SEC Adopts Rule for Large Trader Reporting

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On July 26, 2011 the U.S. Securities and Exchange Commission (the "SEC") adopted Rule 13h-1, which implements registration and reporting requirements for large traders.

Rule 13h-1 is intended to allow the SEC to effectively monitor the trading activity of market participants who conduct substantial trades whether in terms of volume or dollar amount. Under Rule 13h-1, large traders must self-identify and register with the SEC by filing Form 13H through EDGAR. Subsequently, broker-dealers who execute trades for these large traders must comply with recordkeeping, reporting and monitoring requirements.

Rule 13h-1(a)(1) defines "large trader" as a person/entity who directly or indirectly exercises investment discretion over one or more accounts and effects transactions in an aggregate amount equal to or greater than the "identifying activity level." The identifying activity level is defined as aggregate transactions in "NMS securities" that equal or exceed two million shares or $20 million during any calendar day, or 20 million shares or $200 million during any calendar month. The term "NMS securities" refers generally to exchange-listed securities, including equities and options. Persons nearing this threshold may choose to voluntarily register as a large trader. Rule 13h-1(a)(4) further specifies that a "person's employees who exercise investment discretion within the scope of their employment are deemed to do so on behalf of such person." To the extent that an entity employs a natural person that individually, or collectively with others, meets the definition of a "large trader," then, for purposes of Rule 13h-1, the entity that controls that person or those persons would be a large trader.

Upon reaching the identifying activity level, large traders must submit Form 13H. An amended filing must be submitted no later than the end of the calendar quarter if it becomes necessary to correct any information in the Form. Otherwise, large traders must make annual filings no later than 45 days after the calendar year end.

Following submission of the initial Form 13H, large traders will be issued a large trader identification number (LTID). Large traders must disclose their LTID to their broker-dealers.

Broker-dealers for large traders will be responsible for complying with the recordkeeping and reporting requirements of Rule 13h-1. The reporting obligations parallel the requirements under the Electronic Blue Sheets (EBS) system, which is currently used by the SEC to collect data from registered broker-dealers. In addition to the EBS transaction data, Rule 13h-1 requires broker-dealers to report the LTID and the time of the transaction. This data must be available the morning after the day in which the transaction is effected. In addition to recordkeeping and reporting, broker-dealers must monitor their customers to determine if traders meet the threshold levels of a large trader.

Rule 13h-1 will become effective on October 3, 2011. Current large traders must identify themselves to the Commission under the Rule by December 1, 2011. A firm that becomes a large trader in the future must identify itself to the Commission within 10 days after achieving such status.

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