proposed, Item 2 as adopted requires only disclosure of their CIK numbers.<sup>124</sup>

One commenter objected to the collection of information under proposed Item 2, pointing out that the Commission already has access to this information.<sup>125</sup> The Commission believes that Item 2 is useful because it centralizes information about a large trader's various SEC filing obligations and will thereby allow the Commission to more promptly access records of those filers using their CIK numbers. Especially given the circumscribed scope of Item 2 as adopted, the Commission believes that this requirement will not be unduly burdensome. Further, each

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<sup>121</sup> The title of Item 2 of the adopted Form has been slightly amended; its title is "Securities and Exchange Commission Filings," not "Securities and Exchange Commission Registration." This non-substantive change reflects that registration is not the effect of all forms filed with the Commission.

<sup>122</sup> The CRD is a computerized database that contains information about most brokers, their representatives, and the firms for whom they work.

<sup>123</sup> As discussed above, an SEC File Number is assigned by EDGAR to registrants and others who file materials with the Commission through EDGAR. See supra discussion at text accompanying notes 79-81.

<sup>124</sup> CIK numbers, which are assigned to persons that file material with the Commission, are applicable to a broader universe of entities that may be large traders, as opposed to CRD numbers which are only applicable to broker-dealers.

<sup>125</sup> See American Bankers Association Letter at 2.

large trader should have ready access to this information and be able to summarize it with minimal additional burden.

**c. Item 3**

Item 3 of the Form requires a large trader to disclose whether it or any of its affiliates is registered with the Commodity Futures Trading Commission (“CFTC”) or regulated by a foreign regulator. If so, the large trader is required to identify each entity and the CFTC registration number or primary foreign regulator, as applicable.

The Commission received one comment about the aspect of proposed Item 3 of the Form that would have required disclosure about bank regulation.<sup>126</sup> The commenter argued that the required information did not further the underlying purpose of the proposal, and recommended that the Commission, to the extent necessary, obtain this information directly from applicable banking regulators instead of from the large trader.<sup>127</sup> In response to this comment, the Commission has significantly narrowed the scope of this item by not adopting the proposed requirement in Item 3(b) of the proposed Form to disclose information on bank regulators. Instead, as mentioned above, the Commission is adopting the requirement to disclose whether the large trader includes a bank<sup>128</sup> or bank holding company. The Commission believes that collection of this basic information will be sufficient to characterize a large trader’s operations,

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<sup>126</sup> See *id.*

<sup>127</sup> Item 3(b) of the proposed Form would have required the large trader to disclose: (1) whether it or any of its affiliates is a bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank; if so, the large trader would have been required to identify each such affiliate and its banking regulators.

<sup>128</sup> As adopted, the instructions for Form 13H define the term “bank” to mean a national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank.



foreign regulators.<sup>133</sup> In balancing the benefits of collecting such information against the burden on large traders to provide it, the Commission is not adopting the requirement as proposed. This adopted item, renumbered as Item 3(b), requires identification only of the primary foreign regulator. Further, the Commission is making the requirement applicable only to the large trader and its Securities Affiliates. In addition, two separate questions proposed on CFTC registration have been combined into one question to streamline the presentation of those items. No substantive change has been made to either question. The Commission believes that the requirement as adopted should not be as burdensome and yet should provide the Commission with access to the basic information it needs to understand the identity and regulatory status of a large trader and its affiliates.

**d. Item 4**

Item 4(b) of the Form requires information on affiliates of the large trader that exercise investment discretion over NMS securities (i.e., Securities Affiliates).<sup>134</sup> Item 5 of the proposed Form would have required a large trader to identify each affiliate that either exercises investment discretion over accounts that hold NMS securities or that beneficially owns NMS securities. In response to comments received, the Commission is not adopting the requirement to disclose affiliates that merely beneficially own NMS securities.<sup>135</sup> Accordingly, large traders will not have to identify or further describe affiliates who merely beneficially own NMS securities. The Commission believes that limiting the scope of required information to focus on affiliates that

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<sup>133</sup> See id.

<sup>134</sup> Information from proposed Item 5 (on affiliates) has been integrated into Item 4 of the adopted Form, which covers the organization of the large trader generally. This change was intended to consolidate under one Item similar information that is requested on the organization of each large trader.

<sup>135</sup> One commenter suggested that the Commission require identification of only those affiliates that trade in NMS securities. See SIFMA Letter at 17.























a broker-dealer to maintain records of transactions by an inactive large trader after receiving notice from the large trader that the trader had filed for inactive status with the Commission on Form 13H.

One commenter asked the Commission to clarify Rule 13h-1(d)(5),<sup>169</sup> which requires that the “records and information required to be made and kept pursuant to the provisions of this rule shall be available on the morning after the day the transactions were effected (including Saturdays and holidays).”<sup>170</sup> Specifically, the commenter asked whether, by requiring that records be available on Saturdays and holidays, the Commission expects that broker-dealers might be required to submit transaction data on Saturdays and holidays. The Commission notes that the Rule contemplates that broker-dealers might be called upon by the Commission to report data to the Commission on a Saturday or holiday, consistent with the legislative history that accompanies Section 13(h).<sup>171</sup> Depending on the urgency of the situation, the Commission may need prompt access to large trader data and the Rule contemplates that possibility.<sup>172</sup> The provisions applicable to the reporting of data to the Commission are discussed below.

## 2. **Reporting Requirements**

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<sup>169</sup> See Financial Information Forum Letter at 3.

<sup>170</sup> See *id.*

<sup>171</sup> See Senate Report, *supra* note 14, at 40. See also Section 13(h) of the Exchange Act, 15 U.S.C. 78m(h)(2), providing that “[r]ecords shall be reported to the Commission... immediately upon request by the Commission...”

<sup>172</sup> The Commission notes that while new Rule 13h-1(d)(5) governs the availability of data, new Rule 13h-1(e) governs the reporting of transaction data by broker-dealers to the Commission. Specifically, that provision requires registered broker-dealers to submit transaction data “no later than the day and time specified in the request for transaction information, which shall be no earlier than the opening of business of the day following such request, unless in unusual circumstances the same-day submission of information is requested.” Accordingly, while information must be available on the morning after the transaction was effected, the reporting deadline is based upon the day of the Commission’s request.

As proposed, Rule 13h-1(e) would require every registered broker-dealer who is itself a large trader, exercises investment discretion over an account together with a large trader or an Unidentified Large Trader, or carries an account for a large trader or an Unidentified Large Trader to report to the Commission upon request records they keep pursuant to Rule 13h-1(d)(1). In addition, as proposed, 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 a large trader would be required to report such records.

As described above, the Commission is not adopting the proposed requirement on large traders to disclose their LTIDs to other large traders.<sup>173</sup> The Commission believes it is appropriate to similarly narrow the scope of the reporting duty to not extend the reporting requirement to broker-dealers that exercise investment discretion over an account together with a large trader or an Unidentified Large Trader.

Accordingly, as adopted, upon the request of the Commission, every registered broker-dealer who is itself a large trader or carries an account for a large trader or an Unidentified Large Trader shall electronically report to the Commission all information required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders and Unidentified Large Traders, equal to or greater than the reporting activity level. 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 a large trader shall electronically report such information.

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<sup>173</sup> See discussion supra at Section III.A.2.b.



Broker-dealers will be required to report a particular day's trading activity if it equals or exceeds the "reporting activity level" of 100 shares.<sup>174</sup> Transaction reports must be submitted to the Commission no later than the day and time specified in the request for transaction information, which shall be no earlier than the opening of business of the day following such request, unless in unusual circumstances the same-day submission of information is requested.<sup>175</sup>

The Commission solicited<sup>176</sup> and received comments regarding the reporting duty of registered broker-dealers.<sup>177</sup> One commenter, in observing that the proposed rule would require registered broker-dealers to submit transaction data to the Commission before the close of business on the day specified in the request for such transaction information, asked for clarification about whether the day could be the same day the request is made.<sup>178</sup> The same commenter suggested that the Commission should allow registered broker-dealers a full business day, based on the time of the request, to respond to data requests.<sup>179</sup> Other commenters suggested longer periods. One suggested two days,<sup>180</sup> and one suggested affording registered

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<sup>174</sup> New Rule 13h-1(a)(8) defines the reporting activity level as: "(i) each transaction in NMS securities, effected in a single account during a calendar day, that is equal to or greater than 100 shares; (ii) any other transaction in NMS securities, effected in a single account during a calendar day, that a registered broker-dealer may deem appropriate; or (iii) such other amount that may be established by order of the Commission from time to time." The Commission solicited comment about a number of aspects of the proposed reporting activity level, see Proposing Release, supra note 3, 75 FR at 21473, but received no comments regarding the proposed threshold.

<sup>175</sup> Cf. Exchange Act Section 13(h)(2), 15 U.S.C. 78m(h)(2), which requires that "[s]uch records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization."

<sup>176</sup> See Proposing Release, supra note 3, 75 FR at 21473.

<sup>177</sup> See, e.g., Financial Information Forum Letter at 4 and SIFMA Letter at 13-17.

<sup>178</sup> See Financial Information Forum Letter at 2.

<sup>179</sup> See id.

<sup>180</sup> See Prudential Letter at 5.

broker-dealers 10 business days to respond, which could be shortened over time to three business days.<sup>181</sup> The latter commenter opposed the proposed deadline, stating that broker-dealers' existing infrastructure cannot respond to data requests for large trader transactions within one business day. As noted in the Proposing Release, the Commission expects that certain system enhancements will be required to prepare broker-dealers' existing EBS infrastructure for compliance with Rule 13h-1, including the provisions regarding the availability of data.<sup>182</sup> While the Commission does not anticipate that, under normal circumstances, it would request delivery of large trader transaction data on the same day the request is made, the Commission believes it is important that it have the flexibility to do so if required by the urgency of the situation.<sup>183</sup>

In response to the requests of commenters to provide additional guidance on the expected timeframe within which broker-dealers would need to submit transaction data to the Commission, the Commission is adopting a modified version of Rule 13h-1(e) to provide that reports of transactions must be “submitted to the Commission no later than the day and time specified in the request for transaction information, which shall be no earlier than the opening of business of the day following such request, unless in unusual circumstances the same-day submission of information is requested.”

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<sup>181</sup> See SIFMA Letter at 15.

<sup>182</sup> See Proposing Release, *supra* note 3, 75 FR at 21471.

<sup>183</sup> The Commission notes that the Rule requires that trade data be available for reporting to the Commission on the morning after the day the transactions were effected (which could include Saturdays and holidays). As specified in new Rule 13h-1(e), in response to a Commission request for transaction data, the information must be reported to the Commission no later than the day and time specified in the request for transaction information, which shall be no earlier than the opening of business of the day following such request, unless in unusual circumstances the same-day submission of information is requested.

The Commission understands from one commenter that EBS data processes are normally done during overnight batch runs.<sup>184</sup> In light of these considerations, the Commission believes it would be appropriate for broker-dealers to utilize any overnight process they may have currently in production, and the Rule as adopted provides that the Commission will normally request reports to be submitted in manner that allows time for such overnight processing.

However, under unusual circumstances, the Commission may request more immediate responses that may require some broker-dealers to perform a manual process in order to provide reports to the Commission sooner than could be accommodated by an overnight batch process. For example, on the morning following a market event such as May 6, 2010, the Commission could request data about the prior day to be submitted the same day as the request is made. The Commission recognizes that under these circumstances, depending on the nature of broker-dealer's systems, the report data may be preliminary and require updating by the opening of business of the day following the request. One commenter inquired whether registered broker-dealers would be required to submit transaction data directly to the Commission instead of through the normal channel for EBS submissions.<sup>185</sup> As adopted, Rule 13h-1(e) requires that reports be submitted "electronically, in machine-readable form and in accordance with a format specified by the Commission that is based on the existing EBS system format." Like Exchange Act Rule 17a-25, this provision does not require (or prohibit) preparation or transmission of reports by any intermediary. However, as stated in the Proposing Release, in order to mitigate costs on registered broker-dealers, the Commission intends to utilize the existing infrastructure of the EBS system for the large trader reporting rule.

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<sup>184</sup> See Financial Information Forum Letter at 3.

<sup>185</sup> See *id.*

Another commenter asked whether the Commission intended to request transaction data according to LTID.<sup>186</sup> The Commission expects that it would, on occasion, request EBS data according to LTID. A narrowly-focused request for transaction records of a particular large trader would help the Commission obtain in the most efficient manner possible targeted and limited data and should reduce the burden on broker-dealers by allowing them to provide smaller files in response to an EBS request for records of specific large traders.

One commenter recommended using the OATS system maintained by the Financial Industry Regulatory Authority (“FINRA”) instead of the EBS system for the large trader reporting rule. The commenter pointed out that, unlike the EBS system, OATS processes are tied to front office order and execution systems and thus could more readily incorporate the proposed new field of execution time.<sup>187</sup> Further, the commenter noted that OATS should be able to provide next day reporting.<sup>188</sup> The Commission, however, believes that the large trader reporting requirements can be most efficiently implemented and operated through relatively modest enhancements to the existing EBS system. Use of OATS, which is maintained by FINRA, would involve expanding OATS to additional categories of securities (e.g., options) and making additional enhancements to accommodate the records that would need to be kept pursuant to the Rule. For these reasons, the Commission does not believe basing the large trader reporting rule on OATS is appropriate at this time.

### **3. Monitoring Requirements**

Overview of Proposed Rule. Under proposed Rule 13h-1(d) and (e), certain registered broker-dealers would be subject to recordkeeping and reporting responsibilities for their

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<sup>186</sup> See id. at 2.

<sup>187</sup> See SIFMA Letter at 15.

<sup>188</sup> See id.

customers that meet the criteria for Unidentified Large Traders. Proposed Rule 13h-1(a)(9) defined “Unidentified Large Trader” as “each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader.” The proposed Rule provided that a registered broker-dealer “has reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer.”

In assessing whether a broker-dealer “has reason to know” whether one of its customers may be a large trader, the proposed rule effectively would have required the broker-dealer to take into account trading activity in its own customer accounts.

Proposed Rule 13h-1(f) also contained a safe harbor that was designed to reduce the broker-dealer’s burdens in connection with monitoring its customers’ trading for purposes of identifying possible large traders.<sup>189</sup> The safe harbor in proposed Rule 13h-1(f) required reasonably designed systems to detect and identify persons that may be large traders – based upon transactions effected through an account or group of accounts or other information readily available to the broker-dealer. Further, the proposed safe harbor required reasonably designed systems to inform such persons of their potential obligations under Rule 13h-1.

The proposed monitoring requirements were intended to promote awareness of and foster compliance with Rule 13h-1 by customers who might not be aware of their large trader reporting responsibilities. As noted in the Proposing Release, the proposed rule placed “the principal burden of compliance with the identification requirements on large traders themselves”<sup>190</sup> while the broker-dealer monitoring requirements were intended to be “limited” and “a necessary

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<sup>189</sup> See Proposing Release, supra note 3, 75 FR at 21470.

<sup>190</sup> Id.

backstop to encourage compliance and fulfill the objectives of Section 13(h) of the Exchange Act.”<sup>191</sup>

Comments Received. In the Proposing Release, the Commission requested comments on the proposed monitoring requirements and the related safe harbor.<sup>192</sup> The Commission received several comments that addressed the proposed duty to monitor customers for purposes of Rule 13h-1.<sup>193</sup> One commenter asserted that the Commission lacks the statutory authority to impose a monitoring requirement on registered broker-dealers in connection with the large trader reporting rule.<sup>194</sup> A few commenters asked for clarification of the monitoring requirements and offered alternatives.<sup>195</sup> Of those commenters that addressed the issue, most were critical of the proposed monitoring requirements.<sup>196</sup> One commenter characterized the role of broker-dealers under the proposed rule as “gatekeepers,” and asserted that “the proposed rule would impose on broker-dealers much of the operational monitoring regarding registration of large traders.”<sup>197</sup> Two commenters asked whether the Rule would require broker-dealers to stop doing business with Unidentified Large Traders.<sup>198</sup> One of those commenters asserted that it should not because that would have the unintended consequence of driving customers to broker-dealers who may be less

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<sup>191</sup>

Id.

<sup>192</sup>

See id. at 21472-73.

<sup>193</sup>

See, e.g., Financial Information Forum Letter at 4-5; GETCO Letter at 3; and SIFMA Letter at 9-13.

<sup>194</sup>

See SIFMA Letter at 11.

<sup>195</sup>

See, e.g., Financial Information Forum Letter; SIFMA Letter; and GETCO Letter.

<sup>196</sup>

One commenter described the proposed safe harbor as “anything but safe” and, as discussed above, asserted that the proposal exceeds the Commission’s statutory authority because, among other reasons, the safe harbor provided that a registered broker-dealer would have reason to know that a customer is an Unidentified Large Trader based on other readily available information, as well as transactions effected through the broker-dealer. See SIFMA Letter at 11.

<sup>197</sup>

Id. at 9.

<sup>198</sup>

See id. at 11 and Financial Information Forum Letter at 5.

diligent in monitoring for large traders.<sup>199</sup> These two commenters also requested guidance about whether the monitoring provisions required any specific policies and procedures.<sup>200</sup> Another commenter asked whether a broker-dealer has a duty to proactively determine whether a customer is an Unidentified Large Trader based on the broker-dealer’s knowledge that its customer maintains accounts at other broker-dealers.<sup>201</sup>

Summary of Monitoring Requirements in Final Rule. The Commission addresses these comments below, but for purposes of clarity we also will briefly summarize the monitoring requirements in the final Rule. As adopted, the Rule requires that a registered broker-dealer treat as an Unidentified Large Trader (for purposes of the recordkeeping and reporting provisions in paragraphs (d) and (e) of the Rule) any person that the broker-dealer “knows or has reason to know” is a large trader where such person has not complied with the identification requirement applicable to large traders (i.e., identified itself as a large trader to the broker-dealer and disclosed the accounts to which its LTID applies). As noted in Rule 13h-1(a)(9), in considering whether the broker-dealer has “reason to know” that a person is a large trader, however, the broker-dealer need take into account only transactions in NMS securities effected by or through such broker-dealer (i.e., it need not seek out information on transactions effected by that person through another broker-dealer). Moreover, a broker-dealer may determine that it has no “reason to know” that a person is a large trader through two methods. First, the broker-dealer may simply conclude, based on its knowledge of the nature of its customers and their trading activity with the broker-dealer, that it has no reason to expect that any of these customers’ transactions

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<sup>199</sup> See SIFMA Letter at 11.

<sup>200</sup> See id. at 10 and Financial Information Forum Letter at 5.

<sup>201</sup> See SIFMA Letter at 10.

approach the identifying activity level.<sup>202</sup> Second, the broker-dealer may rely on the safe harbor provision in paragraph (f) of the Rule. Under the safe harbor, a registered broker-dealer would be deemed not to know or have reason to know that a person is a large trader if it 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 at the broker-dealer 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. Under either approach, a broker-dealer's obligation with respect to an Unidentified Large Trader is limited to compliance with the requirements of paragraphs (d) and (e) of the Rule, and the broker-dealer would not be required to cease trading or take other action with respect to that Unidentified Large Trader.<sup>203</sup> The Commission notes that, pursuant to the reporting requirements of the Rule, it may periodically request reports from broker-dealers regarding all customers they may be treating as Unidentified Large Traders.

Response to Comments and Discussion of the Final Rule. The Commission carefully considered the comments on the proposed rule, and therefore is providing responses and additional clarifications below regarding the monitoring requirements required under this Rule. In response to the comment asserting that the Commission lacks authority to impose monitoring requirements, we note that the explicit authority under Section 13(h) of the Exchange Act to

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<sup>202</sup> For example, the broker-dealer may know, or learn from its customer, that the transactions over the identifying activity level were effected in connection with a tender offer, which are excluded under the Rule for purposes of determining whether a person is a Large Trader. Alternatively, the broker-dealer may know, or learn from its customer, that the account in question is an omnibus account and that the individual subaccounts do not exceed the identifying activity level.

<sup>203</sup> The Commission reiterates that the monitoring requirements are intended to be a "limited" duty that serves as "a necessary backstop to encourage compliance and fulfill the objectives of Section 13(h) of the Exchange Act." Proposing Release, supra note 3, 75 FR at 21470. The Commission believes that requiring limited monitoring by broker-dealers will help assure that the objectives of the Rule are met and is consistent with the statutory intent of Section 13(h) of the Exchange Act.



adopt this Rule is supplemented by Section 23(a) of the Exchange Act, which allows the Commission to “make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which they are responsible or for the execution of the functions vested in them by this title....”<sup>204</sup> Further, Section 13(h)(2) of the Exchange Act specifically authorizes the Commission to require registered broker-dealers to report transactions that “equal or exceed the reporting activity level effected directly or indirectly by or through [them]...for any person that such broker or dealer has reason to know is a large trader on the basis of transactions in securities effected by or through such broker or dealer” (emphasis added).<sup>205</sup> That section, then, contemplates that registered broker-dealers would take into account their own customers’ trading (which they have reason to know). The Commission believes, therefore, that it is reasonable to require broker-dealers to take into account a customer’s trading activity through the broker-dealer’s accounts to implement Section 13(h).

The Commission is, however, making several modifications to the proposed rule in response to commenters’ requests for additional clarification. First, in response to questions regarding the scope of the information that a broker-dealer must consider in determining whether a person may be a large trader, the Commission is adopting a definition of Unidentified Large Trader to clarify what was intended in the proposed Rule – that a broker-dealer does not have “reason to know” that a person is a large trader other than by reference to transactions in accounts of the broker-dealer. In particular, proposed paragraph (a)(9) of the Rule would have defined an Unidentified Large Trader as a “person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader.” It further provided that “[a] registered broker-dealer has

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<sup>204</sup> 15 U.S.C. 78w(a).

<sup>205</sup> 15 U.S.C. 78m(h)(2).

reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer.” To clarify the Commission’s intent for determining whether a registered broker-dealer has reason to know, the Commission is adopting a revised second sentence of paragraph (a)(9) of the Rule to provide: “For purposes of determining under this rule 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.” In other words, when considering whether a customer’s trading activity has exceeded the “identifying activity level,” the broker-dealer need only consider the customer’s activity effected through an account or a group of accounts at that broker-dealer. If that activity rose to the “identifying activity level”, the broker-dealer would be required to treat the customer as an Unidentified Large Trader. Beyond considering the transactions effected through an account or a group of accounts at the broker-dealer, however, the broker-dealer is not required to proactively make further inquiries for the purpose of determining its customer’s status (e.g., by seeking to determine the customer’s trading activity at other broker-dealers). However, if a registered broker-dealer nevertheless has actual knowledge that a person is a large trader and the person has not provided the broker-dealer with a LTID, then the broker-dealer must treat the person as an Unidentified Large Trader under the recordkeeping and reporting requirements of the Rule.

Further, in response to questions regarding the scope of a broker-dealer’s obligations with respect to an Unidentified Large Trader, the Commission notes that the Rule does not require a broker-dealer to stop doing business with Unidentified Large Traders. Rather, paragraph (d)(3) of the Rule requires broker-dealers to maintain information on Unidentified Large Traders, and

paragraph (e) requires broker-dealers to report that information to the Commission on request.<sup>206</sup> Moreover, the Rule does not require a broker-dealer to proactively or affirmatively determine who is in fact a large trader. A potential large trader is required to assess for itself whether it meets the identifying activity threshold and thus qualifies as a large trader. The Commission notes that in some cases only the potential large trader would know whether it in fact is a large trader because certain types of transactions are excluded from the identifying activity level calculation. For example, a broker-dealer may have a customer that effected \$22,000,000 worth of transactions through that broker-dealer in a given day, in excess of the identifying activity threshold. If that customer did not previously identify itself as a large trader to the broker-dealer by providing an LTID and identifying the accounts to which it applies, then the broker-dealer would treat the customer as an Unidentified Large Trader. However, the customer may not, in fact, be required to register as a large trader because the customer may not have exercised investment discretion over those transactions.

The Commission also is making several modifications to paragraph (f) from the proposal to clarify the requirements of the safe harbor provision contained in that paragraph. As noted above, this safe harbor would provide a broker-dealer with assurance as to whether it has “reason to know” that a person is a large trader, and therefore whether the broker-dealer must treat such person as an Unidentified Large Trader. As a practical matter, the Commission expects that broker-dealers with customers whose trading activities could exceed the identifying activity level will likely elect to avail themselves of the safe harbor. To qualify under the safe harbor, the broker-dealer must (i) implement policies and procedures reasonably designed to identify customers whose trading activity exceeds the identifying activity level, (ii) treat such customers

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<sup>206</sup> The Rule does not address any other obligation or potential liability of the broker-dealer under any other provisions of the federal securities laws.









































































































































































impact of privacy laws on the ability to collect information and for large traders to reports such information.<sup>431</sup> A third concern involved the practicality of the proposed requirement for large traders to list account numbers on Form 13H.<sup>432</sup>

The Commission is mindful of these comments and believes that the modifications and clarifications in the adopted Rule and discussed in detail above should mitigate these concerns. For example, as adopted, the Rule does not require account numbers to be included on Form 13H, alleviating the commenters' concern about the practicality of non-U.S. traders providing this information. Also as discussed above, the scope of the monitoring requirements has been clarified in the adopted Rule such that the obligations of broker-dealers to collect information from non-U.S. parties is limited to only the non-U.S. entity with whom they transact. Furthermore, in the event, which the Commission believes to be unlikely, that the laws of a large trader's foreign jurisdiction preclude or prohibit the large trader from waiving such restrictions or otherwise voluntarily filing Form 13H with the Commission, then such foreign large traders or representatives of foreign large traders may request an exemption from the Commission pursuant to Section 36 of the Exchange Act<sup>433</sup> and paragraph (g) of the Rule.

Given these mitigating factors, the Commission does not believe that any remaining costs to a non-U.S. trader that trades in an amount sufficient to require identification with the Commission via Form 13H outweigh the considerable benefits of directly accessing U.S. markets for the trading of NMS securities. Moreover, armed with more current and accurate trading information on large traders, the Commission would be able to identify regulatory and potential enforcement issues more quickly. Thus, Rule 13h-1 could help maintain investor trust in the

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<sup>431</sup> See *id.* at 3.

<sup>432</sup> See *id.* at 3-4.

<sup>433</sup> 15 U.S.C. 78mm.

markets, and in turn could add depth and liquidity to the markets and promote capital formation. Further, the Commission believes that the requirements imposed on all large traders, whether U.S. or foreign, are necessary and appropriate, not unduly burdensome, and would be imposed uniformly on all affected entities (whether U.S. or non-U.S.).

**C. Efficiency**

New Rule 13h-1 is designed to achieve the appropriate balance between the Commission's goals of monitoring the impact on the securities markets of securities transactions by large traders and assisting the Commission's enforcement of the federal securities laws, on the one hand, and the effort to minimize the burdens and costs associated with implementing a large trader reporting rule.

The Commission believes that the disclosure by registered broker-dealers to regulators that would be achieved by the large trader reporting rule would promote efficiency by enabling the Commission to go beyond the EBS system, which permits investigations of small samples of securities over a limited period of time, and to instead assist with large-scale investigations and market reconstructions involving numerous stocks during peak trading volume periods. The Rule also would enable the Commission to receive from registered broker-dealers contemporaneous information on large traders' trading activity much more promptly than is currently the case with the EBS system. With a system designed specifically to help the Commission reconstruct and analyze time-sequenced trading data, the Commission could more quickly investigate the nature and causes of unusual market movements and initiate investigations and regulatory actions where warranted.

The Commission acknowledges that the trading activity of certain large traders also promotes market liquidity in secondary securities markets. The Commission also acknowledges



that participation in primary market offerings may be affected by changes in expectations about secondary market liquidity and price efficiency. As discussed above, however, the Commission believes that Rule 13h-1 will enhance the Commission’s efforts to monitor the markets, in furtherance of promoting efficiency and capital formation and thereby bolstering investor trust.

## **VII. Regulatory Flexibility Act Certification**

The Regulatory Flexibility Act (“RFA”)<sup>434</sup> requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)<sup>435</sup> of the Administrative Procedure Act,<sup>436</sup> as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on “small entities.”<sup>437</sup> Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not “have a significant economic impact on a substantial number of small entities.”<sup>438</sup>

Paragraph (a) of Rule 0-10 provides that for purposes of the Regulatory Flexibility Act, a small entity when used with reference to a “person” other than an investment company means a

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<sup>434</sup> 5 U.S.C. 601 et seq.

<sup>435</sup> 5 U.S.C. 603(a).

<sup>436</sup> 5 U.S.C. 551 et seq.

<sup>437</sup> Although Section 601(b) of the RFA defines the term “small entity,” the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0-10, 17 CFR 240.0-10. See Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS-305).

<sup>438</sup> See 5 U.S.C. 605(b).

person that, on the last day of its most recent fiscal year, had total assets of \$5 million or less.<sup>439</sup>

In reference to a broker-dealer, small entity means total capital of less than \$500,000 and not affiliated with any person that is not a small business or small organization. Pursuant to Section 605(b), the Commission believes that Rule 13h-1 and Form 13H will not have a significant economic impact on a substantial number of small entities.

In the Proposing Release, the Commission requested comment on whether proposed Rule 13h-1 and Form 13H would have a significant economic impact on a substantial number of small entities. While the Commission did receive comment letters that discussed the overall number of respondents that would be affected by the proposed new rule,<sup>440</sup> the Commission did not receive any comments that specifically addressed whether Rule 13h-1 and Form 13H would have a significant economic impact on small entities.

Rule 13h-1 and Form 13H will require self-identification by large traders, which is a term that, as discussed below, would implicate persons and entities with the resources and capital necessary to transact securities in substantial volumes relative to overall market volume in NMS securities.<sup>441</sup> Specifically, the Rule defines “large trader” as a person that effects transactions in an “identifying activity level” of: (1) 2 million shares, or shares with a fair market value of \$20 million, effected during a calendar day; or (2) 20 million shares, or shares with a fair market value of \$200 million, effected during a calendar month.

The Commission anticipates that the types of entities that would identify as large traders would include, for example, broker-dealers, financial holding companies, investment advisers,

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<sup>439</sup> 17 CFR 240.0-10(a). Investment companies are small entities when the investment company, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less at the end of its most recent fiscal year. 17 CFR 270.0-10(a).

<sup>440</sup> See supra Section IV.C.

<sup>441</sup> See supra text accompanying note 61.

and firms that trade for their own account. The Commission does not believe that any small entities would be engaged in the business of trading, over the course of the applicable measuring period, in a volume that approaches the threshold levels. Because the Rule focuses on parent companies and is designed to identify the largest market participants by volume or fair market value of trading, the Commission believes that a large trader that trades in such substantial volumes would necessarily have considerable assets (beyond the level of a small entity) to be able to conduct such trading.

In addition, Rule 13h-1 will apply to registered broker-dealers that serve large trader customers. The Commission believes that, given the considerable volume in which a large trader as defined in the Rule would effect transactions, particularly in the case of high-frequency traders, registered broker-dealers servicing large trader customers or broker-dealers that are large traders themselves likely would be larger entities, with total capital greater than \$500,000, and have systems and capacities capable of handling the trading associated with such accounts. Further, because the trading capacities of large traders will typically necessitate the services of sophisticated broker-dealers likely to be well capitalized entities or affiliated with well capitalized entities, the Commission does not believe that any broker-dealer that maintains large trader customers would be “not affiliated with any person that is not a small business or small organization” under Rule 0-10.

For the foregoing reasons, the Commission hereby certifies that, pursuant to 5 U.S.C. 605(b), Rule 13h-1 will not have a significant economic impact on a substantial number of small entities.

## **VIII. Statutory Authority**

Pursuant to the Exchange Act and particularly, Sections 13(h) and 23(a) thereof, 15 U.S.C. 78m(h) and 78w(a), the Commission adopts new Rule 13h-1 under the Exchange Act that will implement a large trader reporting rule to provide the Commission with a mechanism to identify large traders, and the affiliates, accounts, and transactions of large traders.

**IX. Text of the Amendments**

**List of Subjects in 17 CFR Parts 240 and 249**

Reporting and recordkeeping requirements; Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

**PART 240 -- GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-ll, and 7201 et seq.; 18 U.S.C. 1350, 12 U.S.C. 5221(e)(3); and 7 U.S.C. 2(c)(2)(E), unless otherwise noted.

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2. Add § 240.13h-1 to read as follows:

**§ 240.13h-1 Large trader reporting.**

(a) Definitions. For purposes of this section:

(1) The term large trader means any person that:

(i) 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; or

(ii) Voluntarily registers as a large trader by filing electronically with the Commission Form 13H (§ 249.327 of this chapter).

(2) The term person has the same meaning as in Section 13(h)(8)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(h)(8)(E)).

(3) The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of securities, by contract, or otherwise. For purposes of this section only, any person that directly or indirectly has the right to vote or direct the vote of 25% or more of a class of voting securities of an entity or has the power to sell or direct the sale of 25% or more of a class of voting securities of such entity, or in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity.

(4) The term investment discretion has the same meaning as in Section 3(a)(35) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(3)(a)(35)). A person's employees who exercise investment discretion within the scope of their employment are deemed to do so on behalf of such person.

(5) The term NMS security has the meaning provided for in Section 242.600(b)(46) of this chapter.

(6) The term transaction or transactions means all transactions in NMS securities, excluding the purchase or sale of such securities pursuant to exercises or assignments of option contracts. For the sole purpose of determining whether a person is a large trader, the following transactions are excluded from this definition:

(i) Any journal or bookkeeping entry made to an account in order to record or memorialize the receipt or delivery of funds or securities pursuant to the settlement of a transaction;

(ii) Any transaction that is part of an offering of securities by or on behalf of an issuer, or by an underwriter on behalf of an issuer, or an agent for an issuer, whether or not such offering is subject to registration under the Securities Act of 1933 (15 U.S.C. 77a), provided, however, that this exemption shall not include an offering of securities effected through the facilities of a national securities exchange;

(iii) Any transaction that constitutes a gift;

(iv) Any transaction effected by a court appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate;

(v) Any transaction effected pursuant to a court order or judgment;

(vi) Any transaction effected pursuant to a rollover of qualified plan or trust assets subject to Section 402(a)(5) of the Internal Revenue Code (26 U.S.C. 1 et seq.);

(vii) Any transaction between an employer and its employees effected pursuant to the award, allocation, sale, grant, or exercise of a NMS security, option or other right to acquire securities at a pre-established price pursuant to a plan which is primarily for the purpose of an issuer benefit plan or compensatory arrangement; or

(viii) Any transaction to effect a business combination, including a reclassification, merger, consolidation, or tender offer subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)); an issuer tender offer or other stock buyback by an issuer; or a stock loan or equity repurchase agreement.

(7) The term identifying activity level means: aggregate transactions in NMS securities that are equal to or greater than:

(i) During a calendar day, either two million shares or shares with a fair market value of \$20 million; or

(ii) During a calendar month, either twenty million shares or shares with a fair market value of \$200 million.

(8) The term reporting activity level means:

(i) Each transaction in NMS securities, effected in a single account during a calendar day, that is equal to or greater than 100 shares;

(ii) Any transaction in NMS securities for fewer than 100 shares, effected in a single account during a calendar day, that a registered broker-dealer may deem appropriate; or

(iii) Such other amount that may be established by order of the Commission from time to time.

(9) The term Unidentified Large Trader means each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this section that a registered broker-dealer knows or has reason to know is a large trader. For purposes of determining under this section whether a registered broker-dealer has reason to know that a person is large trader, a registered broker-dealer need take into account only transactions in NMS securities effected by or through such broker-dealer.

(b) Identification requirements for large traders.

(1) Form 13H. Except as provided in paragraph (b)(3) of this section, each large trader shall file electronically Form 13H (17 CFR 249.327) with the Commission, in accordance with the instructions contained therein:

(i) Promptly after first effecting aggregate transactions, or after effecting aggregate transactions subsequent to becoming inactive pursuant to paragraph (b)(3) of this section, equal to or greater than the identifying activity level;

(ii) Within 45 days after the end of each full calendar year; and

(iii) Promptly following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason.

(2) Disclosure of large trader status. Each large trader shall disclose to the registered broker-dealers effecting transactions on its behalf its large trader identification number and each account to which it applies. A large trader on Inactive Status pursuant to paragraph (b)(3) of this section must notify broker-dealers promptly after filing for reactivated status with the Commission.

(3) Filing requirement.

(i) Compliance by controlling person. A large trader shall not be required to separately comply with the requirements of this paragraph (b) if a person who controls the large trader complies with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) of this section applicable to such large trader with respect to all of its accounts.

(ii) Compliance by controlled person. A large trader shall not be required to separately comply with the requirements of this paragraph (b) if one or more persons controlled



by such large trader collectively comply with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) of this section applicable to such large trader with respect to all of its accounts.

(iii) Inactive status. A large trader that has not effected aggregate transactions at any time during the previous full calendar year in an amount equal to or greater than the identifying activity level shall become inactive upon filing a Form 13H (17 CFR 249.327) and thereafter shall not be required to file Form 13H or disclose its large trader status unless and until its transactions again are equal to or greater than the identifying activity level. A large trader that has ceased operations may elect to become inactive by filing an amended Form 13H to indicate its terminated status.

(4) Other information. Upon request, a large trader must promptly provide additional descriptive or clarifying information that would allow the Commission to further identify the large trader and all accounts through which the large trader effects transactions.

(c) Aggregation.

(1) Transactions. For the purpose of determining whether a person is a large trader, the following shall apply:

(i) The volume or fair market value of transactions in equity securities and the volume or fair market value of the equity securities underlying transactions in options on equity securities, purchased and sold, shall be aggregated;

(ii) The fair market value of transactions in options on a group or index of equity securities (or based on the value thereof), purchased and sold, shall be aggregated; and

(iii) Under no circumstances shall a person subtract, offset, or net purchase and sale transactions, in equity securities or option contracts, and among or within accounts, when aggregating the volume or fair market value of transactions for purposes of this section.

(2) Accounts. Under no circumstances shall a person disaggregate accounts to avoid the identification requirements of this section.

(d) Recordkeeping requirements for broker and dealers.

(1) Generally. Every registered broker-dealer shall maintain records of all information required under paragraphs (d)(2) and (d)(3) of this section for all transactions effected directly or indirectly by or through:

(i) An account such broker-dealer carries for a large trader or an Unidentified Large Trader, or

(ii) If the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion.

(iii) Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting transactions directly or indirectly for such large trader or Unidentified Large Trader shall maintain records of all of the information required under paragraphs (d)(2) and (d)(3) of this section for those transactions.

(2) Information. The information required to be maintained for all transactions shall include:

(i) The clearing house number or alpha symbol of the broker or dealer submitting the information and the clearing house numbers or alpha symbols of the entities on the opposite side of the transaction;

- (ii) Identifying symbol assigned to the security;
- (iii) Date transaction was executed;
- (iv) The number of shares or option contracts traded in each specific transaction;

whether each transaction was a purchase, sale, or short sale; and, if an option contract, whether the transaction was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment;

- (v) Transaction price;
- (vi) Account number;
- (vii) Identity of the exchange or other market center where the transaction was

executed.

(viii) A designation of whether the transaction was effected or caused to be effected for the account of a customer of such registered broker-dealer, or was a proprietary transaction effected or caused to be effected for the account of such broker-dealer;

(ix) If part or all of an account's transactions at the registered broker-dealer have been transferred or otherwise forwarded to one or more accounts at another registered broker-dealer, an identifier for this type of transaction; and if part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise received from one or more other registered broker-dealers, an identifier for this type of transaction;

(x) If part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise received from another account at the reporting broker-dealer, an identifier for this type of transaction; and if part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise forwarded to one or more other accounts at the reporting broker-dealer, an identifier for this type of transaction;

(xi) If a transaction was processed by a depository institution, the identifier assigned to the account by the depository institution;

(xii) The time that the transaction was executed; and

(xiii) The large trader identification number(s) associated with the account, unless the account is for an Unidentified Large Trader.

(3) Information relating to Unidentified Large Traders. With respect to transactions effected directly or indirectly by or through the account of an Unidentified Large Trader, the information required to be maintained for all transactions also shall include such Unidentified Large Trader's name, address, date the account was opened, and tax identification number(s).

(4) Retention. The records and information required to be made and kept pursuant to the provisions of this section shall be kept for such periods of time as provided in § 240.17a-4(b).

(5) Availability of information. The records and information required to be made and kept pursuant to the provisions of this rule shall be available on the morning after the day the transactions were effected (including Saturdays and holidays).

(e) Reporting requirements for brokers and dealers. Upon the request of the Commission, every registered broker-dealer who is itself a large trader or carries an account for a large trader or an Unidentified Large Trader shall electronically report to the Commission, using the infrastructure supporting § 240.17a-25, in machine-readable form and in accordance with instructions issued by the Commission, all information required under paragraphs (d)(2) and (d)(3) of this section for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders and Unidentified Large Traders, equal to or greater than the reporting activity level. 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 a large trader shall electronically report using the infrastructure supporting § 240.17a-25, in machine-readable form and in accordance with instructions issued by the Commission, all information required under paragraphs (d)(2) and (d)(3) of this section for such transactions equal to or greater than the reporting activity level. Such reports shall be submitted to the Commission no later than the day and time specified in the request for transaction information, which shall be no earlier than the opening of business of the day following such request, unless in unusual circumstances the same-day submission of information is requested.

(f) Monitoring safe harbor. For the purposes of this rule, a registered broker-dealer shall be deemed not to know or have reason to know that a person is a large trader if it does not have actual knowledge that a person is a large trader and it establishes policies and procedures reasonably designed to:

(1) Identify persons who have not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this section but whose transactions effected through an account or a group of accounts carried by such broker-dealer or through which such broker-dealer executes transactions, as applicable (and considering account name, tax identification number, or other identifying information available on the books and records of such broker-dealer) equal or exceed the identifying activity level;

(2) Treat any persons identified in paragraph (f)(1) of this section as an Unidentified Large Trader for purposes of this section; and

(3) Inform any person identified in paragraph (f)(1) of this section of its potential obligations under this section.

(g) Exemptions. Upon written application or upon its own motion, the Commission may by order exempt, 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 this section to the extent that such exemption is consistent with the purposes of the Securities Exchange Act of 1934 (15 U.S.C. 78a).

#### **PART 249 -- FORMS, SECURITIES EXCHANGE ACT OF 1934**

3. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

4. Add § 249.327 to read as follows:

**§ 249.327 Form 13H, Information required on large traders pursuant to Section 13(h) of the Securities Exchange Act of 1934 and rules thereunder.**

This form shall be used by persons that are large traders required to furnish identifying information to the Commission pursuant to Section 13(h)(1) of the Securities Exchange Act of 1934 [15 U.S.C. § 78m(h)(1)] and § 240.13h-1(b) of this chapter.

**Note:** The text of Form 13H does not, and this amendment will not, appear in the Code of Federal Regulations.

- OMB Number: 3235-0862
- Estimated average burden hours per response: 18

United States Securities and Exchange Commission

**FORM 13H**  
**Large Trader Registration**  
**Information Required of Large Traders Pursuant To Section 13(h) of the**  
**Securities Exchange Act of 1934 and Rules Thereunder**

INITIAL FILING: Date identifying transactions first effected (mm/dd/yyyy) \_\_\_\_\_

Voluntary filing?  no  yes Date of voluntary filing \_\_\_\_\_

ANNUAL FILING:

Calendar year ending \_\_\_\_\_

AMENDED FILING

INACTIVE STATUS: Date commencing Inactive Status (mm/dd/yyyy) \_\_\_\_\_

TERMINATION FILING: Effective date (mm/dd/yyyy) \_\_\_\_\_

REACTIVATED STATUS: Date identifying transactions first effected, post-Inactive Status  
(mm/dd/yyyy) \_\_\_\_\_

\_\_\_\_\_  
Name of Large Trader Filing This Form

\_\_\_\_\_  
LTID

\_\_\_\_\_  
Taxpayer Identification Number

\_\_\_\_\_  
Business Address of the Large Trader (Street, City, State, Zip, Country)

\_\_\_\_\_  
Mailing Address of the Large Trader (Street, City, State, Zip, Country)

Telephone No. (\_\_\_\_) \_\_\_\_ - \_\_\_\_ Facsimile No. (\_\_\_\_) \_\_\_\_ - \_\_\_\_ Email \_\_\_\_\_

The Form and the schedules thereto must be submitted by a natural person who is authorized to make this submission on behalf of the large trader.

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Name of Authorized Person (First, Middle Initial, Last)

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Title of Authorized Person

---

Relationship to Large Trader

---

Business Address of Authorized Person (Street, City, State, Zip, Country)

Authorized Person's Telephone No. ( ) - Facsimile No. ( ) -

Authorized Person's Email \_\_\_\_\_

**ATTENTION**

Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a). Intentional misstatements or omissions of facts may result in civil fines and other sanctions pursuant to the Securities Exchange Act of 1934.

The authorized person signing this form represents that all information contained in the form, schedules, and continuation sheets is true, correct, and complete. It is understood that all information whether contained in the form, schedules, or continuation sheets, is considered an integral part of this form and that any amendment represents that all unamended information remains true, correct, and complete.

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Signature of Person Authorized to Submit this Form



FORM 13H  
 INFORMATION REQUIRED OF ALL LARGE TRADERS

ITEM 1. BUSINESSES OF THE LARGE TRADER (check as many as applicable)

(a) Businesses engaged in by the large trader and any of the large trader's affiliates (check as many as applicable)

- |   |   |
|---|---|
| <input type="checkbox"/> Broker or Dealer<br><input type="checkbox"/> Government Securities Broker or Dealer<br><input type="checkbox"/> Municipal Securities Broker or Dealer<br><input type="checkbox"/> Investment Adviser<br><input type="checkbox"/> to Registered Investment Companies<br><input type="checkbox"/> to Hedge Funds or other Funds not registered<br>under the Investment Company Act<br><input type="checkbox"/> Futures Commission Merchant<br><input type="checkbox"/> Commodity Pool Operator | <input type="checkbox"/> Bank Holding Company<br><input type="checkbox"/> Non-Bank Holding Company<br><input type="checkbox"/> Bank<br><input type="checkbox"/> Pension Trustee<br><input type="checkbox"/> Non-Pension Trustee<br><input type="checkbox"/> Insurance Company<br><br><input type="checkbox"/> Other (specify) _____ |
|---|---|

(b) Describe the nature of the business of the large trader including a description for each Securities Affiliate:

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ITEM 2. SECURITIES AND EXCHANGE COMMISSION FILINGS

Does the large trader or any of its Securities Affiliates file any other forms with the Commission?

- Yes       No

If yes, specify the entity and the forms filed:

Entity	Form(s) Filed	CIK Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ITEM 3. CFTC REGISTRATION AND FOREIGN REGULATORS

(a) Is the large trader or any of its affiliates registered with the Commodity Futures Trading Commission in any capacity, including as a “registered trader” pursuant to sections 4i and 9 of the Commodity Exchange Act?

Yes             No

If yes, identify each entity and specify the registration number:

Entity	Registration Number
_____	_____
_____	_____
_____	_____
_____	_____

(b) Is the large trader or any of its Securities Affiliates regulated by a foreign regulator?

Yes             No

If yes, identify each entity and its primary foreign regulator(s):

Entity	Primary Foreign Regulator
_____	_____
_____	_____
_____	_____
_____	_____

**ITEM 4. ORGANIZATION INFORMATION**

(a) Attach an Organizational Chart that identifies the large trader, its parent company (if applicable), all Securities Affiliates, and all entities identified in Item 3(a).

(b) Provide the following information on all Securities Affiliates and all entities identified in Item 3(a):

Entity	MPID(s)	Description of Business	Relationship to the Large Trader
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(c) If any affiliates file separately, identify each entity:

Entity	LTID	Suffix (if any)
_____	_____	_____
_____	_____	_____
_____	_____	_____

(d) If any affiliates have been assigned an LTID suffix, identify such entities and their corresponding suffixes:

Entity	Suffix
_____	_____
_____	_____
_____	_____

ITEM 5. GOVERNANCE OF THE LARGE TRADER

(a) STATUS OF THE LARGE TRADER (check as many as apply)

- |  |  |
|--|--|
| <input type="checkbox"/> Individual                | <input type="checkbox"/> Partnership           |
| <input type="checkbox"/> Trustee                   | <input type="checkbox"/> Limited Partnership   |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Corporation           |
|  | <input type="checkbox"/> Other (specify) _____ |

(b) Complete the following for each general partner, and in the case of limited partnerships, each limited partner that is the owner of more than a 10 percent financial interest in the accounts of the large trader:

Name	Status (check one for each)
_____	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner
_____	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner
_____	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner
_____	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner
_____	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner
_____	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner
_____	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner

(c) Complete the following for each executive officer, director, or trustee of a large trader corporation or trustee:

Name	Status (check one for each)		
_____	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Trustee
_____	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Trustee
_____	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Trustee
_____	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Trustee
_____	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Trustee
_____	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Trustee
_____	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Trustee

(d) Jurisdiction in which the large trader entity is incorporated or organized:

\_\_\_\_\_  
 (state and country)

**ITEM 6. LIST OF BROKER-DEALERS AT WHICH THE LARGE TRADER OR ITS SECURITIES AFFILIATES HAS AN ACCOUNT**

Identify each broker-dealer at which the large trader or any of its Securities Affiliates has an account and the types of services provided.

Name of Broker-Dealer	<input type="checkbox"/> Prime Broker	<input type="checkbox"/> Executing Broker	<input type="checkbox"/> Clearing Broker
_____	<input type="checkbox"/> Prime Broker	<input type="checkbox"/> Executing Broker	<input type="checkbox"/> Clearing Broker
_____	<input type="checkbox"/> Prime Broker	<input type="checkbox"/> Executing Broker	<input type="checkbox"/> Clearing Broker
_____	<input type="checkbox"/> Prime Broker	<input type="checkbox"/> Executing Broker	<input type="checkbox"/> Clearing Broker
_____	<input type="checkbox"/> Prime Broker	<input type="checkbox"/> Executing Broker	<input type="checkbox"/> Clearing Broker
_____	<input type="checkbox"/> Prime Broker	<input type="checkbox"/> Executing Broker	<input type="checkbox"/> Clearing Broker
_____	<input type="checkbox"/> Prime Broker	<input type="checkbox"/> Executing Broker	<input type="checkbox"/> Clearing Broker
_____	<input type="checkbox"/> Prime Broker	<input type="checkbox"/> Executing Broker	<input type="checkbox"/> Clearing Broker
_____	<input type="checkbox"/> Prime Broker	<input type="checkbox"/> Executing Broker	<input type="checkbox"/> Clearing Broker
_____	<input type="checkbox"/> Prime Broker	<input type="checkbox"/> Executing Broker	<input type="checkbox"/> Clearing Broker

## INSTRUCTIONS FOR FORM 13H

**Submission of the Form.** All submissions on Form 13H must be filed electronically through the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system. For more information on filing through EDGAR, including instructions on how to obtain access to and file electronically through EDGAR, see the EDGAR Filer Manual (available on the Commission’s website at: <http://www.sec.gov/info/edgar.shtml>).

**Definitions.** The term “Securities Affiliate” means an affiliate of the large trader that exercises investment discretion over NMS securities.

The term “affiliate” means any person that directly or indirectly controls, is under common control with, or is controlled by the large trader.

The term “bank” means a national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank.

The term “executive officer” means “policy-making officer” and otherwise is interpreted in accordance with Rule 16a-1(f) under the Exchange Act.

**Type of Filing.** Indicate the type of Form 13H filing by checking the appropriate box at the top of the cover page to Form 13H. All filings must include a valid digital signature.

If the filing is an “Initial Filing,” indicate whether it is a voluntary filing. Voluntary filings are submitted regardless of whether the aggregate number of transactions effected reached the identifying activity level. For voluntary filings, the large trader must input the date on which it submits its voluntary filing. For non-voluntary filings, the large trader must input the first date on which the aggregate number of transactions effected reached the identifying activity level. A non-voluntary “Initial Filing” must be submitted promptly after first effecting an aggregate number of transactions equal to or greater than the identifying activity level.

If the filing is an “Annual Filing,” input the applicable calendar year.

An “Amended Filing” must be filed promptly following the end of the calendar quarter in which any of the information contained in a Form 13H filing becomes inaccurate for any reason. A large trader must file an “Amended Filing” when, for example, it changes its name, business address, organization type (e.g., the large trader partnership reincorporates as a limited liability company), or regulatory status (e.g., a hedge fund registers under the Investment Company Act), or when its organizational chart changes in a manner relevant under Item 4(a) (e.g., it adds or removes a Securities Affiliate).

If the filing is for “Inactive Status,” input the date that the large trader qualified for Inactive Status. A large trader that has not effected aggregate transactions at any time during the previous full calendar year in an aggregate amount equal to or greater than the identifying activity level may file for Inactive Status. A large trader shall become inactive, and exempt from the filing

and self-identification requirements upon filing for Inactive Status until the identifying activity level is reached again.

If the filing is for “Reactivated Status,” indicate the date that the aggregate number of transactions again reached or exceeded the identifying activity level. A filing for “Reactivated Status” must be submitted promptly after effecting an aggregate number of transactions -- subsequent to filing for “Inactive Status” -- equal to or greater than the identifying activity level. In addition, a person may voluntarily elect to file for Reactivated Status prior to effecting aggregate transactions that are equal to or greater than the identifying activity threshold. For such voluntarily filings for “Reactivated Status,” the date of the voluntarily filing should be entered rather than the date that the aggregate number of transactions again reached or exceeded the identifying activity level.

If the filing is a “Termination Filing,” indicate the date on which the large trader ceased operation. For example, when one large trader merges into another large trader, resulting in only one surviving entity, the non-surviving large trader should specify the effective date of the merger in its Termination Filing.

The Form also requires that a large trader input its Taxpayer Identification Number. The Form further requires a large trader to input its business and mailing addresses. If those addresses are the same, for the mailing address field, the large trader may either input its address again or input “same.”

The Form must be filed by a natural person who is authorized to submit it on behalf of the large trader. The Commission may require the large trader to provide descriptive or clarifying information about the information disclosed in the Form 13H, and will contact the Authorized Person to provide such information.

To amend the name, phone number, and email address of the large trader, the large trader must modify its EDGAR profile. Thereafter, changes will automatically be reflected in the Form 13H.

**Item 1.** Businesses of the Large Trader. Item 1 of the Form requires the large trader to specify, from among the enumerated choices, the types of business engaged in by the large trader, by checking as many as are applicable. Select “Other” to indicate a financial entity not included in any of the enumerated categories and enter a short description for each such entity. In addition, select “Other” if the large trader is an individual and input his or her occupation.

A large trader also is required, for itself and each of its Securities Affiliates, to describe the nature of its operations, including a general description of its trading strategies. As an example, the following would be an appropriate description: “Registered market-maker on [SRO], authorized participant for a number of ETFs based on foreign indices, and proprietary trading focusing on statistical arbitrage.”

**Item 2.** Securities and Exchange Commission Filings. The large trader must indicate whether it or any of its Securities Affiliates files forms with the Commission. If it checks “Yes,” the large



trader must input the names of the filing entities and, for each of them, input the form(s) they file and the applicable CIK number.

**Item 3. CFTC Registration and Foreign Regulators.**

Item 3(a) requires the large trader to indicate whether it or any of its affiliates is registered with the Commodity Futures Trading Commission in any capacity, including as a “registered trader” pursuant to Sections 4i and 9 of the Commodity Exchange Act. If it checks “Yes,” the large trader must input the name of each such entity and the registration number for each such entity.

Item 3(b) requires the large trader to indicate whether it or any of its Securities Affiliates is regulated by a foreign regulator. Unlike Item 3(a), Item 3(b) applies only to the large trader and its Securities Affiliates. If it checks “Yes,” the large trader must input the name of each such regulated entity and its primary foreign regulator.

**Item 4. Organization Information.**

To comply with Item 4(a), the large trader must attach an organizational chart that depicts the organization of the large trader. At a minimum, the chart must include the large trader, its parent company (if applicable), all Securities Affiliates, and all entities identified in Item 3(a) of the Form (if any) (collectively, “Item 4 Affiliates”).

Item 4(b) requires that a large trader provide information about the Item 4 Affiliates.

Specifically, the large trader must input the names of Item 4 Affiliates and, for each one of them,

also input the following information: MPID(s); a brief description of its business, and its relationship to the large trader.

Item 4(c) requires that a large trader identify all affiliates that file a separate Form 13H. Those affiliates will have a different LTID.

Item 4(d) permits a large trader to assign LTID suffixes to one or more of its Securities Affiliates. A suffix should have no more than three characters, all of which must be numbers; no letters or special characters may be used. The same suffix may not be assigned to more than one affiliate using the same LTID.

**Item 5.** Governance of the Large Trader.

Item 5 captures basic information about the large trader organization. All terms have the meanings generally ascribed to them in the United States. If a foreign organization type has no comparable corporate form, check “Other” and input the organization type. A large trader who is a natural person must check “Individual.”

**Item 6.** List of Broker-Dealers at Which the Large Trader or Its Securities Affiliates Has an Account.

Item 6 requires that a large trader identify each broker-dealer at which the large trader and any Securities Affiliate has an account. Additionally, for each such broker-dealer, the large trader must indicate the type(s) of services provided. The large trader must check as many of the following that apply: Prime Broker; Executing Broker; Clearing Broker.

**Paperwork Reduction Act Disclosures.** This collection of information has been reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Responses to this collection are mandatory, pursuant to Section 13(h) of the Exchange Act and Rule 13h-1 thereunder. The Commission will treat as confidential the information collected pursuant to this Form in a manner consistent with Section 13(h)(7) of the Exchange Act, which sets forth a few limited exceptions.

The Commission will use the information collected pursuant to this Form 13H to identify significant market participants, i.e., large traders. Form 13H will allow the Commission to collect background information about large traders, which will contribute to the agency's ability to conduct investigations and enforcement matters. The Commission estimates that the average burden to respond to the Form 13H will be 18 hours. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

By the Commission.

Elizabeth M. Murphy  
Secretary

Dated: July 27, 2011