

FINANCIAL INFORMATION FORUM

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New York, New York 10004

212-422-8568

Via Electronic Delivery

September 14, 2017

Ms. Heather Seidel
Acting Director, Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Large Trader Rule (Rule 13h-1) Exemptive Relief Request

Dear Ms. Seidel,

The Financial Information Forum (“FIF”),¹ on behalf of its member firms, respectfully requests relief from the current November 1, 2017 compliance date for Phase Three of Rule 13h-1 (“The Rule”). FIF believes that the compliance date of November 1, 2017 is not achievable given the implementation challenges which were previously identified by the industry and the inability of the industry or The Commission to define how these issues can be solved outside of the Consolidated Audit Trail (“CAT”) infrastructure. FIF believes that the identification in the CAT NMS Plan of portions of the Large Trader Rule as being duplicative of CAT made the rationale of Phase 3 redundant of CAT reporting requirements. Furthermore, with skilled industry expertise focused on CAT implementation efforts required to meet the ambitious CAT implementation timeframe, FIF is concerned that mandating the implementation of duplicative rule requirements will divert scarce resources away from the Implementation of CAT. Consequently, FIF requests that Phase 3 of The Rule be eliminated because Phase 3 can be subsumed by CAT. Alternatively, should The Commission disagree with FIF’s position that Phase 3 be eliminated at this time, FIF strongly suggests that, at minimum, the compliance date for Phase 3 be extended three years to November 1, 2020 to allow full implementation of CAT Phase 1 for both Large and Small Industry Members.

Background

On August 8, 2013, The Commission published an Order Temporarily Exempting Certain Broker-Dealers and Certain Transactions from the Recordkeeping and Reporting Requirements, thereby establishing Phase 3 of the rule. Phase 3 of The Rule includes all outstanding Rule requirements not implemented during Phase 1 or 2. Specifically, Phase 3 includes “the recordkeeping and reporting requirements of Rule 13h-1(d)-(e), except for (1) clearing broker-dealers, (b) transactions effected pursuant to a ‘sponsored access’ arrangement, and (c) transactions effected pursuant to a ‘direct market access’ arrangement; and, for other types of transactions and (2) broker-dealers that carry an account for a Large Trader for Transaction Data other than the execution time.”²

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² *Id.*

In issuing the Order³ on October 30, 2015 extending the compliance date of The Rule to November 1, 2017, The Commission stated that the subsequent 24 months will provide it with an opportunity to “evaluate future developments, including any investment in or progress on a CAT.”⁴ Since November 2015, the CAT NMS Plan was approved on November 15, 2016, Thesys was selected as the Plan Processor, and the Participant Technical Specification and the Initial CAT Reporting Specification for Industry Members have been published. However, as of today, LTR Phase 3 compliance date remains as November 1, 2017. As FIF commented in 2015⁵, “...the goals of The Rule have been achieved by Phase 1 and Phase 2 of the Rule. ... the intent of the rule was to focus on reporting activity associated with the most significant market participants that may contribute to market volatility. Those market participants are precisely those covered by Phase 1 and 2 of the Rule.”

Using CAT to Meet LTR Phase 3 Reporting and Recordkeeping Requirements

FIF has previously noted several implementation challenges associated with Phase 3 of The Rule, as documented in FIF’s 2012 [letter](#) to the Commission and extensive dialog with The Commission and the industry during the Large Trader Rule roll-out.⁶ The CAT, as intended and defined by The Commission, is a comprehensive approach to recordkeeping and reporting across all customers who trade in NMS securities. As such, Rule 613 and its associated Exemptive Relief⁷ through the CAT NMS Plan, defines the basic infrastructure needed to solve the Phase 3 implementation issues of Rule 13h-1 and includes the recordkeeping and reporting obligations included in Large Trader Phase 3.

With the approval of the CAT NMS Plan in November of 2016 and the 24-month CAT implementation phase currently underway, the implementation Large Trader Rule Phase 3 effort *would be redundant of the CAT initiative*. The CAT NMS Plan itself identifies portions of the Large Trader Rule⁸ as duplicative and thus could be eliminated with the introduction of CAT. Further, FIF believes that CAT can more effectively monitor for Large Trader across the marketplace, a function not possible by any single broker-dealer.

Permanently Eliminate Rule 13h-1 Phase 3 Requirements

FIF had previously requested that The Commission permanently retire Phase 3 of Rule 13h-1; or at minimum, to postpone the implementation date of LTR Phase 3 until November 1, 2020 in order to allow full implementation of CAT Phase 1 and The Commission’s evaluation of the effectiveness of CAT reporting to fulfill Rule 13h-1 Phase 3 requirements.⁹ With only 2 months remaining before Phase 3 of The Rule must be implemented, FIF does not believe the broker-dealer community, given today’s interfaces and infrastructure and in the absence of Exemptive Relief (as evidenced in the CAT Exemptive Relief Letter¹⁰), can comply with LTR Phase 3 requirements by the November 1, 2017 compliance date. Further, implementation of LTR Phase 3 represents significant duplicative costs to the broker-dealer community because these recordkeeping and reporting obligations are already included in the CAT.

³ SEC Release No. 34-79318, *Order Exempting Certain Large Traders from the Self-Identification Requirements of Rule 13h-1 Under the Securities Exchange Act of 1934, and Exempting Certain Broker-Dealers from the Recordkeeping, Reporting, and Monitoring Responsibilities Under the Rule*, (October 30, 2015).

⁴ *Id.*

⁵ See [Letter](#) from Mary Lou Von Kaenel, Managing Director, FIF to Mr. Stephen Luparello, *Large Trader Rule (Rule 13h-1) Exemptive Relief Request* (March 27, 2015).

⁶ See, e.g. [FIF CAT WG: Preliminary Large Trade Rule \(Rule 13h-1\) – CAT \(Rule 613\) Gap Analysis](#)

⁷ http://www.catnmsplan.com/wp-content/uploads/2017/03/cat_nms_approved_exemptive_letter_030116.pdf

⁸ SEC Release No. 34-79318, *Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail* at 332 (November 15, 2016).

⁹ See [Letter](#) from Mary Lou Von Kaenel, Managing Director, FIF to Mr. Stephen Luparello, *Large Trader Rule (Rule 13h-1) Exemptive Relief Request (March 27, 2015)*; [Letter](#) from Bill Hebert, Managing Director, FIF to Ms. Heather Seidel, *Large Trader Rule (Rule 13h-1) Exemptive Relief Request* (November 15, 2016).

¹⁰ See, [Letter](#) from SROs to Brent Fields, *Secretary, SEC, Request for Exemptive Relief from Certain Provisions of SEC Rule 613 of Regulation NMS under the Securities Exchange Act of 1934* (January 30, 2015).

Conclusion

FIF wishes to thank The Commission for providing the opportunity to discuss the important considerations regarding the November 1, 2017 scheduled compliance date of Phase Three of The Rule. FIF respectfully requests that The Commission permanently retire Phase 3 of The Rule or, alternatively, to postpone the compliance date for three years to November 1, 2020 to allow for the implementation of CAT Phase 1 and evaluation by The Commission that the CAT fully captures the necessary data for the surveillance of Large Trader.

Regards,

A handwritten signature in black ink, appearing to read "William H. Hebert". The signature is fluid and cursive, with the first name "William" and last name "Hebert" clearly distinguishable.

William H. Hebert
Managing Director
Financial Information Forum

cc:

Gary Goldsholle, Deputy Director, Division of Trading and Markets, SEC
David Shillman, Associate Director, Division of Trading and Markets, SEC
Richard Holley, Assistant Director, Division of Trading and Markets, SEC