

FINANCIAL INFORMATION FORUM

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Via Electronic Delivery

September 7, 2018

Mr Brett Redfearn
Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE Washington, D.C. 20549

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

Dear Mr. Redfearn,

The Financial Information Forum¹ (“FIF”) on behalf of its member firms, respectfully requests relief from the current November 15, 2018 compliance date for Phase Three of Rule 13h-1 (“The Rule”). FIF believes that November 15, 2018 compliance date as specified in the October 30, 2017 order² exempting broker-dealers from certain recordkeeping and reporting requirements of the Rule is not achievable given the implementation challenges previously identified by the industry, and lack of guidance concerning how these issues can be solved outside Consolidated Audit Trail (“CAT”) infrastructure. Additionally, FIF emphasizes that due to the significant effort required by the Industry to implement the CAT by the specified November 15, 2019 “go-live” date, a material extension of two years (November 15, 2020) of the compliance date of the Rule is required to allow the industry a reasonable opportunity to meet CAT reporting requirements and for the Commission to more fully determine whether the CAT will subsume Large Trade Rule Phase 3 requirements.

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.”³

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 SEC Release No. 81993, Order Temporarily Exempting Certain Broker Dealers from Specified Provisions of the Recordkeeping, Reporting, and Monitoring Responsibilities of Rule 13h-1 Under the Securities Exchange Act of 1934 (October 30, 2017).

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).

On March 27, 2015, FIF submitted comments⁴ to the Commission requesting, *inter alia*, that Phase 3 of the Rule be eliminated or postponed for five years to allow for the full implementation of CAT. The Commission issued a subsequent Order on October 30, 2015, further extending the compliance date of The Rule to November 1, 2017, stating that the additional 24 months will provide it with an opportunity to “evaluate future developments, including any investment in or progress on a CAT.”⁵

FIF submitted two subsequent letters to the Commission on February 2, 2017⁶ and September 14, 2017⁷ requesting additional relief from the November 1, 2017 Phase 3 implementation date to Commission to assess whether the CAT will meet LTR Phase 3 Reporting and Recordkeeping requirements.⁸ On October 30, 2017, the Commission issued an Order further extending the compliance date of the Rule to November 15, 2018.⁹ As specified in the Order, the intent of the extension was intended to “focus broker-dealer attention and resources on implementing the CAT in the near term, the Commission hereby is exempting temporarily, until November 15, 2018, broker-dealers from the remaining recordkeeping and reporting obligations of Rule 13h-1, beyond those previously implemented in Phases one and two. During that time, the Commission will consider progress in implementing the CAT as it determines implementation of Phase Three.”¹⁰

Current Status of CAT

Following the October 30th, 2017 Order, significant changes have been made to the CAT implementation plan. Notably, the current CAT implementation plan understood by the industry to be the “plan of record” shifts the CAT implementation dates out significantly. Specifically, pursuant to the SRO Master Plan and Revised Time Table referenced in the Commission’s recent [statement](#) on CAT, the second phase (Industry Member Reporting) of CAT implementation will commence on November 15, 2019 (phase 2a – simple equities), with full equities reporting to commence with phase 2c reporting on September 1, 2020.

Extend Large Trader Rule Phase 3 Compliance Date until November 15, 2020

With CAT development continuing, FIF urges that the Commission to materially extend the implementation date of LTR Phase 3 until November 1, 2020 to allow full implementation of CAT Phase(s) 2a and 2c and the Commission’s evaluation of the effectiveness of CAT reporting to fulfill Rule 13h-1 Phase 3 requirements.¹¹ FIF notes that the principal goals of Rule 13h-1 capturing activity associated with the most significant market participants that contribute to market volatility have been accomplished in Phases I & 2, as the execution detail of broker dealer proprietary, direct market access,

⁴ Letter from Ms. Mary Lou VonKaenel, Managing Director, FIF to Mr. Stephen Luparello, Director, Division of Trading and Markets, SEC RE: *Large Trader Rule (Rule 13h-1) Exemptive Relief Request* (March 27, 2015)

⁵ *Supra* note, 3.

⁶ Letter from Mr. William Hebert, Managing Director, FIF to Ms. Heather Seidel, Acting Director, Division of Trading and Markets, SEC RE: *Larger Trader Rule (Rule 13h-1) Exemptive Relief Request* (February 2, 2017).

⁷ Letter from Mr. William Hebert, Managing Director, FIF to Ms. Heather Seidel, Acting Director, Division of Trading and Markets, SEC RE: *Larger Trader Rule (Rule 13h-1) Exemptive Relief Request* (September 14, 2017).

⁸ *See Id.* (FIF recommended that in lieu of a permanent exemption of LTR Phase 3 reporting requirements, the Commission further extend the implementation date until November 1, 2020 to allow the Commission the opportunity to evaluate the effectiveness of CAT reporting to fulfill Rule 13h-1 reporting requirements).

⁹ *Supra* note, 2.

¹⁰ *Id.* at 4.

¹¹ *See supra* note, 4 at 3 (“It is worth noting that [previous relief] was the result of extensive discussions between the Commission and the industry primarily focusing on the reengineering effort that would be required to accommodate all requirements of the rule. The CAT NMS Plan specifically addresses these concerns by incorporating customer data as part of new order reports.”).

and sponsored access trading activity is now available to the SEC and other regulators via Electronic Blue Sheets.¹² Furthermore, as specified in the approval of the CAT NMS Plan¹³, the Commission explicitly cites that LTR Phase 3 would become duplicative of CAT and thus eliminated because it will be superseded by the CAT.

With only 2 months remaining before Phase 3 of The Rule is scheduled to be implemented, FIF does not believe the broker-dealer community, given today's interfaces and infrastructure¹⁴ and in the absence of necessary regulatory guidance, can comply with the November 15, 2018 implementation date. Furthermore, with skilled industry expertise focused on CAT implementation efforts required to meet the ambitious CAT implementation timeframe, FIF is concerned that mandating a costly and resource intensive implementation of duplicative rule requirements will divert scarce resources away from the Implementation of CAT. Given the significant time and costs required to build a Large Trader Rule Phase 3 solution in parallel with the Industry's continued focus on the implementation of CAT, FIF urges the Commission to delay LTR Phase 3 reporting until the Commission is afforded a reasonable opportunity to assess whether CAT will supersede LTR Phase 3 reporting obligations.

Conclusion

FIF wishes to thank The Commission for providing the opportunity to discuss the important considerations regarding the November 15, 2018 compliance date of Phase 3 of the Large Trader Rule. FIF respectfully requests that The Commission to postpone the compliance date for two years until November 15, 2020 to allow for the full implementation of Phase 2a and 2c of CAT and the associated evaluation by The Commission that the CAT will fully capture the necessary data for the surveillance of Large Traders.

Sincerely,



Christopher W. Bok, Esq.
Financial Information Forum

cc:

Mr. David Shillman, Associate Director, Division of Trading and Markets, SEC
Mr. Richard Holley, Associate Director, Division of Trading and Markets, SEC

¹² See *supra* note, 4 at 3.

¹³ CAT NMS Plan at Appendix C-119 "The elimination of duplicative and redundant systems and rules is a *critical aspect of the CAT development process*. Industry Members including SIFMA and FIF provided broad based and comprehensive insight on the list of existing regulatory systems and Participant Rules that they deem to be duplicative, including OATS, EBS, and *Large Trader Reporting*." (Emphasis Added).

¹⁴ See SIFMA's Request for Exemptive Relief from certain aspects of Rule 13h-1 (Large Trader Reporting)(February 13, 2013) ("[LTR Phase 3 would require] a massive restructuring of most of the current execution and clearing flows and systems at a considerable cost to aggregate all of [the relevant reporting] information at one broker-dealer" and that "individual broker-dealers must make significant internal changes to their systems, the fundamental restructuring of certain industry standard clearing processes may be required, and concerted and coordinated development activities will be required throughout the broker-dealer industry").

