Federal Register

Friday,
April 23, 2010

Part III

Securities and Exchange Commission

17 CFR Parts 240 and 249

Large Trader Reporting System; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–61908; File No. S7–10–10]

RIN 3235–AK55

Large Trader Reporting System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing new Rule 13h–1 and Form 13H under Section 13(h) of the Securities Exchange Act of 1934 ("Exchange Act") to establish a large trader reporting system. The proposal is intended to assist the Commission in identifying and obtaining certain baseline trading information about traders that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets. In essence, a "large trader" would be defined as a person whose transactions in NMS securities 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 proposed large trader reporting system is designed to facilitate the Commission's ability to assess the impact of large trader activity on the securities markets, to reconstruct trading activity following periods of unusual market volatility, and to analyze significant market events for regulatory purposes. It also should enhance the Commission's ability to detect and deter fraudulent and manipulative activity and other trading abuses, and should provide the Commission with a valuable source of useful data to study markets and market activity.

The proposed identification, recordkeeping, and reporting system would provide the Commission with a mechanism to identify large traders and their affiliates, accounts, and transactions. Specifically, proposed Rule 13h–1 would require large traders to identify themselves to the Commission and make certain disclosures to the Commission on proposed Form 13H. Upon receipt of Form 13H, the Commission would issue a unique identification number to the large trader, which the large trader would then provide to its registered broker-dealers. Registered broker-dealers would be required to maintain transaction records for each large trader, and would be required to report that information to the Commission upon request. In addition, registered broker-dealers would be required to adopt procedures to monitor their customers for activity that would trigger the identification requirements of the proposed rule.

DATES: Comments should be submitted on or before June 22, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–10–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–10–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and copying in the Commission's Public Reference Room, 100 F St., NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Richard R. Holley III, Senior Special Counsel, at (202) 551–5614, Christopher W. Chow, Special Counsel, at (202) 551–5622, or Gary M. Rubin, Attorney, at (202) 551–5669, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Introduction

U.S. securities markets have experienced a dynamic transformation in recent years. In large part, the changes reflect the culmination of a decades-long trend from a market structure with primarily manual trading to a market structure with primarily automated trading. Rapid technological advances have produced fundamental changes in the structure of the securities markets, the types of market participants, the trading strategies employed, and the array of products traded. The markets also have become even more competitive, with exchanges and other trading centers offering innovative order types, data products and other services, and aggressively competing for order flow by reducing transaction fees and increasing rebates. These changes have facilitated the ability of large institutional and other professional market participants to employ sophisticated trading methods to trade electronically in huge volumes with great speed. For example, high frequency traders have become increasingly prominent at a time when the markets are experiencing an increase in overall volume. Market analysts have offered a wide range of estimates for the level of activity attributable to high frequency traders, but these estimates typically exceed 50% of total volume.[1] Meanwhile, consolidated average daily share volume and trades in NYSE-listed stocks increased from just 2.1 billion shares and 2.9 million trades in January 2005, to 5.9 billion shares (an increase of 181%) and 22.1 million trades (an increase of 662%) in September 2009.[2]

[1] *See, e.g.,* Jonathan Spicer and Herbert Lash, Who's Afraid of High-Frequency Trading?, Reuters.com, December 2, 2009, *available at http://www.reuters.com/article/idUSN173583920091202* ("High-frequency trading now accounts for 60 percent of total U.S. equity volume, and is spreading overseas and into other markets."); Scott Patterson and Goeffrey Rogow, What's Behind High-Frequency Trading, Wall Street Journal, August 1, 2009 ("High frequency trading now accounts for more than half of all stock-trading volume in the U.S."). *See also* Rob Iati, The Real Story of Trading Software Espionage, Advanced Trading, July 10, 2009, *available at http://advancedtrading.com/algorithms/showArticle.jhtml?articleID=218401501* (high frequency trading accounts for 73% of U.S. equity trading volume). One source estimates that, five years ago, that number was less than 25%. *See* Rob Curran & Geoffrey Rogow, Rise of the (Market) Machines, Wall Street Journal, June 19, 2009, *available at http://blogs.wsj.com/marketbeat/2009/06/19/rise-of-the-market-machines/.* The trend is clear that high frequency traders now play an increasingly prominent role in the securities markets.

[2] *See* NYSE Euronext, Consolidated Volume in NYSE Listed Issues 2000–2009 (*available at http://www.nyxdata.com/nysedata/NYSE/FactsFigures/tabid/115/Default.aspx*). In addition, NYSE's average speed of execution for small (100–499 shares) market orders and marketable limit orders was 10.1 seconds in January 2005, compared to 0.7 seconds in October 2009. *See* NYSE Euronext, Rule 605 Reports for January 2005 and October 2009, *available at http://www.nyse.com/equities/nyseequities/1201780422054.html.* Consolidated average trade size in NYSE-listed stocks was 724

With respect to market movements and volatility, 2008 marked the third largest yearly decline for the Dow Jones Industrial Average ("Dow") since it was inaugurated in 1896, with the Dow finishing down approximately 34% for the year. However, through the end of December 2009, the Dow had advanced approximately 19%.[3] While such market movements are pronounced in absolute terms, volatility and expectations of volatility have fluctuated considerably. Notably, the CBOE VIX volatility index (based on the S&P 500) marked a high of 80.86 on November 20, 2008, but had fallen back to the low 20s by late 2009.[4]

In light of the dramatic changes to the securities markets, including increased volumes, volatility, and the growing prominence of large traders, the Commission recently published a Concept Release to solicit public comment on a broad range of market structure issues.[5] Given the dramatic changes to the securities markets, the Commission believes it is appropriate to exercise its authority under Section 13(h) of the Exchange Act and propose to establish a large trader reporting system, so as to enhance the Commission's ability to identify large market participants, collect information on their trading, and analyze their trading activity.

Currently, to support its regulatory and enforcement activities, the Commission collects transaction data from registered broker-dealers through the Electronic Blue Sheets ("EBS") system.[6] The Commission uses the EBS system to obtain securities transaction information for two primary purposes: (1) To assist in the investigation of possible Federal securities law violations, primarily involving insider trading or market manipulation; and (2) to conduct market reconstructions.

The EBS system has performed relatively effectively as an enforcement tool for analyzing trading in a small sample of securities over a limited period of time. However, because the EBS system is designed for use in narrowly-focused enforcement investigations that generally involve trading in particular securities, it has proven to be insufficient for large-scale market reconstructions and analyses involving numerous stocks during peak trading volume periods.[7] Further, it does not address the Commission's need to identify important market participants and their trading activity. To enhance the Commission's ability to identify large traders and collect information on their trading activity, Congress passed the Market Reform Act of 1990 ("Market Reform Act").[8]

A. The Market Reform Act

Following declines in the U.S. securities markets in October 1987 and October 1989, Congress noted that the Commission's ability to analyze the causes of a market crisis was impeded by its lack of authority to gather trading information.[9] To address this concern, Congress passed the Market Reform Act, which, among other things, amended Section 13 of the Exchange Act to add new subsection (h), authorizing the Commission to establish a large trader reporting system under such rules and regulations as the Commission may prescribe.

The large trader reporting authority in section 13(h) of the Exchange Act was intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume or large fair market value, as well as to assist the Commission's enforcement of the federal securities laws.[10] In particular, the Market Reform Act provided the Commission with the authority to collect broad-based information on large traders, including their trading activity, reconstructed in time sequence, in order to provide empirical data necessary for the Commission to evaluate market movement and volatility and enhance its ability to detect illegal trading activity.[11]

The large trader reporting system envisioned by the Market Reform Act authorizes the Commission to require large traders [12] to self-identify to the Commission and provide information to the Commission identifying the trader and all accounts in or through which the trader effects securities transactions.[13] The Market Reform Act also contemplated that the Commission could require large traders to identify their status as large traders to any registered broker-dealer through whom they directly or indirectly effect securities transactions.[14]

In addition to facilitating the ability of the Commission to identify large traders, the Market Reform Act authorizes the Commission to collect information on the trading activity of large traders. In particular, the Commission is authorized to require every registered broker-dealer to make and keep records with respect to securities transactions of large traders that equal or exceed a certain "reporting activity level" and report such

shares in 2005, compared to 268 shares in January through October 2009. *See* NYSE Euronext, Consolidated Volume in NYSE Listed Issues 2000–2009, *available at http://www.nyxdata.com/nysedata/NYSE/FactsFigures/tabid/115/Default.aspx.*

[3] Bloomberg L.P. "Stock price graph for Dow Jones Industrial Average 12/31/08 to 12/31/09." (2010) (18.82%).

[4] For purposes of comparison, the high in the VIX for 2007 was 31.09. *See* CBOE's Volatility Indexes (January 2009) *available at http://www.cboe.com/micro/vix/volatility_qrg.pdf.* The VIX is a measure of market expectations of near-term volatility conveyed by stock index option prices. Specifically, VIX measures 30-day expected volatility of the S&P 500 Index. The components of VIX are near- and next-term put and call options, usually in the first and second SPX contract months. *See* Chicago Board Options Exchange, "The CBOE Volatility Index—VIX," at 1 and 4, *available at http://www.cboe.com/micro/vix/vixwhite.pdf.*

[5] *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* 17 CFR 240.17a–25 (Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers).

[7] 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 9, at 48.

[8] Public Law 101–432 (HR 3657), October 16, 1990.

[9] 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, 101st 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. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657).

[10] *See* 15 U.S.C. 78m(h)(1). *See also* Senate Report, *supra* note 9, at 42.

[11] *See* Senate Report, *supra* note 9, at 4, 44, and 71. In this respect, though self-regulatory organization ("SRO") audit trails provide a time-sequenced report of broker-dealer transactions, those audit trails generally do not identify the broker-dealer's customers. Accordingly, the Commission is not presently able to utilize existing SRO audit trail data to accomplish the objectives of the Market Reform Act.

[12] Section 13(h) of the Exchange Act defines a "large trader" as "every person who, for his own or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level." *See* 15 U.S.C. 78m(h)(8)(A). The term "identifying activity level" is defined in Section 13(h) as "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated." *See* 15 U.S.C. 78m(h)(8)(C). The proposed "identifying activity level" is set forth in paragraph (a)(7) of proposed Rule 13h–1.

[13] *See* 15 U.S.C. 78m(h)(1)(A).

[14] *See* 15 U.S.C. 78m(h)(1)(B).

transactions upon request of the Commission.[15]

The Market Reform Act specifies that the information collected from large traders and registered broker-dealers under a large trader reporting system would be considered confidential, subject to limited exceptions.[16] In addition, the Market Reform Act provides the Commission with the authority to exempt any person or class of persons or any transaction or class of transactions from the large trader reporting system requirements.[17]

B. Prior Rulemaking

The Commission initially proposed to use its authority under Section 13(h) of the Exchange Act to establish a large trader reporting system in 1991.[18] Similar to the current proposal, the earlier proposed rulemaking would have required large traders to disclose to the Commission their accounts and affiliations by filing Form 13H and would have imposed recordkeeping and reporting requirements on broker-dealers with respect to the activity of their large trader customers.[19]

After considering the comments received on the 1991 Proposal, the Commission clarified and revised its proposed large trader system and issued a re-proposal in 1994.[20] Among other things, the re-proposal sought to: clarify the definition of large trader and to increase the reporting thresholds;[21] streamline the filing requirements and include provisions for an inactive filing status;[22] and provide a safe harbor for a broker-dealer's duty to monitor compliance with the rule.[23]

C. Rule 17a–25 and the Enhanced EBS System

The Commission did not adopt the large trader reporting rule as re-proposed in 1994. However, in 2001 the Commission adopted Rule 17a–25 to enhance the EBS system and facilitate the Commission's ability to collect electronic transaction data to support its investigative and enforcement activities.[24]

Rule 17a–25 enhanced the EBS system in three primary areas. First, it requires broker-dealers to submit to the Commission securities transaction information responsive to a Blue Sheets request in *electronic* format.[25] Second, the rule modified the EBS system to take into account evolving trading strategies used primarily by institutional and professional traders. Specifically, the rule requires firms to supply three additional data elements—prime brokerage identifiers,[26] average price account identifiers,[27] and depository institution identifiers[28]—to assist the Commission in aggregating securities transactions by entities trading through multiple accounts at more than one broker-dealer.[29] Finally, the rule requires broker-dealers to update their contact person information to provide the Commission with up-to-date information necessary for the Commission to direct EBS requests to the appropriate staff.[30]

D. The Current Proposal

While Rule 17a–25 enhanced the Commission's EBS system and improved the Commission's ability to obtain electronic transaction records, it is insufficient for large-scale investigations and market reconstructions involving numerous stocks during peak trading volume periods, and is therefore inadequate with respect to the Commission's efforts to monitor the impact of large trader activity on the securities markets.[31]

In particular, Rule 17a–25 does not specify a definitive deadline by which EBS trade information must be furnished to the Commission and, in the Commission's experience, data collected through the EBS system often is subject to lengthy delays, particularly with respect to files involving a large number of transactions over an extended time period. Commission staff often must make multiple requests to broker-dealers to obtain sufficient order information about the purchase or sale of a specific security to be able to

---

[15] *See* 15 U.S.C. 78m(h)(2). Section 13(h) also provides the Commission with authority to determine the manner in which transactions and accounts should be aggregated, including aggregation on the basis of common ownership or control. *See* 15 U.S.C. 78m(h)(3). The term "reporting activity level" is defined in Section 13(h)(8)(D) of the Exchange Act to mean "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated." *See* 15 U.S.C. 78m(h)(8)(D).

[16] *See* 15 U.S.C. 78m(h)(7).

[17] *See* 15 U.S.C. 78m(h)(6).

[18] *See* Securities Exchange Act Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991) (S7–24–91) ("1991 Proposal").

[19] In 1991, the Commission proposed an "identifying activity level," the triggering level at which large traders would be required to identify themselves to the Commission, of aggregate transactions during any 24-hour period that equals or exceeds either 100,000 shares or fair market value of $4,000,000, or any transactions that constitute program trading. *See* 1991 Proposal, *supra* note 18, 56 FR at 42551.

[20] *See* Securities Exchange Act Release No. 33608 (February 9, 1994), 59 FR 7917 (February 17, 1994) (S7–24–91) ("1994 Reproposal").

[21] Specifically, the Commission proposed to increase the "identifying activity level" to aggregate transactions in publicly traded securities that are equal to or greater than the lesser of 200,000 shares and fair market value of $2,000,000 or fair market value of $10,000,000. The Commission left unchanged the provision that captured transactions that constitute program trading. *See* 1994 Reproposal, *supra* note 20, 59 FR at 7922.

[22] *See* 1994 Reproposal, *supra* note 20, 59 FR at 7927.

[23] *See id.* at 7918.

[24] *See* Securities Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836 (July 9, 2001) (S7–12–00) (final rulemaking) ("EBS Release"); 42741 (May 2, 2000), 65 FR 26534 (May 8, 2000) (proposed rulemaking).

[25] *See* 17 CFR 240.17a–25. Rule 17a–25 requires submission of the same standard customer and proprietary transaction information that SROs request in connection with their market surveillance and enforcement inquiries. For a proprietary transaction, the broker-dealer must include the following information: (1) Clearing house number or alpha symbol used by the broker-dealer submitting the information; (2) clearing house number(s) or alpha symbol(s) of the broker-dealer(s) on the opposite side to the trade; (3) identifying symbol assigned to the security; (4) date transaction was executed; (5) number of shares, or quantity of bonds or options contracts, for each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an options contract, whether open long or short or close long or short; (6) transaction price; (7) account number; (8) identity of the exchange or market where each transaction was executed; (9) prime broker identifier; (10) average price account identifier; and (11) the identifier assigned to the account by a depository institution. For customer transactions, the broker-dealer also is required to include the customer's name, customer's tax identification number, customer's address(es), branch office number, registered representative number, whether the order was solicited or unsolicited, and the date the account was opened. If the transaction was effected for a customer of another member, broker, or dealer, the broker-dealer must include information on whether the other party was acting as principal or agent on the transaction.

[26] The Commission requires prime brokerage identifiers to avoid double-counting of transactions where EBS submissions reflect the same trade by both the executing broker-dealer and the broker-dealer acting as the prime broker. *See* EBS Release, *supra* note 24, 66 FR at 35838.

[27] Some broker-dealers use "average price accounts" as a mechanism to buy or sell large amounts of a given security for their customers. Under this arrangement, a broker-dealer's average price account may buy or sell a security in small increments throughout a trading session, and then transfer the accumulated long or short position to one or more accounts for an average price or volume-weighted average price after the market close. Similar to prime brokerage identifiers, the Commission requires average price account identifiers to avoid double-counting where the EBS submission reflects the same transaction for both the firm's average price account and the accounts receiving positions from the average price account. *See* EBS Release, *supra* note 24, 66 FR at 35838–39.

[28] The inclusion of a depository identifier in EBS reports was designed to expedite the Commission's efforts to aggregate trading when conducting complex trading reconstructions. *See* EBS Release, *supra* note 24, 66 FR at 35839.

[29] *See* 17 CFR 240.17a–25(b).

[30] This provision was designed to address the recurring problem of frequent staff turnover and re-organizations at broker-dealers to ensure the Commission directs EBS requests to the appropriate personnel. *See* EBS Release, *supra* note 24, 66 FR at 35839.

[31] *See* 15 U.S.C. 78m(h)(1).

adequately analyze the trading. These multiple requests and responses can take a significant amount of time and delay the Commission's efforts to analyze the data on a contemporaneous basis. Further, since decimal trading has increased the number of price points for securities, the volume of transaction data subject to reporting under the EBS system, particularly in the case of active large traders, can be significantly greater than the EBS system was intended to accommodate in a typical request for data. Thus, the current EBS system does not efficiently collect large volumes of data in a timely manner that allows the Commission to perform contemporaneous analysis of market events.

Further, the data generated by the EBS system does not include important information on the time of the trade or the identity of the customer.[32] While the Commission may be able to use price as a proxy for execution time when reconstructing trading history in a particular security, such analysis is extremely resource intensive and hinders the Commission's ability to promptly analyze data on a contemporaneous basis. Further, information to identify the large trader customer can provide valuable information to permit the Commission to track large trader activity across markets and through various broker-dealers. The ability to track and analyze this information would facilitate the Commission's efforts both to investigate potential manipulative activity and to reconstruct a more accurate market history and would be particularly useful when analyzing information on large traders, as some large traders may trade through multiple accounts at multiple broker-dealers and may trade using sponsored access.[33]

In light of recent turbulent markets and the increasing sophistication and trading capacity of large traders, the Commission needs to enhance further its ability to collect and analyze trading information more efficiently, especially with respect to the most active market participants. In particular, the Commission needs a mechanism to reliably identify large traders, and promptly and efficiently obtain their trading information on a market-wide basis.

The Commission believes a proposal for a large trader reporting system is necessary because, as noted above, large traders appear to be playing an increasingly prominent role in the securities markets. For example, market observers have offered a wide range of estimates for the percent of overall volume attributable to one potential subcategory of large trader—high frequency traders—which are typically estimated at 50% of total volume or higher.[34] The proposed large trader reporting system is intended to provide the Commission with an efficient system for obtaining the information necessary to monitor more effectively the impact on the securities markets of "large traders." As discussed in greater detail below, the Commission proposes to define a "large trader" as a person who, in exercising investment discretion, effects transactions in NMS securities[35] in an amount equal to or greater than (1) during a calendar day, either 2 million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either 20 million shares or shares with a fair market value of $200 million.[36]

Among other things, the Commission believes that a large trader reporting system would enhance its ability to (1) reliably identify large traders and their affiliates, (2) obtain far more promptly trading data on the activity of large traders, including execution time,[37] and (3) aggregate and analyze trading data among affiliated large traders.

II. Description of the Proposed Rule

A. Application and Scope

As discussed in detail below, under proposed Rule 13h–1, any person would be a "large trader" that "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."[38] All large traders would be required to identify themselves to the Commission by filing Form 13H, and would be required to update their Form 13H at least annually and more frequently as necessary.[39]

Upon receiving an initial Form 13H, the Commission would assign each large trader a unique Large Trader Identification Number ("LTID"). The LTID is a critical component of the proposal, and is intended, among other things, to enable the Commission to aggregate accounts and transactions of large traders on an inter-broker-dealer basis to capture a large trader's trading activity even where the large trader executes trades through a number of different registered broker-dealers. In particular, the LTID would allow the Commission to efficiently sort trade information by large trader.

A large trader would be required to disclose to each of its registered broker-dealers its LTID and identify all of the accounts held by that broker-dealer through which the large trader trades.[40] By requiring the large trader to identify all applicable accounts to its registered broker-dealer, the proposed rule would place the self-identification requirement directly on the large trader, which should assist the registered broker-dealer in easily identifying and marking all of the large trader's accounts held by the broker-dealer. A broker-dealer also would be required to identify itself as a large trader if it effected transactions for a proprietary account (or other account over which it exercises investment discretion) at or above the identifying activity level. Further, the proposed rule would require large traders to provide, upon request, additional information to the Commission that would allow the Commission to further identify the large

[32] The Commission staff also is developing, for Commission consideration, a proposal to establish a consolidated audit trail for equities and options that would collect and consolidate detailed information about orders entered and trades executed on any exchange or in the over-the-counter market. As Commission staff is unable to estimate when that proposal could potentially be operational, the large trader reporting system proposed today is designed to address in the near term the Commission's current need for access to more information about large traders and their activities. Longer term, the proposed large trader reporting system should continue to provide a uniquely valuable tool for efficiently identifying the most significant market participants, in particular with respect to the requirement on large traders to self-identify to the Commission, as this aspect is uniquely addressed by Section 13(h) of the Exchange Act and proposed Rule 13h–1.

[33] The Commission recently proposed rules that would address sponsored access to exchanges. *See* Securities and Exchange Act Release No. 61379 (January 26, 2010), 75 FR 4713 (January 29, 2010) (File No. S7–03–10).

[34] *See supra* note 1.

[35] 17 CFR 240.600(b)(46) (defining "NMS security" as "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."). The term refers to all exchange-listed securities, including equities and options.

[36] *See infra* notes 72–73 and accompanying text (discussing the calculation of the identifying activity level when determining who meets the definition of large trader).

[37] *See infra* note 149 and accompanying text.

[38] *See* proposed Rule 13h–1(a)(1).

[39] *See* proposed Rule 13h–1(b)(1).

[40] *See* proposed Rule 13h–1(b)(2).

trader and all accounts through which the large trader effects transactions.[41]

Proposed Rule 13h–1 also would impose recordkeeping and reporting requirements on registered broker-dealers, and would require registered broker-dealers to provide large trader transaction data to the Commission upon request. Finally, the proposed rule would require registered broker-dealers to establish and maintain systems and procedures designed to help assure compliance with the identification requirements of the proposed rule.

Accordingly, the proposed rule would impose the following obligations on a large trader: (1) Self-identify to the Commission by filing and updating Form 13H; (2) disclose its LTID to its registered broker-dealers and others with whom it collectively exercises investment discretion; and (3) provide certain additional information in response to a Commission request. The proposed rule would impose the following obligations on registered broker-dealers: (1) Maintain records of transactions effected for large traders that are identified by the specific large trader; (2) electronically report large trader transaction information to the Commission upon request; and (3) monitor compliance with the proposed rule.

B. Defining Large Trader

The proposed definition of a large trader is based on the definition of "large trader" in Section 13(h)(8)(A) of the Exchange Act.[42] Specifically, paragraph (a)(1) of the proposed rule defines a "large trader" as "any person that 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."

When determining who would be subject to the proposed requirements as a "large trader," the proposed definition is intended to focus, in more complex organizations, on the parent company of the entities that employ or otherwise control the individuals that exercise investment discretion. The purpose of this focus is to narrow the number of persons that would need to self-identify as "large traders" while allowing the Commission to identify the primary institutions that conduct a large trading business. As discussed further below, the proposed rule provides specific guidance as to who should self-identify as a "large trader." Paragraph (b)(3)(i) of the proposed rule provides that a large trader shall not be required to separately comply with the requirements of 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) applicable to such large trader with respect to all of its accounts.[43] The intent of this proposed provision is to push the identification requirement up the corporate hierarchy to the parent entity to identify the primary institutions that conduct a large trading business. By focusing the identification requirements in this manner, the Commission would be able to identify easily the controlling persons that themselves, or through subsidiaries or employees, operate as large traders, while limiting the filing and self-identification burdens that would be imposed to a relatively small group of persons. Accordingly, if a natural person or a subsidiary entity within a large organization independently qualifies as a large trader, but the parent company files Form 13H and identifies itself as the large trader, then the natural person or subsidiary entity would not be required to separately identify itself as a large trader, file Form 13H, or be subject to the other requirements that would apply to large traders. Importantly, this provision would require that the entity that self-identifies as the "large trader" comply with the proposed rule with respect to all accounts within the entity over which investment discretion is exercised, directly or indirectly. Accordingly, if the parent company files Form 13H, then all accounts over which any controlled person exercises investment discretion should be tagged with the parent company's LTID.[44]

Conversely, paragraph (b)(3)(ii) of the proposed rule would apply the same principle on a "top down" basis, providing that a large trader shall not be required to comply with the requirements of 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) applicable to such large trader with respect to all of its accounts. A controlling person of one or more large traders would be required to comply with all of the requirements of paragraph (b) unless the entities that it controls discharge all of the responsibilities of the controlling person under paragraph (b). The intent of this provision is to focus the identification requirement on the parent company, and avoid the application of the requirement to natural persons who may be controlling owners of the parent company. This provision is designed to limit the reporting burden to a relatively small group of persons and avoid redundant identification of accounts, while allowing the Commission to identify the controlling institutions that operate as large traders and obtain information on their trading. As with paragraph (b)(3)(i), this provision would require that the entities that self-identify as large traders (*i.e.,* an entity that is "controlled by" the non-filer) comply with the proposed rule with respect to all accounts of the non-filer controlling person. In other words, a controlling person would not be excused from the large trader requirements under this provision if it directly or indirectly exercises investment discretion over any other accounts, including those of other large traders, unless all of those other large traders have also self-identified

[41] *See* proposed Rule 13h–1(b)(4). For example, the Commission might request additional information regarding a response provided in Schedule 6 to a large trader's Form 13H concerning the identification of accounts.

[42] *See* 15 U.S.C. 78m(h)(8)(A) (providing that "the term 'large trader' means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level").

[43] Notably, the definition of "investment discretion" in Section 3(a)(35) of the Exchange Act, 15 U.S.C. 78c(a)(35), applies to a person that is "authorized to determine what securities or other property shall be purchased or sold by or for the account" as well as a person that "makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions* * *." To the extent that an entity employs a natural person that individually, or collectively with others, would meet the proposed definition of a "large trader," then, for purposes of proposed Rule 13h–1, the entity that controls that person or those persons would be considered a "large trader."

[44] Although the proposed rule would relieve a controlled person from separately reporting as a large trader so long as its parent entity complies with the rule with respect to all of its accounts, the Commission anticipates designing the large trader reporting system to accommodate those large traders that wish to voluntarily identify with more granularity the subsidiary, trading desk, or other unit that is directly exercising investment discretion over the account. For example, although the large trader parent entity would be assigned a single LTID by the Commission, the LTID could include a number of blank fields, so that the large trader could elect to append additional characters to sub-identify the relevant unit that directly controls the account. The large trader could then use its generic LTID, along with the more particularized information, when identifying its accounts to its broker-dealers. Large traders voluntarily using these additional characters on their LTID may choose to do so for internal recordkeeping purposes and to facilitate responses to Commission requests for information.

with respect to all of its accounts. The purpose of this proposed provision is to make sure that the entity that self-identifies as a large trader encompasses the full extent of the large trader activity within its domain and those of its controlling person.

For example, a parent holding company generally would file a Form 13H on behalf of itself and each of its large trader subsidiaries. So long as the Form provides all of the relevant information (*e.g.,* discloses contact information and all of the accounts through which it and its affiliates trade), and the holding company makes the necessary disclosures to its and its subsidiaries' broker-dealers, then the large trader subsidiaries would not be required to individually file Forms 13H.[45] Alternatively, if all of the large trader's subsidiaries collectively comply with all of the requirements of proposed paragraphs (b)(1), (b)(2), and (b)(4) with respect to all of the parent company's trading activity, then the holding company would not be required to file a Form 13H.[46] If however, a holding company has two subsidiaries that independently qualify as large traders, and only one elects to file its own Form 13H, then the holding company still would be required to file its own Form 13H that encompasses both subsidiaries.[47] The holding company's Form 13H therefore would include information on each of its subsidiaries, and transactions of both subsidiaries would be tagged with the parent company's LTID.[48]

The examples above describe situations in which, for the limited purpose of determining who should self-identify as a large trader, investment discretion would be considered to be indirectly exercised by a parent company by virtue of the direct or indirect power that the parent company exercises over its subsidiaries. Those who do not exercise investment discretion—either directly or indirectly through, for example controlled persons—would not be large traders, and so mere ownership of accounts—by trusts,[49] custodians, or nominees, for example—through which the requisite number of securities transactions are effected would not trigger large trader status.

The proposed rule focuses on entities that directly or indirectly exercise investment discretion and are responsible for trading large amounts of securities. As these entities can represent significant sources of liquidity and overall trading volume, their trading may have a direct impact on the markets. As such, the Commission believes that the proposed rule, if adopted, would allow the Commission to more readily identify these large traders and obtain current information on their trading activity. The Commission also believes that the proposed rule is tailored to achieve the objectives of section 13(h) of the Exchange Act by allowing the Commission to monitor the impact of large traders on the securities markets and assisting the Commission's enforcement of the Federal securities laws, while at the same time minimizing the burden on affected entities.

1. Definition of Person and Control

Section 13(h)(8)(E) of the Exchange Act defines "person" as having "the meaning given in Section 3(a)(9) [of the Exchange Act] and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank."[50] Section 3(a)(9) of the Exchange Act defines person as "a natural person, company, government, or political subdivision, agency, or instrumentality of a government."[51] Paragraph (a)(2) of the proposed rule defines "person" by reference to the definition contained in Section 13(h)(8)(E) of the Exchange Act."[52] Accordingly "person," for purposes of proposed Rule 13h–1, would include, among other things, two or more persons acting together for the purpose of trading, acquiring, holding, or disposing of NMS securities.[53]

In addition, paragraph (a)(3) of the proposed rule defines control (including 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. 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% of 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." The proposed definition of control is based on the definition of control contained in Form 1 (Application for Registration or Exemption from Registration as a National Securities Exchange). The Commission preliminarily believes that the proposed definition of control is sufficiently limited to capture only those persons with a significant enough controlling interest to warrant identification as a large trader.[54]

While a natural person typically exercises investment discretion over an account, the proposed large trader reporting system is intended to capture the activity of the entity that employs the natural person doing the trading.[55] As discussed above, the proposed rule is intended to push requirements triggered by the large trader definition up the hierarchy of corporate control to the parent company, where applicable. For example, a company that controls persons who, collectively or individually, meet the definition of large trader would file Form 13H and identify itself as the large trader, and all transactions by its employee traders, as well as the employee traders of entities under its control, would be marked with the parent's LTID number.

[45] *See* proposed paragraph (b)(3)(i).

[46] *See* proposed paragraph (b)(3)(ii).

[47] Both the holding company and subsidiary that elected to file its own Form 13H would identify the other as an affiliated large trader in Item 5 of the Form.

[48] Transactions of the subsidiary that filed its own Form 13H would also be tagged with its unique LTID. *See infra* text accompanying note 113 (discussing multiple LTIDs).

[49] Trustees exercising investment discretion on behalf of such trusts would be large traders.

[50] *See* 15 U.S.C. 78m(h)(8)(E).

[51] 15 U.S.C. 78c(a)(9).

[52] As required by Section 13(h)(8)(E) of the Exchange Act, the proposed rule expressly excludes foreign central banks from the definition of a person. *See* 15 U.S.C. 78m(h)(8)(E). *See also* Senate Report, *supra* note 9, at 49 (noting that foreign central banks were to be excluded in the interest of comity and due to the nature of the specific functions of such entities).

[53] *See, e.g.,* House Comm. on Energy and Commerce, Report to Accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657).

[54] In particular, the Commission notes that the definition of control contained in Form 1 is among the least expansive definitions of control referenced in Commission rules. *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 percent or more of the voting securities or receive 10 percent or more of the net profits). The Commission believes that this definition of control represents a less burdensome option that still achieves the goal of identifying persons who exert direct or indirect control over large traders. Further, the Commission has not incorporated the provision contained in the Form 1 definition of control that is applicable to directors, general partners, or officers that exercise executive responsibility. Rather, given the proposed rule's focus on parent companies, the Commission's proposed definition focuses on the existence of a corporate control relationship over the large trader entity.

[55] Where a firm trades through an algorithmic trading system in which trading decisions are performed by a computer program without the intervention of a natural person, the exercise of investment discretion would be attributed to the firm by way of the natural person or persons who are responsible for the design of the trading engine.

The following examples elaborate on which person would identify itself as the "large trader." For example, if a firm (*e.g.,* a corporation, limited liability company, partnership, limited partnership) employs two natural persons who exercise investment discretion and trade in an amount that would qualify them individually as "large traders," then the firm, as their employer, would file Form 13H and identify itself as a large trader, and the individual employees would not file Form 13H. In addition, if a firm employs two natural persons who exercise investment discretion and trade in an amount that would *not individually* qualify them as "large traders," but, when taken together, the exercise of investment discretion and trading effected by those two natural persons would qualify the firm as a large trader, then the firm, as their employer, would file Form 13H and identify itself as a large trader. This would be the case as long as the firm, directly or indirectly, is the employer of the natural persons and exercises control over them in the context of the employer relationship.[56]

In the case of a large firm that is composed of numerous operating subsidiaries, to accomplish the Commission's goals, the Commission intends that the entity that is the ultimate parent company would file Form 13H and identify itself as the large trader, not the individual subsidiaries. For example, in the case of a large financial holding company, if an adviser and a registered broker-dealer subsidiary both employ persons who exercise investment discretion over accounts and effect the requisite level of transactions (either collectively or individually), the financial holding company could identify itself as the large trader by filing Form 13H, and the adviser and broker-dealer subsidiaries need not file Form 13H.

The following additional examples are intended to provide further clarity as to the party the Commission believes should self-identify as a large trader under the proposed rule:

- In the case of a registered investment adviser that acts as the adviser to several investment companies registered under the Investment Company Act (*e.g.,* mutual funds), even if each fund is managed by one natural person that would meet the applicable large trader threshold, the investment adviser would file Form 13H and identify itself as a large trader and the individual fund manager would not file Form 13H. For purposes of the proposed rule, the investment company would not directly or indirectly exercise investment discretion over one or more accounts and therefore would not file Form 13H.
- Where four individuals form a partnership and operate a proprietary trading business through a computerized algorithmic trading engine, the partnership entity would file Form 13H and identify itself as a large trader, and the four individual partners would not file Form 13H, so long as the partnership covers all of the partners' trading activity for the partnership.[57]
- If a natural person large trader is not employed by an entity (*e.g.,* the person is self-employed), then the natural person would file Form 13H and identify itself as a large trader.

By focusing on parent companies, the proposed rule requires large traders to aggregate accounts over which persons they control exercise investment discretion.[58] Accordingly, even if any individual employee, group, or subsidiary within a company would not effect transactions that equal or exceed the identifying activity threshold by itself, if *collectively* the ultimate parent company operates subsidiaries or controls individuals that together effect transactions that equal or exceed the identifying activity threshold, then the parent company would need to identify itself as a large trader.

The Commission believes that the proposed focus on parent company-level entities should reduce the burden of the proposed rule by requiring self-identification by a concentrated group of parent companies, while capturing those organizations that in the aggregate are responsible for exercising investment discretion over the trading of a substantial volume or fair market value of NMS securities. Notably, companies would not be able to divide their trading among employees, groups, or subsidiaries for the purpose of avoiding meeting the definition of large trader under the proposed rule.

2. Definition of Investment Discretion

Paragraph (a)(4) of proposed Rule 13h–1 states that the definition of "investment discretion" shall have the meaning provided for in Section 3(a)(35) of the Exchange Act. Section 3(a)(35) provides that "[a] person exercises 'investment discretion' with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder."[59] A person's employees would be deemed to exercise investment discretion on behalf of that person when they act within the scope of their employment. This provision is intended to clarify that when an entity determines whether it meets the definition of large trader, it would not count, for example, transactions effected by employees in their personal accounts. The Commission preliminarily believes that this proposed definition would identify those persons and entities responsible for making trading decisions concerning securities transactions involving a substantial volume or a large fair market value consistent with the purposes of section 13(h) of the Exchange Act.

3. Definition of Transaction and NMS Security

Paragraph (a)(6) of the proposed rule defines the term "transaction" to mean all transactions in NMS securities, including exercises or assignments of option contracts, except for a limited number of transactions that are specifically identified in that paragraph, which are discussed below. The term "NMS security" is defined in Rule 600(b)(46) under the Exchange Act.[60] The proposed rule would apply to trading in NMS securities that are traded through any facility of a national securities exchange, as well as traded in foreign or domestic over-the-counter markets and after-hours systems.

[56] The Commission notes that the proposed rule would require the aggregation of accounts over which employees exercise investment discretion in the scope of their employment. *See* proposed Rule 13h–1(a)(4) (defining "investment discretion"). Therefore, as an entity determines whether it is a large trader, it would not count transactions effected by employees in their personal (*e.g.,* 401(k)) accounts.

[57] *See* proposed Rule 13h–1(b)(3)(ii).

[58] *See* proposed Rule 13h–1(a)(1) (defining the term "large trader" to include "any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion * * *").

[59] 15 U.S.C. 78c(a)(35)(B).

[60] 17 CFR 240.600(b)(46). An "NMS security" means "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."

Section 13(h)(8)(B) defines the term "publicly traded security" to mean "any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system." [61] The Commission preliminarily believes that the definition of "NMS security" encompasses the universe of securities that the term "publicly traded security" used in Section 13(h)(8)(B) was intended to cover.[62]

For purposes of determining whether a person effects the requisite amount of transactions in NMS securities to meet the definition of "large trader," paragraph (a)(6) of the proposed rule would exclude a limited set of transactions from the term "transaction" and the requirements of the proposed rule. The proposed exclusions are designed to exempt certain small and otherwise infrequent traders from the definition of a large trader as well as activity that is not characterized by active investment discretion or is associated with capital raising or employee compensation.

Specifically, the Commission preliminarily believes that 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. While a large enough one-time transaction in the proposed categories could have an impact on the market, the Commission would be able to obtain information on that trade through other means, including the EBS system. The Commission preliminarily believes that the benefit to the Commission of identifying such person as a large trader solely through one of the enumerated excepted transactions would not be justified by the costs that would be imposed on the person and their registered broker-dealer that accompany meeting the definition of large trader. Accordingly, the Commission proposes to exclude the following types of transactions, described below, from the proposed definition of "transaction":

- Any journal or bookkeeping entry made to an account to record or memorialize the receipt or delivery of funds or securities pursuant to the settlement of a transaction; [63]
- 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, provided, however, that this exemption shall not include an offering of securities effected through the facilities of a national securities exchange;
- Any transaction that constitutes a gift;
- Any transaction effected by a court-appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate; [64]
- Any transaction effected pursuant to a court order or judgment;
- Any transaction effected pursuant to a rollover of qualified plan or trust assets subject to Section 402(c)(1) of the Internal Revenue Code; [65] and
- 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.

The Commission preliminarily believes that narrowing the definition of a transaction should reduce the impact of the proposed rule on infrequent traders and at the same time allow the Commission to focus the proposed rule on those persons and activities that require large trader identification.

4. Identifying Activity Level

Section 13(h)(8)(C) defined the term "identifying activity level" to mean "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated." [66] The "identifying activity level" is the threshold level of transaction activity at which a market participant would be considered a "large trader" and required to identify itself to the Commission. The Commission proposes that "identifying activity level" mean aggregate transactions in NMS securities that are equal to or greater than: 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.[67]

The thresholds are designed to identify large traders that effect transactions of a substantial magnitude relative to overall volume. In formulating the proposed threshold, the Commission considered a level that would identify those entities that effect transactions in an amount corresponding to approximately 0.01% of the daily volume and market value of trading in NMS stocks. The Commission staff estimates that daily matched volume in NMS stocks traded on U.S. securities exchanges or reported through a transaction reporting facility [68] is within a range of 7 to 10 billion shares in late 2009.[69] Doubling that matched volume figure to account for the two sides of every trade, considering that the large trader proposal is focused on the aggregated buy and sell activity of traders, results in a figure of between 14 billion and 20 billion shares. Given the Commission's objective to define a "large" trader to be one who effects

[61] *See* 15 U.S.C. 78m(h)(8)(B).

[62] The Commission notes that the term "NMS security" was adopted in 2005, fourteen years after the adoption of Section 13(h). *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) (Regulation NMS adopting release).

[63] The Commission notes that such activity is part of the clearance and settlement process. Because proposed Rule 13h–1 focuses on effecting transactions for the purchase or sale of an NMS security, the Commission does not believe that the capture of this activity is useful in the context of a rule that is designed to identify trading activity.

[64] This proposed exclusion draws a distinction between the distribution and continuing administration of an estate. A court-appointed fiduciary may be authorized to invest and reinvest in securities for many years. Transactions effected pursuant to the continuing administration or investment of an estate's assets would fall outside the exclusion for transactions of a decedent or marital estate, as they would indicate an on-going exercise of investment discretion and extend beyond a one-time event. Only those transactions effected pursuant to the distribution or liquidation of such estates would be excluded.

[65] 26 U.S.C. 402(c)(1).

[66] *See* 15 U.S.C. 78m(h)(8)(C).

[67] *See* proposed Rule 13h–1(a)(7).

[68] Over-the-counter trades, including trades executed by alternative trading systems, are reported to the consolidated trade streams through one of the trade reporting facilities operated by FINRA on behalf of exchanges, or through FINRA's ADF.

[69] While the proposed large trader definition would include options trading in defining a large trader, the proposed threshold was based on information for NMS stock trading. This figure does not count transactions conducted on derivatives markets. Consequently, the Commission believes that the 7 to 10 billion figure understates overall volume relative to the proposed gross-up methodology for calculating the identifying activity threshold. Nevertheless, the Commission preliminarily believes that considering reported volume in NMS stocks provides an appropriate and relevant benchmark, using figures that are widely accessible, for determining the threshold for large trader status. The Commission notes that several exchanges provide daily and moving average volume figures on public Web sites. *See, e.g., http://www.nasdaqtrader.com.*

transactions of approximately .01% of overall daily volume on the equities markets, then a large trader would be a trader who effects transactions involving 2 million shares daily. The Commission estimates that, based on its experience with information gathered in connection with transaction fees pursuant to Section 31 of the Exchange Act,[70] the daily market value of trading in NMS stocks, also on a double-counted basis, is approximately $200 billion. Applying the same 0.01% standard to market value that was applied to daily volume results in a threshold of approximately $20 million.

The first prong of the proposed threshold is designed to identify large traders who effect transactions, on a daily basis, in a substantial volume. The second prong of the proposed threshold is intended to identify large traders who might not trigger the calendar-day threshold but might nevertheless effect transactions in large enough amounts over the course of a calendar month to warrant becoming subject to the proposed requirements that would be applicable to large traders. In addition, the second prong should allow the Commission to establish a high enough first prong so as to not pick up small or infrequent traders who might trigger identification based on a single transaction.

Section 13(h)(3) of the Exchange Act authorizes the Commission to prescribe rules governing the manner in which transactions and accounts shall be aggregated for purposes of determining who should be defined as a large trader.[71] The proposal would require market participants to use a "gross up" approach in calculating their activity levels. Offsetting or netting transactions among or within accounts, even for hedged positions, would be added to a participant's activity level in order to show the full extent of a trader's purchase and sale activity.[72] Specifically, paragraph (c)(1) of proposed Rule 13h–1 would specify that the volume or fair market value of equity securities purchased and sold would be aggregated with the market value of transactions in options or on a group or index of equity securities.[73] For purposes of the identifying activity level, with respect to options, only purchases and sales, and not exercises, would be counted. By considering only purchases and sales, the proposed rule is intended to focus on the trading of options and avoid double-counting towards the applicable identification threshold.

The Commission believes that this approach would accurately identify those traders that effect purchase and sale transactions in a large volume of securities in absolute terms and is designed to minimize the burden on affected entities in calculating the applicable thresholds by utilizing a bright line standard that is readily applied.

To help prevent circumvention of the proposed rule, paragraph (c)(2) further would prohibit a person from disaggregating accounts to avoid identification and the accompanying proposed requirements of a large trader. Accordingly, the proposal would prohibit, among other things, persons from splitting activity among multiple registered broker-dealers, accounts, or transactions for the purpose of evading the large trader identification requirement. Additionally, where two separate entities engage in a coordinated trading strategy that results in the joint exercise of investment discretion over their individual accounts, each entity must count the transactions in NMS securities effected through those "joint" accounts toward its identifying activity level.[74]

The Commission believes that the capture of substantial trading activity would be essential to accomplish the purposes of Section 13(h) of the Exchange Act. The Commission has balanced this need against the burden of capturing the information and preliminarily believes that the proposed identifying activity level strikes an appropriate balance. In particular, the Commission preliminarily believes that trading activity in an amount corresponding to the proposed identifying activity level effected during the applicable measuring periods is sufficiently substantial to warrant identification as a large trader so that the Commission can more readily obtain information about that trader and its market activity. The Commission also preliminarily believes that the proposed identifying activity level would establish a simple bright-line threshold consistent with the activity-based threshold contemplated by Section 13(h) of the Exchange Act.

5. Inactive Status

Proposed Rule 13h–1(b)(3)(iii) would establish an optional inactive status for large traders. Specifically, large traders previously assigned an LTID whose aggregate transactions during the previous full calendar year did not reach the identifying activity level at any time during the year would be eligible to file for inactive status upon checking a box on the cover page of a Form 13H filing. This status would be available to traders that become less active and no longer meet the threshold at which large trader status is realized. After a large trader files for inactive status, it would be relieved from the Form 13H filing requirements, as well as the requirement to inform its registered broker-dealers and others with whom it shares investment discretion, of its LTID.[75]

As proposed, large traders on inactive status who once again reach the identifying activity level would be required to reactivate their large trader status by filing Form 13H promptly after effecting transactions in an amount that equals or exceeds the large trader identifying activity threshold.[76] In submitting a "Reactivated Status" Form 13H, the large trader would retain the LTID initially assigned to it, and would be required to notify registered broker-dealers and others of its status and LTID.

The Commission believes that the proposed provision for an inactive status should eliminate the ongoing costs of compliance with the proposed rule, including the requirement to file amendments to Form 13H with the Commission, for those entities that no longer trade in amounts that would meet the definition of large trader. The Commission preliminarily believes that

[70] 15 U.S.C. 78ee.

[71] *See* 15 U.S.C. 78m(h)(3).

[72] In particular, a trader that nets or hedges its positions, *e.g.,* one that seeks to achieve a net position of zero at the end of a trading day, may nevertheless have transacted in a substantial volume or fair market value during the course of the day. Through the proposed rule, the Commission seeks to identify any person who effects transactions in the requisite amount. Substantial trading activity has the potential to impact the market regardless of the person's net position.

[73] For example, 50,000 shares of XYZ stock and 500 XYZ call options would count as aggregate transactions of 100,000 shares in XYZ (*i.e.,* 50,000 + 500 × 100 = 100,000). With respect to index options, the market value would be computed by multiplying the number of contracts purchased or sold by the market price of the options and the applicable multiplier. For example, if ABC Index has a multiplier of 100, a person who purchased 200 ABC call options for $400 would have effected aggregate transaction of $8 million (*i.e.,* 200 × 400 × 100 = $8,000,000). Transactions in index options are not required to be "burst" into share equivalents for each of the underlying component equities.

[74] The definition of "person" includes two or more persons acting as a partnership, limited partnership, syndicate, or other group. As discussed *infra,* if a person meets the identifying activity level, the person would be a large trader and would need to list the applicable accounts in proposed Schedule 6 to Form 13H.

[75] In addition, a large trader on inactive status could inform its broker-dealers of its inactive status and request that the broker-dealer cease tagging its transactions with its LTID.

[76] *See infra* note 81 (discussing the "promptly" standard).

the provision for an inactive status is consistent with the objectives of Section 13(h) of the Exchange Act.

As a subset of inactive status, proposed Form 13H would allow a large trader that discontinues operations to file an amended Form 13H reflecting its "Termination" status. For example, this status would be applicable in the event of certain mergers or acquisitions involving a large trader, including a merger of two large traders. In that instance, the non-surviving large trader would be required to submit a "Termination Filing" that specifies the effective date of the merger. In Item 5b of the Form 13H, the surviving large trader would be required to list as an affiliate the non-surviving company, note that the company no longer exists, and provide the LTID of the non-surviving company. The Commission believes that specifically allowing a large trader to file an updated Form 13H indicating that it has discontinued operations will allow large traders to accurately reflect their status to the Commission and will enhance the utility of the proposed large trader reporting system.

C. Large Trader Self-Identification

Section 13(h)(1) of the Exchange Act authorizes the Commission to prescribe identification requirements for large traders for the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume, or a large fair market value or exercise value, and to assist the Commission in the enforcement of the Exchange Act.[77] The Commission is specifically authorized to require large traders to provide it with the information deemed necessary or appropriate to identify large traders and all accounts in or through which large traders effect transactions.[78] The Commission also is authorized to require large traders to disclose their large trader status to the registered broker-dealers that carry the accounts through which they effect transactions.[79] The Commission is proposing Rule 13h–1(b) and Form 13H to implement these provisions of Section 13(h)(1) of the Exchange Act.

As discussed below, under the proposed rule, each large trader would be required to identify itself to the Commission by filing electronically with the Commission a Form 13H.[80] Additionally, each large trader would be required to identify itself to the broker-dealers through which it effects transactions as well as to any other entity with which it shares investment discretion over an account. Finally, the proposed rule would require a large trader to promptly provide the Commission with such other descriptive or clarifying information that the Commission may request from time to time to further identify the large trader and all accounts through which the large trader effects transactions.[81] Under this provision, the Commission would be able to obtain, for example, clarifying information concerning information provided in a Form 13H filing.

1. Form 13H Filing Requirements

Paragraph (b)(1) of the proposed rule would require large traders to file Form 13H with the Commission promptly after first effecting transactions that reach the identifying activity level.[82] Thereafter, large traders would be required to file an amended Form 13H promptly following the end of a calendar quarter, but only if any of the information contained in the Form 13H becomes inaccurate for any reason (*e.g.,* change of name or address, contact number, type of organization, principal business, regulatory status, or accounts maintained).[83] To the extent none of the information contained in the Form became inaccurate during the quarterly period, the large trader would not be required to file an amended form. Regardless of whether it files any amended Forms 13H, a large trader would still be required to file proposed Form 13H annually, within 45 days after the calendar year-end, in order to help ensure the accuracy and currency of all of the information reported to the Commission.[84]

The Commission believes that the proposed requirement that large traders keep current the information contained in their Form 13H submissions will provide the Commission with up-to-date information that the Commission could utilize promptly when needed. Unless the Commission has up-to-date Forms 13H for each large trader, the Commission could be impaired in its ability quickly to identify and contact large traders, as well as identify their accounts, affiliates, and trading activity. Given the limited amount of information proposed to be collected on the Form 13H, the Commission believes the burden of amending the form would be justified by the benefit to the Commission of minimizing problems that could arise from otherwise stale information.

2. Form 13H and Instructions

Proposed Form 13H, and the Schedules and Instructions thereto, are designed to capture basic information on each large trader consistent with the Commission's authority under Section 13(h) of the Exchange Act. The proposed Instructions to the proposed form provide all of the pertinent definitions, examples of who would be a large trader, and what information must be provided on Form 13H. The proposed Instructions also provide guidance and cross-references to Rule 13h–1 and other related instructions. The Commission believes that a careful review of the Instructions to Form 13H should assist large traders and facilitate the completion and filing of Form 13H.

The cover page to proposed Form 13H requires a large trader to indicate the nature of the submission it is filing, including: "Initial Filing," "Annual Filing," "Interim Filing," "Inactive Status," "Reactivated Status," and "Termination Filing." It also requires that a large trader provide its LTID. For its "Initial Filing," a large trader would not be able to provide an LTID, as the Commission would issue the LTID only after it receives the initial Form 13H submission. After receiving its LTID, the large trader would need to file promptly an "Interim Filing" to include the LTID and any new information.[85] The cover page also would require contact information for the large trader, and requires the signature of the large trader's representative. The cover page contains a statement for the person signing the form to acknowledge that all of the information contained in the form

[77] *See* 15 U.S.C. 78m(h)(1).

[78] *See* 15 U.S.C. 78m(h)(1)(A).

[79] *See* 15 U.S.C. 78m(h)(1)(B).

[80] The Commission is proposing an electronic filing system for proposed Form 13H, and the proposed rule would require electronic filing. *See* proposed Rule 13h–1(b)(1). If the Commission adopts the proposed rule as proposed, it is possible that large traders might be required to file Form 13H in paper until such time as an electronic filing system is operational and capable of receiving the Form. Large traders would be notified as soon as the electronic system can accept filings of Form 13H.

[81] *See* proposed Rule 13h–1(b)(4). *See also infra* note 83 (referencing the "promptly" standard of Rule 15b3–1)."

[82] *See* proposed Rule 13h–1(b)(1)(i).

[83] *See* proposed Rule 13h–1(b)(1)(iii) (requiring registered broker-dealers to "promptly file" amendments to Form 13H as necessary). *See also* 17 CFR 240.15b3–1 (concerning a similar standard for Form BD).

[84] *See* proposed Rule 13h–1(b)(1)(ii).

[85] Proposed Schedule 6 of Form 13H would require a large trader to provide the LTID for all other large traders (if any) that also exercise investment discretion over the accounts it identifies. When large traders submit their "Initial Filings" after implementation of this rule, large traders may not have the LTID of these other large traders for the same reason: the Commission may not have issued them yet. Therefore, as the Commission issues LTID numbers, and as large traders disclose their LTIDs to each other as required under proposed paragraph (b)(2), large traders would need to file "Interim Filings."

is true, correct, and complete. In addition, the cover page notes that intentional misstatements or omissions of fact constitute a federal crime and may result in civil penalties or other sanctions.

Proposed Item 1 to Form 13H would require large traders to identify their business by checking the appropriate pre-populated categories or by indicating "other." In Item 2, a large trader would be required to disclose whether it or any of its affiliates files forms with the Commission and, if so, to indicate the types of forms and all applicable SEC File and CRD numbers. The Commission anticipates that some of the most common registrations or filings that large traders may list in proposed Item 2 would include, for example, Form BD, Form ADV, or Form 10–K. Identification of this information will allow the Commission to readily ascertain the regulatory status of the large trader and its controlled persons.

Proposed Item 3 to Form 13H would require a large trader to disclose whether it or any of its affiliates is: (1) A registered trader or otherwise registered with the Commodity Futures Trading Commission; (2) 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; (3) an insurance company; or (4) regulated by a foreign regulator. For each entity that is, the form requires additional identifying information, which will allow the Commission to readily ascertain the regulated status of the large trader, and provide context for the Commission to understand the large trader's operations. Such entities must be identified and, for entities registered under the Commodity Exchange Act, the large trader would be required to provide its registration type and number. For other identified entities, a large trader would be required to disclose the applicable regulator(s).

Proposed Item 4 to Form 13H, and the corresponding Schedule 4, would require the large trader to disclose basic business information. For example, the large trader must disclose whether it exercises investment discretion as a trustee, partnership, or corporation. Natural person large traders would be required to disclose whether they are self-employed or otherwise employed. Entities would be required to disclose the jurisdiction in which they are organized and their organization type: partnership, limited partnership, corporation, limited liability company, or other. In addition, entities would be required to identify those persons who own or control a large trader corporation, partnership, limited partnership, or trust. The term "executive officer," used in proposed Schedule 4, would mean "policy-making officer" and otherwise would be interpreted in accordance with Rule 16a–1(f) under the Exchange Act.[86] Further, each large trader would be required to describe the nature of its business. Identification of this information will help the Commission understand the corporate structure of the large trader and the nature of its business. Among other things, this information would be useful to the Commission to provide context to a large trader's operations, and would help the Commission understand the control relationships surrounding the large trader. This information also would be useful to the Commission in tailoring any requests for additional information that it may send to a large trader.

Proposed Item 5 to Form 13H would collect information about the affiliates of large traders that either exercise investment discretion over accounts that hold NMS securities or that beneficially own NMS securities, if any. For purposes of this form, "affiliate" would be defined to mean any person that directly or indirectly controls, is under common control with, or is controlled by the large trader. This proposed definition of affiliate is designed to allow the Commission to collect comprehensive identifying information relating to the large trader and is consistent with other similar definitions of the term.[87] The large trader would be required to identify each affiliate that either exercises investment discretion over accounts that hold NMS securities or that beneficially owns NMS securities, state the nature of its affiliate's business, and explain the relationship to the large trader (*e.g.,* limited partner, direct subsidiary). Additionally, the large trader would be required to provide any applicable LTID for its large trader affiliates. Among other things, proposed Item 5 would allow the Commission to more carefully tailor any request that it may make to disaggregate large trader activity, and should also assist the Commission in understanding the affiliate relationships of the large trader and determine whether the correct entities had self-identified with the Commission.

Proposed Item 6, and the accompanying Schedule 6, are designed to collect information concerning accounts over which the large trader exercises investment discretion. Specifically, the proposed schedule would require the large trader to identify all the accounts over which it directly or indirectly (*e.g.,* through controlled persons) exercises investment discretion for purposes of the proposed rule. Proposed Schedule 6 also would require a large trader to disclose the LTID of any other large traders that exercise investment discretion over the identified accounts. The Commission would use this information to cross-reference accounts and avoid the double counting of transactions. To reduce the burden on large traders, the proposed Instructions specify that large traders may submit internally produced lists of accounts, provided that such lists contain all required information in a format substantially similar to the applicable Schedule. Finally, Schedule 6 would require the identification of a designated contact person at the large trader that the Commission could consult concerning the accounts listed on Schedule 6.

3. Confidentiality

Section 13(h)(7) of the Exchange Act provides that Section 13(h) "shall be considered a statute described in subsection (b)(3)(B) of [5 U.S.C. 552]", which is part of the Freedom of Information Act ("FOIA").[88] As such, "the Commission shall not be compelled to disclose any information required to be kept or reported under [Section 13(h)]."[89] Accordingly, the information that a large trader would be required to disclose on proposed Form 13H or provide in response to a Commission request would be exempt from disclosure under FOIA. In addition, any transaction information that a registered broker-dealer would report under the proposed rule also would be exempt from disclosure under FOIA.

4. Self-Identification to Others

Proposed paragraph (b)(2) of Rule 13h–1 would require each large trader to disclose its LTID to those registered broker-dealers that effect transactions on its behalf. In doing so, a large trader would be required to identify all of the accounts held by such broker-dealer to which its LTID applies. For example, a large trader would not be required to disclose to Broker-Dealer A the large trader's accounts held by Broker-Dealer B, but the large trader would need to

[86] 17 CFR 240.16a–1(f).

[87] This definition is similar to the definition of "affiliate" provided in the instructions to Form 1, 17 CFR 249.1. *See also supra* note 54.

[88] 5 U.S.C. 552(b)(3)(B) is now 5 U.S.C. 552(b)(3)(A)(ii).

[89] *See* section 13(h)(7) of the Exchange Act, 15 U.S.C. 78m(h)(7).

specifically highlight to Broker-Dealer A all of the accounts held by Broker-Dealer A over which the large trader exercises investment discretion. Requiring large traders to provide this information to their broker-dealers would place the primary account identification responsibilities on those who can most readily satisfy them—the large traders themselves—and would facilitate the ability of registered broker-dealers to fulfill their recordkeeping and reporting requirements under the proposed rule by facilitating their ability to identify and properly mark all applicable accounts through which a large trader trades.

Proposed paragraph (b)(2) of Rule 13h–1 also would require each large trader to disclose its LTID to others with whom it collectively exercises investment discretion. The purpose of this provision is to enable large traders to provide all information required under Schedule 6 of Form 13H.[90] In addition, the proposed requirement would facilitate the ability of a large trader to provide a broker-dealer with the LTID of all large traders that exercise investment discretion over an account.[91]

D. Recordkeeping, Reporting, and Monitoring Responsibilities

Section 13(h)(2) of the Exchange Act authorizes the Commission to prescribe for registered broker-dealers recordkeeping requirements related to large trader activity that it deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[92] The Commission also is authorized to conduct reasonable periodic, special, or other examinations of registered broker-dealers of all records required to be made and kept pursuant to the rule.[93] Paragraph (d) of the proposed rule would implement the recordkeeping provisions of Section 13(h)(2) of the Exchange Act.

In addition, 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 such broker-dealer for persons who they know are large traders, or any persons who they have reason to know are large traders on the basis of transactions effected by or through such broker-dealers.[94] The Commission is proposing paragraph (e) of Rule 13h-1 to implement the transaction reporting provisions of Section 13(h)(2) of the Exchange Act. The proposed rule would mirror the statutory requirement that records and information required to be made and kept pursuant to the proposed rule be available for reporting to the Commission on the morning after the day the transactions were effected.[95] While such information must be available for reporting to the Commission on the following day, the proposed rule further clarifies that transaction data would be required to be submitted to the Commission before the close of business on the day specified in the request for such transaction information.[96] Further, the Commission is authorized to require that such transaction reports be transmitted in any format that it may prescribe, including machine-readable form.[97] The proposed rule mirrors this requirement and, as discussed further below, the proposed rule would utilize the general format applicable to the EBS system, as modified to accommodate the specific requirements of the proposed rule, including the fields of LTID and execution time.[98]

The proposed rule would impose certain duties on broker-dealers. In particular, the proposed rule would impose recordkeeping and reporting requirements on the following: registered broker-dealers that are large traders; registered broker-dealers that, together with a large trader or Unidentified Large Trader, exercise investment discretion over an account; and registered broker-dealers that carry accounts for large traders or Unidentified Large Traders or, with respect to accounts carried by a non-broker-dealer, broker-dealers that execute transactions for large traders or Unidentified Large Traders. Additionally, the proposed rule would require registered broker-dealers to implement procedures to encourage and foster compliance with the self-identification requirements of the proposed rule.

1. Broker-Dealer Recordkeeping

Proposed paragraph (d)(1) of Rule 13h–1 would provide that "[e]very registered broker-dealer shall maintain records of all information required under paragraphs (d)(2) and (d)(3) 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, (ii) an account over which such broker-dealer exercises investment discretion together with a large trader or an Unidentified Large Trader, or (iii) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, 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) for those transactions."

The term "Unidentified Large Trader" would be defined to mean "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."[99] The proposed "reason to know" standard is discussed in more detail below in the context of a registered broker-dealer's responsibility to monitor for Unidentified Large Traders.

To help the Commission monitor the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value, assist in the Commission's investigation of possible Federal securities law violations, and allow the Commission to conduct time-sequenced market reconstructions, the proposed rule would require registered broker-dealers to maintain specified data that would be relevant for these purposes. Notably, as discussed below, registered broker-dealers already are required to maintain most of the proposed fields of information for all of their customers pursuant to Rule 17a–25 under the Exchange Act and the EBS system. In particular, the proposed rule would require registered broker-dealers to maintain the following information:

- Date the transaction was executed;
- Account number;
- Identifying symbol assigned to the security;

[90] Specifically, Schedule 6 would require a large trader to disclose the LTID of all other large traders who exercise investment discretion over the accounts listed. Absent this requirement, large traders would have no reason to know the LTIDs of the large traders with whom they share investment discretion.

[91] For example, where two advisers co-manage an account, Adviser A would inform Adviser B of its LTID, and Adviser B would provide both its LTID and Adviser A's LTID to the broker-dealer carrying the account.

[92] *See* 15 U.S.C. 78m(h)(2).

[93] *See* 15 U.S.C. 78m(h)(4).

[94] *See* 15 U.S.C. 78m(h)(2).

[95] *See* proposed Rule 13h–1(d)(5). This requirement was intended to include Saturdays or holidays. *See* Senate Report, *supra* note 9, at 40.

[96] *See* proposed Rule 13h–1(e).

[97] *See* 15 U.S.C. 78m(h)(2).

[98] *See infra* note 104 and accompanying text.

[99] *See* proposed Rule 13h–1(a)(9).

- Transaction price;
- 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
- Clearing house number of the entity maintaining the information and the clearing house numbers of the entities on the opposite side of the transaction;
- 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;
- Identity of the exchange or other market center where the transaction was executed;
- Time that the transaction was executed;
- LTID(s) associated with the account, unless the account is for an Unidentified Large Trader;
- Prime broker identifier;
- Average price account identifier; and
- If the transaction was processed by a depository institution, the identifier assigned to the account by the depository institution.

In addition, proposed paragraph (d)(3) broadens the list of required broker-dealer records for transactions effected by Unidentified Large Traders beyond those that would be required for a self-identified large trader in order to assist the Commission in identifying the Unidentified Large Trader. Specifically, for Unidentified Large Traders, in addition to the above fields, the registered broker-dealer also would be required to retain and report such person's name, address, date the account was opened, and tax identification number(s).

The proposed rule would incorporate the requirement contained in Section 13(h)(2) that transaction records be available for reporting to the Commission on the morning of the day following the day the transactions were effected.[100] When the Commission makes a request for data, the proposed rule specifies that registered broker-dealers would be required to furnish it before the close of business on the day specified in the request for such transaction information.[101] Paragraph (d)(4) of the proposed rule would require that such records be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a–4(b) under the Exchange Act.[102]

Currently, broker-dealers already are required to provide most of the proposed fields of information for all of their customers pursuant to Rule 17a–25 under the Exchange Act and the EBS system.[103] The only additional items of information that this proposal would capture beyond what is currently captured by the existing EBS system are: (1) LTID and (2) transaction execution time.[104] In this respect, the proposed rule is intended to address the principal limitations of the EBS system when applied to a large trader reporting system under Section 13(h) of the Exchange Act, namely the EBS system's lack of transaction execution time information and lack of a LTID to uniformly identify large traders on a market-wide basis. The proposed rule also would require registered broker-dealers to be able to report trading information for large traders to the Commission much more promptly than the EBS system.[105] The Commission preliminarily believes that the collection of current trading information is necessary to allow it to monitor the impact on the securities markets of large trader activity, particularly during times of market stress when such analyses are particularly relevant, as well as to support the Commission's efforts to detect and deter fraudulent and manipulative activity and other trading abuses.

In particular, the capture of transaction execution times would allow the Commission to reconstruct a more accurate and complete time-sequenced market history and facilitate the Commission's ability to more accurately assess the market impact of large traders, particularly during times of peak activity and market stress. The Commission preliminarily believes that capturing execution time would be essential for accomplishing the purposes of Section 13(h) of the Exchange Act, as the Market Reform Act intended a large trader system through which the Commission could perform time-sequenced reconstruction of trading activity.[106]

The Commission acknowledges that, in some instances, multiple LTIDs may be disclosed to a registered broker-dealer for a single account. For example, such a situation could arise where more than one large trader exercises investment discretion over an account (*e.g.,* where two large trader investment managers co-manage an account), or where a parent company and one of its subsidiaries both identify themselves as large traders. Therefore, registered broker-dealers would need to develop systems capable of tracking multiple LTIDs. The Commission preliminarily believes that capturing the LTID of all large traders that exercise investment discretion for an account would be essential to adequately monitor the trading activity of each large trader that exercises investment discretion over those transactions that are reported to the Commission by broker-dealers and thereby accomplish the purposes of Section 13(h) of the Exchange Act. Without that information, the Commission could be hindered in its ability to readily use large trader data as contemplated in Section 13(h), including to support its regulatory and enforcement activities.

2. Broker-Dealer Reporting

Complementing the proposed recordkeeping requirements on brokers and dealers, proposed paragraph (e) of Rule 13h–1 would implement the transaction reporting provisions of Section 13(h)(2) of the Exchange Act.

a. General Requirements

[100] *See* proposed Rule 13h–1(d)(5). This time frame is established in Section 13(h)(2) of the Exchange Act. *See* 15 U.S.C. 78m(h)(2).

[101] *See* proposed Rule 13h–1(e).

[102] 17 CFR 240.17a–4(b).

[103] Rule 17a–25 requires that broker-dealers provide to the Commission upon request the following information for proprietary transactions: (1) Clearing house number or alpha symbol used by the broker-dealer submitting the information; (2) clearing house number(s) or alpha symbol(s) of the broker-dealer(s) on the opposite side to the trade; (3) security identifier; (4) execution date; (5) quantity executed; (6) transaction price; (7) account number; (8) identity of the exchange or market where each transaction was executed; (9) prime broker identifier; (10) average price account identifier; and (11) the identifier assigned to the account by a depository institution. For transactions effected for a customer account, a broker-dealer must provide to the Commission upon request the following information: The customer's name, customer's address, the customer's tax identification number, and other related account information. *See* Rule 17a–25(a)(2)(ii). Additionally, if the transaction was effected for a customer of another firm or broker-dealer, the broker-dealer must state whether the other broker-dealer was acting as principal or agent on the transaction. *See* Rule 17a–25(a)(2)(iii).

[104] While the recording of execution time is already required of registered broker-dealers pursuant to Rule 17a–3, 17 CFR 240.17a–3, and is currently captured by many SRO audit trails, *see, e.g.,* CBOE Chapter VI, Rule 6.51 (Reporting Duties), with respect to the proposed large trader reporting system, the reporting of execution times within the specified period would constitute a new requirement compared to the existing EBS system. Execution times would need to be recorded and reported with the same degree of precision that is required by applicable rules.

[105] *See* EBS Release, *supra* note 24, 66 FR at 35836 (noting that firms are requested to submit the electronic bluesheets data within 10 business days).

[106] *See* Senate Report, *supra* note 9, at 38–40.

Under proposed paragraph (e) of proposed Rule 13h–1, the broker-dealers required to keep records pursuant to paragraph (d)(1) also would have a duty to report that information upon request. More specifically, upon the request of the Commission, those broker-dealers would be required to report electronically, in machine-readable form and in accordance with a format specified by the Commission that is based on the existing EBS system format, all required information for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders and Unidentified Large Traders if they equal or exceed the reporting activity level.[107] Broker-dealers would need to report a particular day's trading activity only if it equals or exceeds the "reporting activity level," which is defined and discussed below. Transaction reports, including data on transactions up to and including the day immediately preceding the request, would need to be furnished to the Commission before the close of business on the day specified in the request for such transaction information.[108] In recognition of the value of using existing reporting systems where practicable, the proposed rule would require broker-dealers to utilize the existing technology and infrastructure of the EBS system to the greatest degree possible to maintain large trader data and transmit it to the Commission.[109]

b. Reporting Activity Level

Consistent with Section 13(h)(2) of the Exchange Act, the proposed rule would require a registered broker-dealer to report only those transactions that equal or exceed the reporting activity level for that particular day of trading being reported. Paragraph (a)(8) of Rule 13h–1 would define 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. While a registered broker-dealer would be required to report for a given day data only if it equals or exceeds the reporting activity level, the rule specifically would allow a broker-dealer to voluntarily report a day's trading activity that falls short of the applicable threshold. For example, registered broker-dealers may consider it more appropriate, given the low level of the proposed reporting activity level, to take this approach if they prefer to avoid implementing systems to filter the transaction activity and would rather utilize a "data dump" approach to reporting large trader transaction information to the Commission.

In proposing a reporting activity level of 100 shares, the Commission notes that large traders often break-up large-size orders and disburse their trading interest across multiple market centers in an effort to maintain the confidentiality of the trade and minimize any market impact it might otherwise have if it were revealed to its full extent. Such large orders often are processed by algorithmic systems that split the order into smaller orders of a hundred to a few hundred shares. For example, high frequency traders often quote and trade in round lots of 100 shares or a few hundred shares. By establishing a low reporting activity level, the Commission intends for the proposed rule to result in the reporting of substantially all large trader activity in response to a request for data.[110] Access to substantially all trading data would allow the Commission to perform more complete and accurate reconstructions of aggregate large trader activity.

The proposed rule also would implement the authority in Section 13(h)(8)(D) of the Exchange Act, allowing the Commission to establish, from time to time, such reporting activity level that the Commission shall specify by rule, regulation, or order, by proposing that the Commission would be able to alter the reporting activity level by order.[111] The Commission could use this authority to change the reporting activity level if necessary to assure, for example, the quality of 13H Reports and the level of compliance with the identification requirements.[112]

Unlike the identifying activity level, when considering the reporting activity level, a registered broker-dealer would consider only the trading activity for each of its large trader and unidentified accounts, and would not need to aggregate transaction information on an intra-broker-dealer basis solely for calculating the reporting activity level. Thus, if a large trader maintains two separate accounts at a registered broker-dealer under the same LTID, the broker-dealer would be required to report activity in each account only if the activity in such account equaled or exceeded the reporting activity level on the specified day. A registered broker-dealer would report each account separately and would not need to aggregate accounts with the same LTID. By establishing a low reporting activity level, the Commission's proposal eliminates the need to propose aggregation requirements to assure that most large trader accounts would be reported in response to a request for data. The Commission believes that most active large trader accounts on any given day should contain sufficient transactions (*i.e.,* at least 100 shares traded) to make the accounts reportable in response to a particular Commission request.

c. Multiple LTIDs

Under the proposal, it is possible that more than one LTID could be associated with a particular account. For example, such a situation could arise where two or more large traders share investment discretion over the account. For transactions involving these accounts, the registered broker-dealer would be required to record each LTID for every trade effected in such account.[113] In response to a request for records, the registered broker-dealer would report transaction information containing each LTID associated with the account. For identified large traders, the Commission could then use the LTID information collected on Schedule 6 to proposed Form 13H to filter the data and avoid double counting transactions.

[107] Section 13(h)(2) requires that "[s]uch records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form)." *See* 15 U.S.C. 78m(h)(2).

[108] Section 13(h)(2) 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." *See* 15 U.S.C. 78m(h)(2).

[109] Section 13(h)(5)(A) of the Exchange Act directs the Commission to take into account existing reporting systems in exercising its authority under Section 13(h). *See* 15 U.S.C. 78m(h)(5)(A).

[110] *See* proposed Rule 13h–1(a)(6) (exceptions to the definition of transaction).

[111] *See* proposed Rule 13h–1(a)(8). *See also* Senate Report, *supra* note 9, at 73 (noting that this authority to act by order was intended to provide the Commission with the flexibility necessary for responding to changing market conditions).

[112] The Commission might, for example, consider whether an alternative threshold amount would be more appropriate if large traders were managing their account activity to avoid the proposed 100 share reporting activity level.

[113] Broker-dealers also would need to monitor for Unidentified Large Traders that effect transactions through a shared account.

3. Broker-Dealer Monitoring and Safe Harbor

The proposed rule places the principal burden of compliance with the identification requirements on large traders themselves. The Commission, however, believes that a limited monitoring requirement at the broker-dealer level would provide a necessary backstop to encourage compliance and fulfill the objectives of Section 13(h) of the Exchange Act.

Section 13(h) of the Exchange Act contemplates that registered broker-dealers would assist in fostering compliance with a large trader reporting system by monitoring their customers' compliance with the large trader self-identification requirements. Specifically, Section 13(h)(2) of the Exchange Act authorizes the Commission to establish rules for recordkeeping and reporting of transactions effected by persons a registered broker-dealer "knows or has reason to know" is a large trader, based on transactions effected directly or indirectly by or through such broker-dealer. Proposed paragraphs (d) and (e) of Rule 13h–1 would implement that authority by requiring registered broker-dealers to maintain records of and report to the Commission information about transactions effected by Unidentified Large Traders.[114]

With respect to identifying large traders, the Commission emphasizes that the principal burden of compliance with the proposed identification requirements is placed squarely on large traders themselves. However, the Commission also believes that requiring some form of monitoring by the entities that are in the best position to know the details of a large trader's account would help assure that the objectives of the rule are met.

The Commission acknowledges that the duty to monitor its large trader customers would impose a burden on registered broker-dealers. To minimize this burden, paragraph (f) of proposed Rule 13h–1 would establish a "safe harbor" for the duty to monitor for Unidentified Large Traders.[115] Pursuant to proposed paragraph (a)(9), in the case of an Unidentified Large Trader, 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." A registered broker-dealer would not be deemed to know or to have reason to know that a person is an Unidentified Large Trader if: (1) It does not have actual knowledge that a person is a large trader; and (2) it established and maintained policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed safe harbor. Paragraphs (f)(1) and (2) of the proposed rule provide the specific elements that would be required for the safe harbor.

The safe harbor contained in paragraph (f)(1) of the proposed rule would require the establishment of systems "reasonably designed to detect and identify" persons who have not complied with the identification requirements by providing the broker-dealer with their LTID and highlighting all accounts to which it applies. This paragraph incorporates the "reason to know" standard and clarifies that, with respect to an account or group of accounts that may be identified as large traders (*e.g.,* commonly owned or controlled accounts), policies and procedures would be within the safe harbor if they are reasonably designed to detect and identify such groups of accounts based on account name, tax identification number, or other readily available information.

The Commission would consider "other readily available information" to include, for example, those instances where a single customer effects the requisite transactions through a single registered representative, trading desk, or branch office in his or her personal accounts, accounts of family members, or accounts of others, pursuant to written trading authorizations. In that case, a broker-dealer should be able to identify a large trader based on readily available information. Similarly, customer authorization to transfer funds or securities among accounts in order to receive approval for trading activities, meet margin requirements, or to settle transactions, would be considered to be readily available information, as broker-dealers could use that information to readily identify accounts that may be related. Accordingly, a broker-dealer's responsibility would be limited to those Unidentified Large Traders that are readily identifiable and apparent to the broker-dealer.

Paragraph (f)(2) of the proposed rule would require that broker-dealer monitoring policies and procedures contain systems reasonably designed to inform persons of their obligations to file proposed Form 13H and disclose their large trader status. In this respect, the Commission would consider questions and informative disclosures on new account applications, as well as notices to Unidentified Large Traders when their transactions approach the reporting level, among other things, to fulfill this element of the safe harbor. The Commission believes that, because broker-dealers are in the best position to know the details of a large trader's account, a proposed requirement on broker-dealers to inform a large trader customer of the customer's responsibility to self-identify to the Commission would help educate large traders on their obligations under the proposed rule and foster compliance with it.

The Commission notes that the elements of the safe harbor do not contain precise compliance prescriptions such as automated systems, employee training programs, or other specific systems or procedures. The adequacy of monitoring procedures would depend on the nature and characteristics of a broker-dealer's business. The Commission believes that a variety of systems or procedures may be effective for accomplishing the objectives of the monitoring requirements and, therefore, could satisfy the requirements of the safe harbor. The Commission preliminarily believes that the proposed safe harbor contains sufficient detail and adds objectivity to the "reason to know" requirements of Section 13(h)(2) of the Exchange Act in a manner that is designed to minimize the burden of the monitoring requirements of the proposed large trader system.

E. Exemptions

Section 13(h)(6) of the Exchange Act authorizes the Commission "by rule, regulation, or order, consistent with the purposes of this title, [to] exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of [Section 13(h)], and the rules and regulations thereunder."[116] Proposed Rule 13h–1(g) would implement this authority, providing that: "[u]pon 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

[114] *See supra* text accompanying note 99 (discussing recordkeeping requirements for Unidentified Large Traders). In particular, proposed Rule 13h–1(d)(3) would broaden the list of required elements for transactions effected by Unidentified Large Traders, and would require broker-dealers to report for Unidentified Large Traders such person's name, address, date the account was opened, and tax identification number(s).

[115] *See* proposed Rule 13h–1(a)(9) (defining an 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.")

[116] 15 U.S.C. 78m(h)(6).

transactions from the provisions of this rule to the extent that such exemption is consistent with the purposes of the Securities Exchange Act." Accordingly, persons desiring an exemption from Rule 13h–1 could request exemptive relief under proposed paragraph (g) of the rule.

The Commission is not proposing at this time any specific or class exemptions with respect to persons or classes of persons covered by the proposed rule.[117] The Commission is proposing a comprehensive large trader system that is designed to track all large traders through a system capable of producing comprehensive trading records.

F. Foreign Entities

Section 13(h)(5)(C) of the Exchange Act directs the Commission, in exercising its authority under Section 13(h), to take into account the relationship between U.S. and international securities markets.[118] The Commission is concerned that excluding foreign large traders from the proposed rule's requirements could create a competitive disparity between domestic markets and persons and foreign markets and persons. In particular, including foreign large traders within the scope of the proposed rule would provide the Commission with information on entities contemplated by the statute that trade substantial amounts of NMS securities regardless of their legal domicile and would subject all such entities equally to the self-identification and filing requirements that the Commission is proposing herein.

As discussed above, the application and scope of the proposed rule would be established by the proposed definition of a large trader, which is based on Section 13(h)(8)(A) of the Exchange Act.[119] The Commission notes that foreign broker-dealers that are not U.S. registered would not be subject to the broker-dealer recordkeeping or transaction reporting requirements of the proposed rule. Accordingly, the only foreign entities that would be subject to the proposed rule are those that would qualify as large traders. As discussed above, under the proposal, the duties and burdens imposed on each large trader would be to: (1) File and update Form 13H;[120] (2) disclose large trader status;[121] and (3) upon request, provide additional descriptive or clarifying information with respect to information provided on Form 13H.[122]

Pursuant to the proposal, a foreign entity or person could be a large trader, and thus subject to the proposed rule, if the following elements were present: (1) The person exercises investment discretion over accounts;[123] (2) the aggregate transactions in NMS securities for those accounts reach the identifying activity level;[124] and (3) such transactions were effected by use of any means or instrumentality of interstate commerce or the mails or any facility of a national securities exchange.[125]

By way of example of how the proposal would operate, assume that a foreign investment adviser maintains accounts with a registered broker-dealer. Assume further that, through these accounts, the foreign investment adviser effects trades in NMS securities on a national securities exchange for its foreign clients (*i.e.,* citizens of, or persons domiciled in, a foreign country) that reach the identifying activity level. In this case, the foreign investment adviser would be required to file Form 13H and Schedules 4 and 6. If a foreign client of the foreign investment adviser also were a large trader by virtue of exercising investment discretion (together with the foreign investment adviser) over its investments, then the foreign investment adviser would be required to include in its Schedule 6 the client's LTID when listing that client's account. The foreign investment adviser would not be required to disclose on its Form 13H the identities of any of its clients that have not been issued a LTID. Additionally, under the proposal, the foreign investment adviser would be required to disclose its LTID to its registered broker-dealers and anyone else with whom it shares investment discretion.

As a second example of how the proposal would operate, assume that a registered broker-dealer receives an order from a customer to effect transactions in NMS securities in a foreign over-the-counter market or exchange. To effect these trades, the registered broker-dealer transmits the order information to a foreign broker-dealer affiliate. Further, assume that the affiliated foreign broker-dealer effects the transaction for an account that it carries in the name of the domestic broker-dealer. Because the transaction was effected through a registered broker-dealer, this activity could cause the customer to be a large trader if the activity reached the identifying activity level. The customer exercised investment discretion over its own account and effected indirectly, through an account maintained by a registered broker-dealer, the requisite level of transactions in NMS securities.

G. Proposed Implementation

The Commission proposes that the broker-dealer recordkeeping requirements contained in paragraph (d) and the reporting requirements contained in paragraph (e) of the proposed rule become effective 6 months after adoption of a final rule. The Commission believes that this time frame would provide sufficient time for the registered broker-dealers to plan, design, and implement the various enhancements to their existing transaction reporting systems required by the proposed rule. In particular, because the proposed rule would utilize the existing infrastructure of the EBS system, the Commission preliminarily believes that broker-dealers should be able to efficiently enhance their existing recordkeeping and reporting systems to meet the requirements of the proposed large trader system within the proposed implementation period. In addition, the Commission proposes that the identification requirements for large traders contained in paragraph (b) become effective 3 months after adoption of a final rule. The Commission believes that this time frame would provide sufficient time for large traders to familiarize themselves with the new form and the applicable filing requirements, and would give large traders sufficient time to calculate their trading over the applicable measuring period, which includes aggregate transactions during a calendar month.

H. Solicitation of Comments

The Commission generally requests comment on all aspects of the proposed rule and the proposed large trader reporting system. In addition, the

[117] As discussed above, however, the Commission does propose limiting the application of those provisions of the proposed rule that concern broker-dealers to carrying broker-dealers, or executing broker-dealers where the account is carried by a bank. In addition, the proposed rule proposes to exclude certain types of transactions from the definition of "transaction." *See* proposed Rule 13h–1(a)(6). *See also supra* text accompanying notes 60–65 (discussing the exceptions for transactions not covered by the proposed rule).

[118] 15 U.S.C. 78m(h)(5)(C).

[119] 15 U.S.C. 78m(h)(8)(A).

[120] *See* proposed Rule 13h–1(b)(1).

[121] *See* proposed Rule 13h–1(b)(2).

[122] *See* proposed Rule 13h–1(b)(4).

[123] *See* proposed Rule 13h–1(a)(4) (defining "investment discretion").

[124] *See* proposed Rule 13h–1(a)(7) (defining "identifying activity level").

[125] *See* 15 U.S.C. 78m(h)(8)(A) (defining "large trader" as "every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange * * *").

Commission also requests comment on the following specific issues:

• Is the definition of "large trader" in proposed Rule 13h–1(a)(1) to mean "any person that 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, with or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level" appropriate and sufficiently clear? Should the Commission consider an alternative definition?

• Would the proposed definition of "identifying activity level" (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) identify those market participants that transact in a significant enough volume such that the Commission should identify the person as a large trader? Should the Commission consider different levels? Should they be higher or lower than what has been proposed? Please explain your reasoning and provide relevant data.

• Is 0.01% of daily volume and market value of trading in NMS stocks an appropriate basis from which to determine the identifying activity level? Should the Commission consider an alternative level?

• Are there other factors the Commission should take into consideration when determining who should be a large trader or what should be the identifying activity level?

• Would basing the large trader definition on aggregated transactions during a different measuring period be more appropriate? For example, to minimize the applicability of the rule to persons that effect one-time transactions greater than the identifying level but who otherwise never or rarely trade anywhere near a substantial volume or large fair market value, instead of considering activity over a calendar day, should the Commission consider activity over several days, a week, or some other time period?

• Instead of requiring large traders to file Form 13H with the Commission "promptly" after first effecting transactions that reach the identifying activity level, should the Commission consider an alternative deadline, such as 10 business days?

• Are the proposed definitions of person, control, and investment discretion appropriate? Should the Commission consider alternative definitions?

• Is the definition of "transaction" in proposed Rule 13h–1(a)(6) and the exceptions thereto appropriate to accomplish the Commission's goals of focusing on trading activity that constitutes an arm's length purchase or sale and warrants the continuing burdens associated with the proposed requirements? Should any other transactions be excluded from the definition of "transaction?" Should any of the transactions proposed to be excepted instead be included? Please explain your reasoning.

• Are the aggregation provisions in proposed Rule 13h–1(c) for the purpose of determining whether a person meets the definition of a large trader appropriate? Should the Commission consider any other alternatives?

• Is the definition of Unidentified Large Trader in proposed Rule 13h–1(a)(9), *i.e.,* a person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of the proposed rule that a registered broker-dealer knows or has reason to know is a large trader, appropriate? Should the Commission consider an alternative definition?

• Is the proposal sufficiently drafted to identify the appropriate person as a large trader? Is the proposed focus on identifying the parent company appropriate to accomplish the Commission's goals and the goals of Section 13(h) of the Exchange Act? Or should the rule take a more granular focus and instead require identification and the assignment of an LTID at a more particularized level within the parent company? Would such an approach be more or less burdensome? In the alternative, should the LTID contain information on both the parent company and the trading entity and the individual trader for a particular trade? Should the Commission consider any other alternatives in this regard? Does assigning a LTID at the parent level pose any difficulties to achieving the goals of the proposed rule?

• Are there other types of large trader identification alternatives that would achieve the Commission's objectives without diminishing the effectiveness of a large trader system in accomplishing the objectives of Section 13(h) of the Exchange Act? Are there any existing identifiers that could serve as an alternative or supplement to the LTID?

• In a situation where fiduciary duties require segregation of proprietary trading from customer trading, should separate LTIDs be required?

• Should the LTID number be structured in any particular manner? For example, should the LTID number be structured so that it discloses both the identity of the parent company and the actual legal entity that effects the trade? Should the LTID number be designed to be "extensible" so that it could be expanded for use in recording aggregated equity and equity option position (as opposed to trade) information, OTC derivatives trades, OTC derivatives positions, and different categories of trader (*e.g.,* hedge fund, insurance company, pension plan), if tracking this information becomes required under applicable law?

• Are the filing requirements applicable to large traders contained in proposed Rule 13h–1(b) sufficiently clear? Is the provision for inactive status appropriate and sufficient, or should it be modified or eliminated? Are the provisions in proposed Rule 13h–1(b)(3)(i) and (ii) regarding compliance by controlling or controlled persons sufficiently clear, or should they be modified? Are there other considerations or alternatives that the Commission should consider?

• Item 5 of proposed Form 13H requests information on a large trader's affiliates, including name, description of their business, relationship to the large trader, and LTID (if any). Should the Commission require any other information on affiliates, such as the tax identification number(s) of the affiliate?

• Should the Commission implement an electronic filing system for the receipt of Form 13H, and, if so, should any particular features be incorporated into the system?

• Is an Annual Filing requirement redundant, in light of the proposed requirement to submit Interim Filings as necessary, or is it necessary to require that large traders keep current their disclosed information?

• How often would large traders need to file "Interim Filings" to correct information that has become inaccurate? The Commission also solicits comments concerning the requirement to submit Interim Filings "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. Are there some items required by the Form that could be more efficiently updated on a less frequent basis? Are there any items required by the Form that ought to be updated more frequently?

• For the broker-dealer recordkeeping requirements contained in proposed Rule 13h–1(d)(2), are there any other fields, elements, codes, designations, or identifiers that the Commission should consider in order to be able to conduct market reconstructions or to aid its investigatory program? Should any of the proposed fields be modified or eliminated? If so, please explain why.

• Should registered broker-dealers also be required to maintain (and report upon request) the exercise price and expiration date of the option position? [126]

• Is the time frame for the availability of transaction information specified in proposed Rule 13h–1(d)(5) appropriate to ensure that the Commission has access to timely transaction data? Should the Commission consider an alternative time frame?

• Are the proposed monitoring responsibilities that would apply to registered broker-dealers sufficient, or are there other or more effective means, within the limitations provided by Section 13(h), that would help assure compliance with the large trader identification requirements?

• Is the safe harbor provided for in proposed Rule 13h–1(f) sufficient to clarify the conditions under which a broker-dealer would be deemed to know or have reason to know whether a person is a large trader? Would an alternative formulation better achieve the Commission's purpose to rely on broker-dealers to help assure compliance by large traders with the self-identification requirements of the proposed rule? Are the policies and procedures that a broker-dealer would need to adopt to take advantage of the proposed safe harbor sufficiently clear and appropriate? Are there any other factors the Commission should consider?

• Would the proposed monitoring responsibility on registered broker-dealers

[126] This information is not covered by Rule 17a–25 under the Exchange Act, 17 CFR 240.17a–25.

and the related safe harbor contained in proposed Rule 13h–1(f) encourage entities that satisfy the large trader standard to identify themselves? Should the Commission consider imposing other types of monitoring duties on broker-dealers? Should the Commission consider requiring a broker-dealer to report promptly to the Commission any Unidentified Large Trader that it detects? Should the Commission require a broker-dealer to report to the Commission a list of all large traders for which it effects transactions?

• Should the Commission consider imposing a duty on large traders to monitor for Unidentified Large Traders among persons with whom they share investment discretion?

• Should the Commission consider exempting certain categories of persons from the proposed rule? The Commission is interested in comments concerning whether certain categories of persons also should be exempt, including the following categories, and if so why:

• A registered broker-dealer that does not carry accounts for itself or others and is registered by a national securities exchange as a specialist or market maker.

• A registered broker-dealer that does not carry accounts for itself or others and is a member of a national securities exchange that exclusively executes transactions on the floor of such national securities exchange (*i.e.,* a "floor broker").

• The Commission is also interested in whether other categories of persons should be excluded.

• Is the proposed "reporting activity level" of transactions in NMS securities, effected in a single account during a calendar day, equal to or greater than 100 shares or any other transaction in NMS securities, effected in a single account during a calendar day, that a registered broker-dealer may consider an appropriate threshold? Why or why not? If not, please identify a more appropriate level and explain your rationale. Should aggregation principles apply to the reporting activity level and could doing so deter non-compliance with the rule? Would doing so impose a significant technological burden on reporting systems?

• Does the proposed 6-month implementation period with respect to the recordkeeping and reporting requirements for broker-dealers, and the 3-month implementation period with respect to the large trader identification requirements, strike an appropriate balance between timely implementation and time needed for system changes, or would a longer or shorter period be more appropriate? If another implementation period is suggested, please also estimate the corresponding change in implementation costs (if any).

• What are the expected costs and related burdens of modifying firms' existing systems to accommodate the proposed new data elements of LTID and execution time?

• Currently, firms are requested to comply with an EBS request for equity and equity option trade data in 10 business days. Is it realistic to expect that broker-dealers will, the first time a request for production is made by the Commission under the proposed rule, be able to produce the required data elements for a day's trades for a large trader in electronic, machine-readable form on the morning after the day the transactions occur?

• Is requiring broker-dealers to maintain the required large trader trade information for prompt production to the Commission upon request the best way to make this information available to the Commission for the rule's purposes? In this connection, we note that the CFTC's Large Trader Reporting Program requires large traders of commodity futures and commodity options to report positions periodically without the CFTC being required to make a prior request for the information. Is this a meaningful precedent for the Commission's large trader reporting system? Why or why not?

• Would a system that requests weekly or daily reporting of large trader trade information to the Commission be unduly burdensome to broker-dealers? Or would it actually be less burdensome to broker-dealers than complying with occasional Commission requests for such information, without having a reliable system in place for providing such information to the Commission? Does data production have to be systematized to be efficient and reasonably free of errors? If a broker-dealer sets up a system to provide large trader information to the Commission on a daily basis as a matter of routine, would the ongoing costs to the broker-dealer for providing large trader information be *de minimis* because the information consists of data the broker-dealer produces on a daily basis anyway in the course of operating its business?

• The proposed rule also is designed to enhance the Commission's ability to conduct market surveillance and to detect and deter fraudulent and manipulative activity. Would it be preferable and ultimately less burdensome for broker-dealers to report large trader activity on a more routine basis (*e.g.,* daily, weekly, or monthly) rather than provide requested information on an infrequent or ad hoc basis?

• Should Item 5a of Form 13H and the corresponding instructions be amended to permit large traders that are registered broker-dealers to incorporate by reference the information provided on Form BD about affiliates?

• Does the proposed rule sufficiently minimize the burden on natural persons?

• Should the proposed rule be expanded to include securities other than NMS securities? If so, what other types of securities should be included?

• Would the large trader reporting requirements influence the day-to-day decisions made by large traders in any substantive way? Would the proposed requirements impact trading strategies? For example, might traders choose in some cases to avoid trading in equities or options in favor of alternative vehicles such as OTC derivatives to avoid reporting? Might they curtail the extent of their trading? Might they trade in foreign jurisdictions?

• Would the application of the proposed rule provide incentives for trading to be effected through certain entities or market centers? If so, how and which ones? For example, would large traders direct their trading through non-registered broker-dealers, like those relying on the foreign broker/dealer exemption (Rule 15a–6)?

• Is the proposed three-year record retention requirement for registered broker-dealers adequate for the Commission to achieve the objectives of the proposed rule? Should the Commission provide for a longer retention period, for example five or more years?

• Is the proposed treatment of foreign entities appropriate? Why or why not? The Commission is aware that some foreign jurisdictions may have statutes that could potentially restrict the ability of a large trader to provide information to the Commission on Form 13H, and that the ability of large traders organized in such jurisdictions would depend on the provisions of such statutes as applied to the scope of information solicited in proposed Form 13H. To what extent do any foreign statutes complicate foreign large traders' ability to comply with the proposed rule?

III. Specific Factors To Be Considered by the Commission

Section 13(h)(5) of the Exchange Act requires the Commission, when exercising its rulemaking authority under Section 13(h) to take into account: (1) Existing reporting systems; (2) the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission; and (3) the relationship between United States and international securities markets. As discussed in this release, the Commission took into account these factors when formulating the proposed rule in exercising its authority under Section 13(h) of the Exchange Act.

The proposed rule reflects the Commission's commitment to utilize existing industry systems, such as the EBS system, in an effort to minimize the costs associated with the proposed large trader system while accomplishing the purposes of the proposed rule. Further, the application of the proposed rule to foreign entities has been considered in light of its impact on the relationship between U.S. and international securities markets.

The Commission has attempted to propose an efficient large trader system that accommodates different types of large traders and business practices while at the same time providing the Commission with a useful tool to identify large traders and their trading activity and assist the Commission in monitoring the impact of large traders on the securities markets. The Commission preliminarily believes that the proposed rule would establish a narrow definition of large trader, and thus limit the costs and burdens of the

system on the relevant entities that are responsible for trading decisions.

The Commission preliminarily believes that the information to be captured and disclosed under the proposed identification requirements would be the minimum necessary for creating an effective large trader system that would achieve the purposes of section 13(h) of the Exchange Act. Moreover, the recordkeeping and reporting requirements of the proposed rule have been designed to minimize costs while accomplishing the purposes of section 13(h) of the Exchange Act. In particular, much of the information that would be required to be retained by registered broker-dealers under the proposed rule is similar to the information currently required to be provided by broker-dealers under Rule 17a–25 of the Exchange Act. Further, the rule contemplates that registered broker-dealers would use the existing reporting infrastructure of the EBS system to transmit trading data to the Commission. As such, large trader transaction data would be collected and disclosed in a manner that utilizes the existing reporting systems. Accordingly, the Commission preliminarily believes that the proposed recordkeeping and reporting requirements are designed to minimize costs and provide a tailored method of collecting large trader transaction information.

The Commission acknowledges that certain provisions of the proposed rule would cause market participants to incur costs including: (1) Preparation, filing, and updating of Form 13H; (2) maintenance and reporting of large trader transaction information; (3) maintenance and reporting of LTIDs and execution times; and (4) development and implementation of monitoring systems and procedures.[127] However, the Commission preliminarily believes that the proposal minimizes the costs of a proposed large trader reporting requirement to the greatest extent possible while still allowing the Commission to implement a system that captures a unique large trader identifier and execution times, both of which the Commission believes would be critical elements necessary to accomplish the objectives of Section 13(h) of the Exchange Act.

In addition, the monitoring provisions of the proposed rule would require a registered broker-dealer to monitor its customers' trading. These obligations are intended to facilitate compliance with the proposed rule. The Commission preliminarily believes that the proposed safe harbor provision would provide meaningful detail and objectivity that would considerably reduce the burden of the monitoring responsibility on registered broker-dealers.

Finally, the Commission believes that the proposed rule's application to foreign persons accomplishes the objectives of Section 13(h) in part by maintaining uniformity between domestic and international securities markets.[128]

IV. Paperwork Reduction Act

Certain provisions of the proposal contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA")[129] and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The title of the new collection of information, including proposed Rule 13h–1 and proposed Form 13H, is "Information Required Regarding Large Traders Pursuant to Section 13(h) of the Securities Exchange Act of 1934 and Rules Thereunder." 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.

A. Summary of Collection of Information Under Proposed Rule p13h–1

Under proposed Rule 13h–1, a "large trader" would be any person that 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, with or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level.

All large traders would be required to identify themselves to the Commission by filing Form 13H, and would be required to update their Form 13H from time to time.[130] Upon receiving an initial Form 13H, the Commission would assign to the large trader a unique large trader identification number ("LTID"). Each large trader would be required to disclose to registered broker-dealers effecting transactions on its behalf its large trader identification number and each account to which it applies.[131] Each large trader also would be required to disclose its large trader identification number to all others with whom it collectively exercises investment discretion. Further, upon request by the Commission, a large trader would be required promptly to provide additional information to the Commission that would allow the Commission to further identify the large trader and all accounts through which the large trader effects transactions.[132]

Proposed Rule 13h–1 also would impose recordkeeping, reporting, and monitoring requirements on registered broker-dealers. Proposed paragraph (d)(1) would require every registered broker-dealer to maintain records of all information required under paragraphs (d)(2) and (d)(3) 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, (ii) an account over which such broker-dealer exercises investment discretion together with a large trader or an Unidentified Large Trader, or (iii) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer such as a bank 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 maintain records of all of the information required under paragraphs (d)(2) and (d)(3) for those transactions. The term "Unidentified Large Trader" would be defined to mean each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of proposed Rule 13h–1 that a registered broker-dealer knows or has reason to know is a large trader.[133] A registered broker-dealer would have reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer. Further, a registered broker-dealer would not be deemed to know or have reason to know that a person is a large trader if it establishes policies and procedures reasonably designed to assure compliance with the identification requirements and does

[127] *See infra* Sections IV (Paperwork Reduction Act) and V (Consideration of Costs and Benefits).

[128] *See* House Comm. on Energy and Commerce, Report to Accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657) (expressing the intent that the Commission consider "the relationship between our domestic markets and the international market place for securities.").

[129] 44 U.S.C. 3501 *et seq.*

[130] *See* proposed Rule 13h–1(b).

[131] *See* proposed Rule 13h–1(b)(2).

[132] *See* proposed Rule 13h–1(b)(4).

[133] *See* proposed Rule 13h–1(a)(9).

not have actual knowledge that a person is a large trader.[134]

Section 13(h)(2) of the Exchange Act provides that records of a large trader's transactions must be made available on the morning after the day the transactions were effected.[135] The proposed rule would incorporate this requirement in paragraph (d)(5). Paragraph (d)(4) of the proposed rule would require that such records be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a–4 under the Exchange Act.[136]

Complementing the recordkeeping requirements on broker-dealers, under proposed paragraph (e), registered broker-dealers that are required to keep records pursuant to paragraph (d)(1) also would have a duty to report that information.[137] Specifically, upon the request of the Commission, registered broker-dealers must report electronically, in machine-readable form and in accordance with instructions issued by 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 other persons for whom records must be maintained, equal to or greater than the reporting activity level.[138]

Broker-dealers would need to report a particular day's trading activity only if it equals or exceeds the "reporting activity level." While a registered broker-dealer is required to report for a given day data only if it is equal to or greater than the reporting activity level, the rule specifically allows a broker-dealer to voluntarily report a day's trading activity that falls short of the applicable threshold. Registered broker-dealers may wish to take this approach if they prefer to avoid implementing systems to filter the transaction activity and would rather utilize a "data dump" approach to reporting large trader transaction information to the Commission.

In recognition of the value of utilizing existing reporting systems, the proposed rule would require broker-dealers to transmit the transaction records by utilizing the infrastructure of the existing EBS system. Transaction reports, including data on transactions up to and including the day immediately preceding the request, would need to be furnished before the close of business on the day specified in the request for the information.

B. Proposed Use of Information

The Commission would use the information collected pursuant to proposed Rule 13h–1 to identify large traders and collect data on the trading activity of large traders. The proposed large trader reporting system would allow the Commission to monitor more readily and efficiently the impact of large traders on the securities markets and would facilitate the Commission's trading reconstruction efforts as well as enhance its monitoring, enforcement, and regulatory activities. Registered broker-dealers would use the information they collect pursuant to proposed Rule 13h–1, namely the LTID, to comply with the proposed recordkeeping requirements and the proposed requirement to report to the Commission upon request all transactions effected for large traders. In addition, any registered broker-dealer that chooses to rely on the proposed safe harbor provisions would use the information they collect pursuant to proposed Rule 13h–1 as well as policies and procedures consistent with the proposed rule as part of their systems to detect and identify Unidentified Large Traders and inform them of their obligations to file Form 13H and disclose large trader status under the proposed rule. Self-regulatory organizations, pursuant to their obligations to enforce compliance by their members and persons associated with their members with the rules and regulations under the Exchange Act,[139] would evaluate whether a broker-dealer has collected and maintained the information required by proposed Rule 13h–1 to surveil for and enforce compliance with the proposed rule.

C. Respondents

While we are not aware of a database that would allow the Commission to calculate the precise number of persons that would meet the definition of large trader, based on the Commission's experience in this area, the Commission estimates that there would be 400 large traders subject to the proposed rule. The estimated number of large traders accounts for the proposed filing requirement provisions contained in proposed Rule 13h–1(b)(3), including the rule's focus, in more complex organizations, on the parent company of the entities that employ or otherwise control the individuals that exercise investment discretion. In addition, the Commission estimates from broker-dealer responses to FOCUS report filings with the Commission made in 2009 that there would be 300 registered broker-dealers subject to the proposed rule, including some broker-dealers that will also themselves be large traders. This estimate reflects the number of broker-dealer carrying firms that the Commission believes would carry accounts for large traders or that would effect transactions directly or indirectly for a large trader or Unidentified Large Trader where a non-broker-dealer carries the account. The Commission seeks comment on the number of large traders and registered broker-dealers that could be affected by the proposed rule and the nature of the proposed rule's effect on those persons and entities.

D. Estimated Total Annual Reporting and Recordkeeping Burden

1. Estimated Burden on Large Traders

Proposed Rule 13h–1 would present new burdens to persons and entities that meet the definition of large trader. In particular, persons, including those that might not presently be registered with the Commission in some capacity, that meet the definition of "large trader" would become subject to a new reporting duty, as the proposed rule would require each large trader to identify itself to the Commission by filing a Form 13H and submitting annual updates, as well as updates on a quarterly basis if necessary to correct information that becomes inaccurate. Additionally, each large trader would be required to identify itself to each registered broker-dealer through which it effects transactions and to all others with whom it collectively exercises investment discretion.

Paragraph (b)(1) of the proposed rule would require large traders to file Form 13H with the Commission promptly after first effecting transactions that reach the identifying activity level.[140] Thereafter, large traders would be required to file an amended Form 13H promptly following the end of a calendar quarter in the event that any of the information contained therein becomes inaccurate for any reason (*e.g.,* change of name and address, type of organization, principal business,

[134] *See* proposed Rule 13h–1(f).

[135] *See* 15 U.S.C. 78m(h)(2).

[136] 17 CFR 240.17a–4.

[137] *See* proposed Rule 13h–1(e).

[138] To assist the Commission in enforcing the self-identification requirements of the proposed rule, paragraph (e) of the proposed rule would require broker-dealers to maintain and report certain information about all transactions effected by Unidentified Large Traders. In addition to the information required to be maintained for identified large traders, a broker-dealer would be required to retain and report for Unidentified Large Traders such person's name, address, date the account was opened, and tax identification number(s). *See* proposed Rule 13h–1(d)(3).

[139] *See* 15 U.S.C. 78f(b)(1).

[140] *See* proposed Rule 13h–1(b)(1)(i).

regulatory status, accounts maintained, or associations).[141] Regardless of whether any interim amended Form 13Hs are filed, large traders also would be required to file Form 13H annually, within 45 days after the calendar year-end, in order to ensure the accuracy of all of the information reported to the Commission.[142] Additionally, proposed Rule 13h–1(b)(4) provides that the Commission may require large traders to provide, upon request, additional information to identify the large trader and all accounts through which the large trader effects transactions.

For purposes of the PRA, the Commission estimates that it would take a large trader approximately 20 hours to calculate whether its trading activity qualifies it as a large trader, complete the initial Form 13H with all required information, obtain a LTID from the Commission, and inform its registered broker-dealers and other entities of its LTID and the accounts to which it applies. The Commission understands that large traders currently maintain systems that capture their trading activity, and believes that these existing systems would be sufficient without further modification to enable a large trader to determine whether it effects transactions for the purchase or sale of any NMS security for or on behalf of accounts over which it exercises investment discretion in an aggregate amount equal to or greater than the identifying activity level. Accordingly, the Commission preliminarily estimates that the one-time burden for large traders would be approximately 8,000 burden hours.[143]

The Commission preliminarily estimates that the ongoing annualized burden for complying with proposed Rule 13h–1 would be approximately 6,800 burden hours for all large trader respondents.[144] This figure is based on the estimated number of hours it would take to file interim updates and the annual updated Form 13H. The Commission estimates that the average large trader would be required to file 1 annual update and 3 interim updates.[145]

Therefore, in summary, under the proposed rule, the total burden on large trader respondents would be 8,000 hours for the first year and 6,800 hours for each subsequent year.

2. Estimated Burden on Registered Broker-Dealers

As part of the Commission's existing EBS system, pursuant to Rule 17a–25 under the Exchange Act, the Commission currently requires registered broker-dealers to keep records of most of the information for their customers that would be captured by proposed Rule 13h–1.[146] The additional items of information that this proposal would capture are: (1) LTID; and (2) transaction execution time. To capture the additional field that includes the LTID number, all registered broker-dealers with large trader customers or that are themselves large traders would have to re-program their systems. Some registered broker-dealers also would need to re-program their systems to capture execution time, to the extent their systems do not already capture that information in a manner that is reportable pursuant to an EBS request for data, and LTID.

The Commission believes that the burden of the proposed rule for individual registered broker-dealers would likely vary due to differences in their recordkeeping systems. The Commission estimates that all registered broker-dealers that have a client base that includes large traders and Unidentified Large Traders, or broker-dealers that are themselves large traders, would be required to make modifications to their existing systems to capture the additional data elements that are not currently captured by systems that comply with Rule 17a–25, including, for example, the LTID number. The Commission estimates from broker-dealer responses to FOCUS report filings with the Commission made in 2009 that there would be 300 registered broker-dealers subject to the proposed rule, including some of those broker-dealers that will also themselves be large traders. The Commission preliminary estimates that the one-time, initial annualized burden for registered broker-dealers for system development, including re-programming and testing of the systems to comply with the proposed rule, would be approximately 133,500 burden hours.[147]

This figure is based on the estimated number of hours for initial internal development and implementation, including software development, taking into account the fact that new data elements are required to be captured and must be available for reporting to the Commission as of the morning following the day on which the transactions were effected. Because broker-dealers already capture, pursuant

[141] *See* proposed Rule 13h–1(b)(1)(iii).

[142] *See* proposed Rule 13h–1(b)(1)(ii).

[143] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1: (Compliance Manager at 3 hours) + (Compliance Attorney at 7 hours) + (Compliance Clerk at 10 hours) × (400 potential respondents) = 8,000 burden hours. Rule 13f–1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information.

[144] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1 and Rule 17a–25: (Compliance Manager at 2 hours) + (Compliance Attorney at 5 hours) + (Compliance Clerk at 10 hours) × (400 potential respondents) = 6,800 burden hours. Rule 13f–1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information. As discussed *supra,* Rule 17a–25 requires broker-dealers to disclose information that is very similar in scope and character to the information required under the proposed rule. The Commission believes that determining whether a firm reaches the identifying activity level is a compliance function and that no software reprogramming would be required. *See infra* note 177.

[145] This estimate is based on the varied characteristics of large traders and the nature and scope of the items that would be disclosed on proposed Form 13H that would require updating, and considers that large traders would file one required annual update and three quarterly updates when information contained in the Form 13H becomes inaccurate.

[146] *See* 17 CFR 240.17a–25. Pursuant to Rule 17a–25, broker-dealers are required to maintain the following information that would be captured by the proposed rule: date on which the transaction was executed; account number; identifying symbol assigned to the security; transaction price; the number of shares or option contracts traded and whether such transaction was a purchase, sale, or short sale, and if an option transaction, whether such was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment; the clearing house number of such broker or dealer and the clearing house numbers of the brokers or dealers on the opposite side of the transaction; a designation of whether the transaction was effected or caused to be effected for the account of a customer of such broker or dealer, or was a proprietary transaction effected or caused to be effected for the account of such broker or dealer; market center where the transaction was executed; prime broker identifier; average price account identifier; and the identifier assigned to the account by a depository institution. For customer transactions, the broker-dealer is required to also include the customer's name, customer's address, the customer's tax identification number, and other related account information.

[147] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1 and Rule 17a–25: (Computer Ops Dept. Mgr. at 30 hours) + (Sr. Database Administrator at 25 hours) + (Sr. Programmer at 150 hours) + (Programmer Analyst at 100 hours) + (Compliance Manager at 20 hours) + (Compliance Attorney at 10 hours) + (Compliance Clerk at 20 hours) + (Sr. Systems Analyst at 50 hours) + (Director of Compliance at 5 hours) + (Sr. Computer Operator at 35 hours) × (300 potential respondents) = 133,500 burden hours. As noted above, the Commission acknowledges that, in some instances, multiple LTIDs may be disclosed to a registered broker-dealer for a single account. Therefore, our hourly burden estimate factors in the cost that registered broker-dealers would need to develop systems capable of tracking multiple LTIDs. Rule 13f–1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information. As discussed *supra,* Rule 17a–25 requires broker-dealers to disclose information that is very similar in scope and character to the information required under the proposed rule.

to Rule 17a–25, most of the data that proposed Rule 13h–1 would capture, the Commission does not expect broker-dealers to incur any hardware costs.

The Commission preliminarily believes that the ongoing annualized expense for the recordkeeping requirement for registered broker-dealers would not result in a burden for purposes of the PRA, as registered broker-dealers already are required to provide to the Commission almost all of the proposed information for all of their customers pursuant to Rule 17a–25 under the Exchange Act. Once a registered broker-dealer's system is revised to capture the additional fields of information, the Commission does not believe that the additional fields would result in any ongoing annualized expense beyond what broker-dealers already incur under Rule 17a–25.

In addition to requiring registered broker-dealers to maintain records of account transactions, the proposed rule would also require registered broker-dealers to report such transactions to the Commission upon request. The Commission preliminarily believes that this collection of information would not involve any substantive or material change in the burden that already exists as part of registered broker-dealers providing transaction information to the Commission in the normal course of business.[148] However, the Commission notes that the information would need to be available for reporting to the Commission on a next-day basis, versus the 10 business day period associated with an EBS request for data.[149] Nevertheless, once the electronic recordkeeping system is in place to capture the information, where such system is designed and built to furnish the information within the time period specified in the proposal, the Commission preliminarily believes that the collection of information would result in minimal additional burden.

Although it is difficult to predict with certainty the Commission's future needs to obtain large trader data, the Commission preliminarily believes that, taking into account the Commission's likely need for data to be used in market reconstruction purposes and investigative matters, the Commission estimates that it would likely send 100 requests for large trader data per year to each registered broker-dealer.[150] The Commission estimates that it would take a registered broker-dealer 2 hours to comply with each request, considering that a broker-dealer would need to run the database query of its records, download the data file, and transmit it to the Commission. Accordingly, the ongoing annual aggregate hour burden for broker-dealers is estimated to be 60,000 hours ($100 \times 300 \times 2 = 60{,}000$).[151]

The proposed rule also would require registered broker-dealers to monitor large traders to help ensure compliance by large traders with the self-identification requirements of the rule. In particular, proposed paragraph (e) would require certain broker-dealers to maintain and report to the Commission certain information about all transactions effected by Unidentified Large Traders.

The Commission acknowledges that the duty to monitor would impose burdens on broker-dealers. To reduce the monitoring burden, the Commission has proposed a safe harbor provision for the monitoring duty. Specifically, registered broker-dealers would be deemed to not know or to have no reason to know that a person is an Unidentified Large Trader if: (1) It has established and maintains policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed rule; and (2) it does not have actual knowledge that a person is a large trader.[152]

The Commission preliminary estimates that the one-time, initial burden for all registered broker-dealers to comply with the proposed monitoring requirements would be approximately 21,000 burden hours to establish a compliance system to detect and identify Unidentified Large Traders.[153] This figure is based on the estimated number of hours to establish policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed rule. The Commission preliminarily estimates that the ongoing annualized burden to all broker-dealers for the monitoring requirements of the proposed rule, including the proposed requirement on broker-dealers to inform Unidentified Large Traders of their obligations to File Form 13H and disclose their large trader status under proposed Rule 13h–1, would be approximately 4,500 burden hours.[154]

Therefore, under the proposed rule, the total burden on these respondents would be 164,500 hours for the first year[155] and 14,500 hours for each subsequent year.[156]

E. Collection of Information Is Mandatory

All collections of information pursuant to the proposed rule would be a mandatory collection of information.

F. Confidentiality

Section 13(h)(7) of the Exchange Act provides that Section 13(h) "shall be considered a statute described in subsection (b)(3)(B) of [5 U.S.C. 552]", which is part of the Freedom of Information Act ("FOIA").[157] As such,

[148] *See* 17 CFR 240.17a–25.

[149] *See* Securities Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836 (July 9, 2001) (S7–12–00) (17a–25 adopting release).

[150] Compared to the EBS system, where the Commission sent 5,168 electronic blue sheets requests between January 2007 and June 2009, the Commission preliminarily expects to send fewer requests for large trader data, in particular because the Commission preliminarily expects that a request for large trader data would be broader and encompass a larger universe of securities and a longer time period than would be the case for the typically more targeted EBS requests it sends to broker-dealers.

[151] The Commission derived the total estimated burdens based on the Commission's experience with, and burden estimates for, other existing reporting systems, including Rule 17a–25. The Commission estimated that each broker-dealer who electronically responds to a request for data in connection with Rule 17a–25 and the EBS system spends 8 minutes per request. *See* EBS Release, *supra* note 24, at 66 FR 35841. Unlike EBS, under proposed Rule 13h–1, a broker-dealer would also be required to report data on Unidentified Large Traders. The Commission therefore believes that the time to comply with a request for data under the proposed rule could take longer than would a similar request for data under the EBS system, as a broker-dealer likely would take additional time to review and report information on any Unidentified Large Traders, including the additional fields of information specified in paragraph (d)(3) of the proposed rule, that they would be required to report to the Commission under the proposed rule.

[152] *See* proposed Rule 13h–1(f).

[153] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1: (Sr. Programmer at 10 hours) + (Compliance Manager at 10 hours) + (Compliance Attorney at 10 hours) + (Compliance Clerk at 20 hours) + (Sr. Systems Analyst at 10 hours) + (Director of Compliance at 2 hours) + (Sr. Computer Operator at 8 hours) × (300 potential respondents) = 21,000 burden hours. Rule 13f–1, like the proposed rule, requires monitoring of a certain trading threshold.

[154] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1 and Rule 17a–25: (Compliance Attorney at 15 hours) × (300 potential respondents) = 4,500 burden hours. Rule 13f–1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information.

[155] This figure is derived from the estimated one-time burdens from the recordkeeping requirement (133,500 burden hours) + the reporting requirement (10,000 burden hours) + the monitoring requirement (21,000 burden hours) = 164,500 total burden hours.

[156] This figure is derived from the estimated ongoing burdens from the reporting requirement (10,000 burden hours) + the monitoring requirement (4,500 burden hours) = 14,500 total burden hours.

[157] 5 U.S.C. 552(b)(3)(B) is now 5 U.S.C. 552(b)(3)(A)(ii).

"the Commission shall not be compelled to disclose any information required to be kept or reported under [Section 13(h)]." [158] Accordingly, the information that a large trader would be required to disclose on proposed Form 13H or provide in response to a Commission request would be exempt from disclosure under FOIA. In addition, any transaction information that a registered broker-dealer would report to the Commission under the proposed rule also would be exempt from disclosure under FOIA.

G. Retention Period of Recordkeeping Requirements

Registered broker-dealers would be required to retain records and information under the proposed rule for a period of three years, the first two in an accessible place, in accordance with Rule 17a–4 under the Exchange Act.[159]

H. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (1) Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503; and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–10–10. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–10–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213.

V. Consideration of Costs and Benefits

The Commission is sensitive to the costs and benefits of our proposal to establish a large trader reporting system. We request comment on the costs and benefits associated with the proposal. The Commission has identified certain costs and benefits associated with the proposal and requests comment on all aspects of its preliminary cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. The Commission also seeks comments on the benefits identified and the costs described in each section of this cost-benefit analysis, as well as elsewhere in this release. Finally, the Commission requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions on such estimates.

A. Benefits

U.S. securities markets have experienced a dynamic transformation in recent years. In large part, the changes reflect the culmination of a decades-long trend from a market structure with primarily manual trading to a market structure with primarily automated trading. Rapid technological advances have produced fundamental changes in the structure of the securities markets, the types of market participants, the trading strategies employed, and the array of products traded. The markets also have become even more competitive, with exchanges and other trading centers offering innovative order types, data products and other services, and aggressively competing for order flow by reducing transaction fees and increasing rebates. These changes have facilitated the ability of large institutional and other professional market participants to employ sophisticated trading methods to trade electronically in huge volumes with great speed. In addition, large traders have become increasingly prominent at a time when the markets are experiencing an increase in overall volume.[160]

Currently, to support its regulatory and enforcement activities, the Commission collects transaction data through the EBS system.[161] The Commission uses the EBS system to obtain securities transaction information for two primary purposes: (1) To assist in the investigation of possible federal securities law violations, primarily involving insider trading or market manipulation; and (2) to conduct market reconstructions.

The EBS system has performed effectively as an enforcement tool for analyzing trading in a small sample of securities over a limited period of time. However, because the EBS system is designed for use in narrowly-focused enforcement investigations that generally involve trading in particular securities, it has proven to be insufficient for large-scale market reconstructions and analyses involving numerous stocks during peak trading volume periods.[162] Further, it does not address the Commission's need to identify important market participants and their trading activity.

Following declines in the U.S. securities markets in October 1987 and October 1989, Congress noted that the Commission's ability to analyze the causes of a market crisis was impeded by its lack of authority to gather trading information.[163] To address this concern, Congress passed the Market Reform Act, which, among other things, amended Section 13 of the Exchange Act to add new subsection (h), authorizing the Commission to establish a large trader reporting system under such rules and regulations as the Commission may prescribe.[164]

The large trader reporting authority in Section 13(h) of the Exchange Act was intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume or large fair market value, as well as to assist the Commission's enforcement of the federal securities laws.[165] In particular, the Market Reform Act provided the Commission with the authority to collect broad-based information on large traders, including their trading activity, reconstructed in

[158] *See* section 13(h)(7) of the Exchange Act, 15 U.S.C. 78m(h)(7).

[159] 17 CFR 240.17a–4.

[160] *See, e.g., infra* note 1.

[161] *See* 17 CFR 240.17a–25 (Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers).

[162] *See supra* note 7 and accompanying text.

[163] 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 Report, *supra* note 9, and House Comm. on Energy and Commerce, Report to accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657).

[164] Public Law 101–432 (HR 3657), October 16, 1990.

[165] *See* 15 U.S.C. 78m(h)(1). *See also* Senate Report, *supra* note 9, at 42.

time sequence, in order to provide empirical data necessary for the Commission to evaluate market movement and volatility and enhance its ability to detect illegal trading activity.[166]

The large trader reporting system envisioned by the Market Reform Act authorizes the Commission to require large traders[167] to self-identify to the Commission and provide information to the Commission identifying the trader and all accounts in or through which the trader effects securities transactions.[168] The Market Reform Act also authorized the Commission to require large traders to identify their status as large traders to any registered broker-dealer through whom they directly or indirectly effect securities transactions.[169]

In addition to facilitating the ability of the Commission to identify large traders, the Market Reform Act also authorizes the Commission to collect information on the trading activity of large traders. In particular, the Commission is authorized to require every registered broker-dealer to make and keep records with respect to securities transactions of large traders that equal or exceed a certain "reporting activity level" and report such transactions upon request of the Commission.[170]

To implement its authority under section 13(h) of the Exchange Act, the Commission now is proposing new Rule 13h–1 and Form 13H to establish an activity-based large trader reporting system. The proposal is intended to assist the Commission in identifying, and obtaining certain baseline trading information about traders that conduct a substantial volume or large fair market value of trading activity in the U.S. securities markets. In essence, a "large trader" would be defined as a person who effects transactions in NMS securities of at least, during any calendar day, two million shares or shares with a fair market value of $20 million or, during any calendar month, either 20 million shares or shares with a fair market value of $200 million.[171] The proposed large trader reporting system is designed to facilitate the Commission's ability to monitor the impact on the securities markets of large trader activity, and allow it to conduct trading reconstructions following periods of unusual market volatility and analyze significant market events for regulatory purposes. It also should enhance the Commission's ability to detect and deter fraudulent and manipulative activity and other trading abuses.

The proposed identification, recordkeeping, and reporting system would provide the Commission with a mechanism to identify large traders, and the affiliates, accounts, and transactions of large traders. Specifically, proposed Rule 13h–-1 would require large traders to identify themselves to the Commission and make certain disclosures to the Commission on proposed Form 13H. Upon receipt of Form 13H, the Commission would issue a unique identification number to the large trader, which the large trader would then provide to its registered broker-dealers. Registered broker-dealers would be required to maintain transaction records for each large trader customer, and would be required to report that information to the Commission upon request. In addition, registered broker-dealers would be required to adopt procedures to monitor their customers' activity for volume that would trigger the identification requirements of the proposed rule.

In light of recent turbulent markets and the increasing sophistication and trading capacity of large traders, the Commission believes it needs to further enhance its ability to collect and analyze trading information, especially with respect to the most active market participants. In particular, the Commission believes it needs a mechanism to reliably identify large traders, and promptly and efficiently obtain their trading information on a market-wide basis.

The Commission believes a proposal for a large trader reporting system is necessary because, as noted above, large traders appear to be playing an increasingly prominent role in the securities markets.[172] Market observers have offered a wide range of estimates for the percent of overall volume attributable to one potential subcategory of large trader—high frequency traders—which are typically estimated at 50% of total volume or higher.[173] The proposed large trader reporting system is intended to provide a basic set of tools so that the Commission can monitor more readily and efficiently the impact on the securities markets of large traders.

Among other things, the Commission believes that a large trader reporting system would enhance its ability to (1) Reliably identify large traders and their affiliates, (2) obtain more promptly trading data on the activity of large traders, including execution time, and (3) aggregate and analyze trading data among affiliated large traders and affiliated accounts.

The Commission generally requests comment on the anticipated benefits of the proposal, including whether the proposal would: (1) Assist in the examination for and investigation of possible federal securities law violations, including insider trading or market manipulation; (2) assist the Commission in conducting market reconstructions; and (3) provide the Commission with a system that would allow it to analyze more readily and efficiently the impact of large traders on the securities markets. Would the proposed rule provide benefits that the Commission has not discussed?

B. Costs

1. Large Traders

The Commission preliminarily anticipates that the primary costs to large traders from the proposal are the requirement to self-identify to the Commission, including utilizing existing systems to detect when the large trader meets the identifying activity level, and the filing and information requirements when large

[166] *See* Senate Report, *supra* note 9, at 4, 44, and 71. In this respect, though self-regulatory organization ("SRO") audit trails provide a time sequenced report of broker-dealer transactions, those audit trail generally do not identify the broker-dealer's customers. Accordingly, the Commission is not presently able to utilize existing SRO audit trail data to accomplish the objectives of the Market Reform Act.

[167] Section 13(h) of the Exchange Act defines a "large trader" as "every person who, for his own or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level." *See* 15 U.S.C. 78m(h)(8)(A).

[168] *See* 15 U.S.C. 78m(h)(1)(A).

[169] *See* 15 U.S.C. 78m(h)(1)(B).

[170] *See* 15 U.S.C. 78m(h)(2). Section 13(h) also provides the Commission with authority to determine the manner in which transactions and accounts should be aggregated, including aggregation on the basis of common ownership or control. *See* 15 U.S.C. 78m(h)(3). The term "reporting activity level" is defined in Section 13(h)(8)(D) of the Exchange Act to mean "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated." *See* 15 U.S.C. 78m(h)(8)(D).

[171] This test is defined in the proposed rule as the "identifying activity level." *See* proposed Rule 13h–1(a)(7). Section 13(h)(8)(c) of the Exchange Act authorizes the Commission to determine, by rule or regulation, the applicable identifying activity level. 15 U.S.C. 78m(h)(8)(c).

[172] *See* 15 U.S.C. 78m(h)(1) and (h)(2) (reflecting the purpose of Section 13(h) of the Exchange Act to allow the Commission to monitor the impact of large traders).

[173] *See supra* note 1.

trader status is achieved, as well as the requirement to inform its broker-dealers and others with whom it exercises investment discretion of its LTID and all accounts to which it applies. The proposed rule would require large traders to file Form 13H with the Commission promptly after first effecting transactions that reach the identifying activity level.[174] Large traders would be required to amend their Forms 13H by submitting an "Interim Filing" 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 (*e.g.,* change of name or address, type of organization, principal business, regulatory status, accounts maintained, or associations).[175] Regardless of whether any interim amended Form 13Hs are filed, large traders would be required to file Form 13H annually, within 45 days after the calendar year-end, in order to ensure the accuracy of all of the information reported to the Commission.[176]

The Commission estimates that the aggregate costs for all 400 potential large trader respondents to self-identify on Form 13H and obtain from the Commission and inform others of its LTID and the accounts to which it applies would be $1,317,600.[177] The Commission believes that potential large trader respondents would not need to modify their existing systems to comply with proposed Rule 13h–1. The Commission believes that large traders already employ software that tracks the number and market value of the shares they trade, and the Commission expects that firms would be able to use their existing systems to monitor whether they reach the identifying activity level. Accordingly, the estimate above does not include any software modification costs. In addition, the Commission estimates that the aggregate cost to file interim updates and the annual updated Form 13H would be $998,400.[178] The Commission does not expect these minimal costs per large trader of self-identification and reporting to the Commission to have any significant effect on how large traders conduct business because such costs would not be so large, when compared to level of activity at which a large trader would be trading, so as to result in a change in how such traders conduct business, create a barrier to entry, or otherwise alter the competitive landscape among large traders.

The term "price efficiency" has a technical meaning in financial economics, which is not the only way the term can be interpreted in the Exchange Act.[179] We have, nonetheless, considered the effect of proposed new Rule 13h–1 on price efficiency in terms of financial economic theory, under which the proposed large trader reporting system could adversely affect the extent to which security prices reflect available information. As discussed above, the Commission acknowledges that the proposal would entail certain costs on large traders. These costs would be incremental to certain large traders which, as part of their business model, expend resources to gather and process public information that is ultimately reflected into prices through their trading activity. The Commission is sensitive to the costs of the proposal and preliminarily believes these costs would have minimal impact on a large trader's decision to gather and process public information, and also have minimal impact on a large trader's decision to ultimately trade on this information. Because the large trader reported positions would be made available only to the Commission, and not to the public or a trader's competitors, we expect the proposed rule to have little impact on where a large trader conducts its business. The Commission therefore preliminarily believes that the proposal mitigates any potential adverse impact on price efficiency.

The Commission believes that the proposed rule's requirement for large traders to file and update Form 13H with the Commission, and to identify itself to each registered broker-dealer through which it effects transactions and to all others with whom it collectively exercises investment discretion, will have minimal adverse effect on efficiency, competition, or capital formation. In particular, the Commission does not believe that the requirement to self-identify to the Commission and the increased regulatory scrutiny it would entail would deter large traders from continuing to actively participate in the securities markets or would otherwise negatively impact large traders. Because the large trader positions will be reported only to the Commission, and not made public to a trader's customers or competitors, we expect the proposed rule to have little to no impact on competition.

The Commission acknowledges that, in addition to promoting price efficiency, 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 preliminarily believes that the proposed rule would have minimal impact on a large trader's secondary market trading activities, and therefore believes there would be little to no impact on capital formation. Further, the Commission believes that proposed Rule 13h–1(b) would enhance the Commission's efforts to monitor the markets, in furtherance of promoting efficiency and capital formation and thereby bolstering investor confidence.

The Commission has sought to limit compliance costs wherever possible. The Commission proposes to establish an initial "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

[174] *See* proposed Rule 13h–1(b)(1)(i).

[175] *See* proposed Rule 13h–1(b)(1)(iii).

[176] *See* proposed Rule 13h–1(b)(1)(ii).

[177] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f–1: (Compliance Manager (3 hours) at $258 per hour) + (Compliance Attorney (7 hours) at $270 per hour) + (Compliance Clerk (10 hours) at $63 per hour) × (400 potential respondents) = $1,317,600. Rule 13f–1, like the proposed rule, requires the filing of a form (Form 13F) upon exceeding a certain trading threshold. This figure is based on the estimated number of hours and hourly costs for the one-time, initial annualized burden for registered broker-dealers for development, including re-programming and testing of the systems to comply with the proposed rule. Hourly figures are from SIFMA's Management & Professional Earnings in the Securities Industry 2008 and SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 or 2.93, as appropriate, to account for bonuses, firm size, employee benefits, and overhead.

[178] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 6a–2: (Compliance Manager (2 hours) at $258 per hour) + (Compliance Attorney (5 hours) at $270 per hour) + (Compliance Clerk (10 hours) at $63 per hour) × (400 potential respondents) = $998,400. Rule 6a–2, like the proposed rule, requires: (1) Form amendments when there are any material changes to the information provided in the previous submission; and (2) submission of periodic updates of certain information provided in the initial Form 1, whether or not such information has changed.

[179] Where we use the terms "price efficiency" in this proposing release we are using terms of art as used in the economic literature proceeding under the "efficient markets hypothesis," under which financial prices are assumed to reflect all available information and accordingly adjust quickly to reflect new information. *See, e.g.,* Fama, Eugene F., (1991), Efficient capital markets: II, Journal of Finance; Fama E, French K. (1992), The Cross-Section of Expected Stock Returns, Journal of Finance. It should be noted that price efficiency is not identical with the ordinary sense of the word "efficiency."

calendar month. The Commission preliminarily believes that this threshold identifying activity level strikes an appropriate balance between the need to identify significant large traders and the burden on affected entities of capturing this information.

Further, when determining who would be subject to the proposed requirements as a "large trader," the proposed definition is intended to focus, in more complex organizations, on the parent company of the entities that employ the individuals that exercise investment discretion. The purpose of this focus is to narrow the number of persons that would need to self-identify as "large traders," while allowing the Commission to identify the primary institutions that conduct a large trading business. Focusing the identification requirements in this manner would enable the Commission to identify easily and be able to contact readily the principal group of persons that control large traders, while minimizing the filing and self-identification burdens that would be imposed on large traders.

In addition, the Commission is proposing an inactive filing status. The inactive filing status is intended to reduce the burden on infrequent traders who may trip the threshold on a particular occasion but do not regularly trade at sufficient levels to merit continued status as a large trader. In particular, large traders that have not effected aggregate transactions at any time during the previous full calendar year that are equal to or greater than the identifying activity level would be eligible for inactive status upon checking a box on the cover page of their next annual Form 13H filing.[180] The proposed inactive status is designed to minimize the impact of the proposed rule on natural persons that infrequently trade in a magnitude that may warrant imposing the added regulatory burdens of the proposed rule. As a subset of inactive status, proposed Form 13H would provide a space for a large trader to reflect the termination of its operations (*i.e.,* inactive status where the entity, because it has discontinued operations, has no potential to requalify for large trader status in the future). This designation would allow large traders to inform the Commission of their status and would signal to the Commission not to expect future amended Form 13H filings from the large trader. For example, termination status would be relevant in the case of a merger or acquisition where the large trader does not survive the corporate transaction. In addition, with respect to registered broker-dealers, the termination filing status should reduce the burden on registered broker-dealers who would no longer have to track the entity's LTID.

From time to time, information provided by large traders through their Forms 13H may become inaccurate. Rather than requiring prompt updates whenever this occurs, the proposed rule instead would require "Interim Filings" only quarterly (and only when the prior submission becomes inaccurate). The quarterly period is designed specifically to mitigate the filing burden of large traders.

A further limitation of the proposal targeted at balancing between capturing significant trading activity and the burden of capturing this information is that the Commission has proposed several exceptions from the definition of "transaction." These exceptions, among others, would include: any transaction that constitutes a gift, any transaction effected by a court-appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate, any transaction effected pursuant to a court order or judgment, and any transaction effected pursuant to a rollover of qualified plan or trust assets subject to Section 402(c)(1) of the Internal Revenue Code.[181] The Commission believes that narrowing the definition of a transaction by adding these exclusions would reduce the impact of the proposed rule on infrequent traders and registered broker-dealers while at the same time allowing the Commission to focus the rule on those entities and activities most appropriate to identify under the proposed rule.

2. Registered Brokers and Registered Dealers

The Commission preliminarily anticipates that the three primary costs to registered broker-dealers from the proposal are: (1) Recordkeeping requirements; (2) reporting requirements; and (3) monitoring requirements.

The rule would require that registered broker-dealers keep records of transactions for each person they know is a large trader and for each person who has not complied with the information requirements that they have reason to know is a large trader based on transactions effected by or through such broker-dealer (an "Unidentified Large Trader").182 The proposed rule would require brokers and dealers to furnish transaction records of both identified large traders and Unidentified Large Traders to the Commission upon request. While most of the proposed data required to be kept pursuant to proposed Rule 13h–1 is already required under Rule 17a–25 and reported via the EBS system, the large trader system would contain a few additional fields of information, notably the LTID number(s) and execution time. The proposed rule would require that such records be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a–4(b) under the Exchange Act.[183]

The Commission preliminarily estimates that the one-time, initial expense for each registered brokers-dealer for development, including re-programming and testing of the systems, would be approximately $106,060.[184] The Commission also preliminarily believes that there would be minimal additional costs associated with the operation and maintenance of the large trader system, because the proposed large trader system would utilize the existing EBS system. Accordingly, the total start-up, operating, and maintenance cost burden for registered broker-dealers is estimated to be $31,818,000 (300 × $106,060 = $31,818,000). As previously noted, this figure is based on the estimated number of hours for initial internal development and implementation, including software development, taking into account the fact that new data elements are required to be captured and to be available for reporting to the Commission on the morning following the day on which the transactions were effected. Because broker-dealers already capture most of the data required to be captured under proposal Rule 13h–1 pursuant to Rule 17a–25, the Commission does not expect any additional hardware costs.

The proposed rule would require registered broker-dealers to report transactions that equal or exceed the

[180] *See* proposed Rule 13h–1(b)(3)(iii).

[181] *See* proposed Rule 13h–1(a)(6).

[182] *See* proposed Rule 13h–1(a)(9) (defining "Unidentified Large Trader").

[183] 17 CFR 240.17a–4.

[184] The Commission derived the total estimated one-time burdens from the following: (Computer Ops Dept. Mgr. (30 hours) at $335 per hour) + (Sr. Database Administrator (25 hours) at $281 per hour) + (Sr. Programmer (150 hours) at $292 per hour) + (Programmer Analyst (100 hours) at $193 per hour) + (Compliance Manager (20 hours) at $258 per hour) + (Compliance Attorney (10 hours) at $270 per hour) + (Compliance Clerk (20 hours) at $63 per hour) + (Sr. Systems Analyst (50 hours) at $244 per hour) + (Director of Compliance (5 hours) at $388 per hour) + (Sr. Computer Operator (35 hours) at $75 per hour) = $106,060. As noted above, the Commission acknowledged that, in some instances, multiple LTIDs may be disclosed to a registered broker-dealer for a single account. Therefore, our cost estimate factors in the cost that registered broker-dealers would need to develop systems capable of tracking multiple LTIDs.

reporting activity level effected by or through such broker-dealer for both identified and Unidentified Large Traders. More specifically, upon the request of the Commission, registered broker-dealers would be required to report electronically, in machine-readable form and in accordance with instructions issued by 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 other persons for whom records must be maintained, which equal or exceed the reporting activity level. These broker-dealers would need to report a particular day's trading activity only if it equals or exceeds the "reporting activity level," but would be permitted to report all data without regard to that threshold.

The Commission estimates that the costs of the proposed reporting requirements would be $16,200,000.[185] The Commission is taking into account that the proposed rule would utilize the recordkeeping and reporting infrastructure of the existing EBS system.

Paragraph (f) of proposed Rule 13h–1 would establish a "safe harbor" for the proposed duty to monitor for Unidentified Large Traders.[186] Pursuant to proposed paragraph (a)(9), in the case of an Unidentified Large Trader, 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." A registered broker-dealer would not be deemed to know or to have reason to know that a person is an Unidentified Large Trader if: (1) It does not have actual knowledge that a person is a large trader; and (2) it established and maintained policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed safe harbor. Paragraphs (f)(1) and (2) of the proposed rule provide the specific elements that would be required for the safe harbor. Paragraph (f)(2) of the proposed rule would require that broker-dealer monitoring policies and procedures contain systems reasonably designed to inform persons of their obligations to file proposed Form 13H and disclose their large trader status.

The Commission estimates the initial, one-time burden to establish policies and procedures pursuant to the proposed safe harbor provision would be $4,756,800.[187] The Commission estimates that the ongoing burden would be $1,215,000.[188] The Commission believes that the proposed safe harbor would reduce the burden of the monitoring requirements of the proposed rule on registered broker-dealers. Among other things, they would limit the broker-dealer's obligations to only those Unidentified Large Traders that should be readily identifiable and apparent to the broker-dealer, and would require the broker-dealer to inform such persons of their obligations to file proposed Form 13H and disclose their large trader status to the Commission.

To assist the Commission in evaluating the costs that could result from the proposed rule, the Commission requests comments on the potential costs identified in this proposal, as well as any other costs that could result from the proposed rule. The Commission asks commenters to quantify those costs, where possible, and provide analysis and data to support their views on the costs. While the Commission does not anticipate that there would be significant adverse consequences to a broker-dealer's business as a result of the proposed rule, it seeks commenters' views regarding the possibility of any such impact. For instance, would the proposed rule impact a broker-dealer's ability to attract or retain its large trader customers?

In addition, the Commission requests specific comment on the following questions:

- Are there ways to further reduce the burdens of the filing requirements on large traders? Is the provision for inactive status sufficient?
- Does the capture of trade execution times in a large trader reporting system present any particular technological or other operational challenges?
- Does the potential capture of multiple LTIDs raise any particular issues?
- What other costs might registered broker-dealers incur in developing policies and procedures to monitor for Unidentified Large Traders? Are there ways to further reduce the burdens of monitoring for Unidentified Large Traders and informing them of their obligations to file Form 13H?
- Do commenters believe that the costs of operating and maintaining a large trader reporting system will result in additional costs beyond the existing EBS system?
- Are there ways to further reduce the burdens of the proposed large trader reporting system?
- Would the proposed rule have any unintended, negative consequences for the U.S. markets?

Commenters should provide specific data and analysis to support any comments they submit with respect to the costs and benefits discussed above and any other costs and benefits identified by the commenters.

VI. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[189] In addition, section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[190] Exchange Act section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission is proposing Rule 13h–1 pursuant to our authority under section 13(h) of the Exchange Act. Section 13(h)(2) requires the Commission, when engaging in rulemaking pursuant to that authority that would require every registered broker-dealer to make and keep for prescribed periods such records as the Commission by rule or regulation prescribes, to consider whether such rule is "necessary or appropriate in the public interest, for the protection of

[185] *See supra* text accompanying note 151. The Commission derived the total estimated ongoing burdens from the following: (Compliance Attorney (2 hours) at $270 per hour) × (100 requests per year) × (300 potential respondents) = $16,200,000.

[186] *See* proposed Rule 13h–1(a)(9) (defining an 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.")

[187] *See supra* note 153. The Commission derived the total estimated one-time burdens from the following: (Sr. Programmer (10 hours) at $292 per hour) + (Compliance Manager (10 hours) at $258 per hour) + (Compliance Attorney (10 hours) at $270 per hour) + (Compliance Clerk (20 hours) at $63 per hour) + (Sr. Systems Analyst (10 hours) at $244 per hour) + (Director of Compliance (2 hours) at $388 per hour) + (Sr. Computer Operator (8 hours) at $75 per hour) x (300 potential respondents) = $3,982,800.

[188] *See supra* note 154. The Commission derived the total estimated ongoing burdens from the following: (Compliance Attorney at (15 hours) at $270 per hour) x (300 potential respondents) = $1,215,000.

[189] 15 U.S.C. 78c(f).

[190] 15 U.S.C. 78w(a)(2).

investors, or otherwise in furtherance of the purposes of [the Exchange Act]."[191]

A. Competition

We consider in turn the impact of proposed new Rule 13h–1 on the securities markets and market participants. Information provided by market participants and broker-dealers in their registrations and filings with us informs our views on the structure of the markets they comprise. We begin our consideration of potential competitive impacts with observations of the current structure of these markets.

The securities trading industry is a competitive one with reasonably low barriers to entry. The intensity of competition across trading platforms in this industry has increased in the past decade as a result of a number of factors, including market reforms and technological advances. This increase in competition has resulted in decreases in market concentration, more competition among trading centers, a proliferation of trading platforms competing for order flow, and decreases in trading fees.

The reasonably low barriers to entry for trading centers are evidenced, in part, by the fact that new entities, primarily alternative trading systems ("ATSs"), continue to enter the market.[192] For example, currently, there are approximately 50 registered ATSs. In addition, the Commission within the past few years has approved applications by two entities—BATS and Nasdaq—to become registered as national securities exchanges for trading equities, and approved proposed rule changes by two existing exchanges—International Securities Exchange, LLC and Chicago Board Options Exchange, Incorporated—to add equity trading facilities to their existing options business. We believe that competition among trading centers has been facilitated by Rule 611 of Regulation NMS,[193] which encourages quote-based competition between trading centers; Rule 605 of Regulation NMS,[194] which empowers investors and broker-dealers to compare execution quality statistics across trading centers; and Rule 606 of Regulation NMS,[195] which enables customers to monitor order routing practices.

Broker-dealers are required to register with the Commission and at least one SRO. The broker-dealer industry, including market makers, is a competitive industry with most trading activity concentrated among several larger participants and thousands of smaller participants competing for niche or regional segments of the market. There are approximately 5,178 registered broker-dealers, of which approximately 890 are small broker-dealers.[196]

Larger broker-dealers often enjoy economies of scale over smaller broker-dealers and compete with each other to service the smaller broker-dealers, who are both their competitors and customers. The reasonably low barriers to entry for broker-dealers are evidenced, for example, by the fact that the average number of new broker-dealers entering the market each year between 2001 and 2008 was 389.[197]

As discussed above, the Commission acknowledges that the proposal would entail certain costs. In particular, requiring registered broker-dealers to establish recordkeeping systems to capture the required information, in particular the new fields that are not currently captured under the existing EBS system, would require one-time initial expenses, as discussed above. In addition, to utilize the proposed safe harbor, registered broker-dealers would need to implement policies and procedures to monitor their customers' trading in order to determine whether customers' trades would trigger the threshold for large trader status. Preliminarily, the Commission does not believe that these expenses would adversely affect competition.

In our judgment, the costs of proposed Rule 13h–1 would not be so large as to significantly raise barriers to entry, or otherwise alter the competitive landscape of the industries involved because the incremental costs of Rule 13(h) that would be incurred by broker-dealers would be small relative to the costs of complying with the existing EBS system.[198] In industries characterized by reasonably low barriers to entry and competition, the viability of some of the less successful competitors may be sensitive to regulatory costs. Nonetheless, we believe that the broker-dealer industry would remain competitive, despite the costs associated with implementing proposed new Rule 13h–1, even if those costs influence the entry or exit decisions of individual broker-dealer firms at the margin. The Commission does not expect that the costs associated with proposed new Rule 13h–1, which are small relative to the costs of complying with the existing EBS system, would be a determining factor in a broker-dealer's entry or exit decision or decision to accept large trader clients because the volume of trading associated with large traders and resultant revenue that could be gained by servicing a large trader would outweigh the costs associated with the proposed rule.

Further, the Commission would not be compelled to disclose any information required to be kept or reported under Section 13(h) of the Exchange Act, including information kept or reported pursuant to proposed Rule 13h–1.[199] Accordingly, information and trading data that the Commission would obtain pursuant to the proposed rule would not be shared with others and would not be available to other large traders or broker-dealers.

The approach of proposed new Rule 13h–1 would advance the purposes of the Exchange Act in a number of significant ways. In light of recent market turmoil and the increasing prominence, sophistication, and trading capacity of large traders, the Commission believes it should further enhance its ability to collect and analyze information on large traders. The Commission believes that the proposed large trader reporting system could enhance its ability to identify large traders and collect trading data on their activity at a time when, for example, many such traders employ rapid algorithmic systems that quote and trade in huge volumes. The proposed large trader reporting system would provide a basic set of tools necessary to allow the Commission to monitor and analyze more readily and efficiently the impact of large traders,

[191] The Commission is proposing Rule 13h–1(b) relating to identification requirements for large traders pursuant to Section 13(h)(1) of the Exchange Act, which does not require the Commission to consider the factors identified in Section 3(f), 15 U.S.C. 78c(f). Analysis of the effects, including the considerations under Section 23(a), of proposed Rule 13h–1(b) is discussed above in Sections IV and V.

[192] *See* Securities Exchange Act Release No. 60997 (Nov. 13, 2009), 74 FR 61208, 61234 (Nov. 23, 2009) (discussing the reasonably low barriers to entry for ATSs and that these reasonably low barriers to entry have generally helped to promote competition and efficiency).

[193] 17 CFR 242.611.

[194] 17 CFR 242.605.

[195] 17 CFR 242.606.

[196] These numbers are based on a review of 2007 and 2008 FOCUS Report filings reflecting registered broker-dealers, and discussions with SRO staff. The number does not include broker-dealers that are delinquent on FOCUS Report filings.

[197] This number is based on a review of FOCUS Report filings reflecting registered broker-dealers from 2001 through 2008. The number does not include broker-dealers that are delinquent on FOCUS Report filings. New registered broker-dealers for each year during the period from 2001 through 2008 were identified by comparing the unique registration number of each broker-dealer filed for the relevant year to the registration numbers filed for each year between 1995 and the relevant year.

[198] *See supra* Sections IV (Paperwork Reduction Act) and V (Consideration of Costs and Benefits) for a detailed description of the expected costs.

[199] *See supra* text following note 89.

including high–frequency traders, on the securities markets.

The Commission preliminarily believes that the proposal to establish the large trader reporting system would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In particular, the Commission believes that the proposal would implement the Commission's authority under Section 13(h) of the Exchange Act at a crucial time when large traders play an increasingly prominent role in the securities markets.

B. Capital Formation

As discussed above, the Commission preliminary believes that the proposed rule will have little to no direct impact on capital formation. However, proposed new Rule 13h–1 is intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume of shares, a large fair market value or a large exercise value, as well as to assist the Commission's enforcement of the federal securities laws. As noted in Paragraph B of Section II, the proposed rule focuses on the core of the large trader reporting system—the entities that control persons that exercise investment discretion and are responsible for trading large amounts of securities. As these entities can represent significant sources of liquidity and overall trading volume, their trading may have a direct impact on the cost of capital of securities issuers. As such, the Commission's ability to promptly obtain information from registered broker-dealers on large trader activity should better enable the Commission to understand the impact of large traders on the securities markets. As the Commission improves its understanding, it should be better positioned to administer and enforce the federal securities laws, thereby promoting the integrity and efficiency of the markets, as well as, ultimately, investor confidence and capital formation. For example, the information collected from Rule 13h–1(b) would allow for a more timely reconstruction of trading activity during a market crisis and thus could better position the Commission to craft any regulatory responses.

Proposed new Rule 13h–1 is intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume of shares, a large fair market value or a large exercise value, as well as to assist the Commission's enforcement of the federal securities laws. As noted in Paragraph B of Section II, the proposed rule focuses on the core of the large trader reporting system—the entities that control persons that exercise investment discretion and are responsible for trading large amounts of securities. As these entities can represent significant sources of liquidity and overall trading volume, their trading may have a direct impact on the cost of capital of securities issuers. As such, the Commission's ability to promptly obtain information from registered broker-dealers on large trader activity should assist the Commission's efforts to indirectly promote capital formation by better enabling the Commission to understand the impact of large traders on the securities markets. For example, the information collected from proposed Rule 13h–1(b) would allow for a more timely reconstruction of trading activity of large traders during a market crisis, and thus could better position the Commission to craft any regulatory responses. Specifically, we believe that, 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, proposed Rule 13h–1 could help maintain investor confidence in the markets, and thus could add depth and liquidity to the markets and promote capital formation. Further, the Commission preliminarily 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 foreign).

C. Efficiency

Proposed new Rule 13h–1 is designed to achieve the appropriate balance between our 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 proposed large trader system.

The Commission preliminarily believes that the disclosure by registered broker-dealers to regulators that would be achieved by the proposed large trader reporting system 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, to instead assist with large-scale investigations and market reconstructions involving numerous stocks during peak trading volume periods. The proposal 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.

D. Request for Comment

The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed large trader reporting system would place a burden on competition, as well as the effect of the proposal on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [200] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[201] of the Administrative Procedure Act,[202] 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." [203] 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." [204]

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 person that, on the last day of its most recent fiscal year, had total assets of $5

[200] 5 U.S.C. 601 *et seq.*

[201] 5 U.S.C. 603(a).

[202] 5 U.S.C. 551 *et seq.*

[203] 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 proposed 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).

[204] *See* 5 U.S.C. 605(b).

million or less.[205] 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 preliminarily believes that proposed Rule 13h–1 and Form 13H would not, if adopted, have a significant economic impact on a substantial number of small entities.

Proposed Rule 13h–1 and Form 13H would 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 publicly traded securities. Specifically, the proposed 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, 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 proposed 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, proposed Rule 13h–1 would 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 proposed 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, that 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.

The Commission solicits comment as to whether proposed Rule 13h–1 and Form 13H would have a significant economic impact on a substantial number of small entities. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[206] the Commission must advise the OMB as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed rule on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Statutory Authority

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

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 proposed to be 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, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–ll, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

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

§ 240.13h–l Large trader reporting system.

(a) Definitions.—For purposes of this section:

(1) The term *large trader* means any person that 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.

(2) The term *person* has the same meaning as in Section 13(h)(8)(E) of the Securities Exchange Act of 1934.

(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. 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. A person's employees who exercise investment discretion within the scope of their employment are deemed to do so on behalf of such person.

[205] 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).

[206] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

(5) The term *NMS security* has the meaning provided for in Rule 600(b)(46) under the Securities Exchange Act of 1934.

(6) The term *transaction or transactions* means all transactions in NMS securities, including exercises or assignments of option contracts, except for the following transactions:

(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, 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; or

(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.

(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 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.

(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. 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.

(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 rule, 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. Each large trader also shall disclose its large trader identification number to all others with whom it collectively exercises investment discretion.

(3) Filing requirement.

(i) Compliance by controlling person. A large trader shall not be required to separately comply with the requirements of paragraph (b) of this section 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 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 at any time during the year shall become inactive upon filing a Form 13H 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 only, 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 only, shall be aggregated; and

(iii) Under no circumstances shall a person be permitted to 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 effected under this rule.

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

(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,

(ii) An account over which such broker-dealer exercises investment discretion together with a large trader or an Unidentified Large Trader, or (iii) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, 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 of the entity maintaining the information and the clearing house numbers 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 rule 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, 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 shall electronically report to the Commission, using the infrastructure supporting 17 CFR 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 17 CFR 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 before the close of business on the day specified in the request for such transaction information.

(f) Monitoring safe harbor. For the purposes of this rule, a registered broker-dealer who either is a large trader, exercises investment discretion over an account together with a large trader or an Unidentified Large Trader, carries an account for a large trader or an Unidentified Large Trader, or effects transactions directly or indirectly for a large trader where a non-broker-dealer carries the account shall not be deemed to know or have reason to know that a person is a large trader if it establishes policies and procedures reasonably designed to assure compliance with the identification requirements of this rule and does not have actual knowledge that a person is a large trader. Policies and procedures shall be deemed to satisfy this requirement if they include:

(1) Systems reasonably designed to detect and identify Unidentified Large Traders based upon transactions effected through an account or a group of accounts considering account name, tax identification number, or other information readily available to such broker-dealer; and

(2) Systems reasonably designed to inform Unidentified Large Traders of their obligations to file Form 13H and disclose large trader status under this rule.

(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 rule to the extent that such exemption is consistent with the purposes of the Securities Exchange Act.

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 Rule 13h–1(b) thereunder [§ 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.

BILLING CODE 8011–01–P

United States Securities and Exchange Commission
Washington, DC 20549
FORM 13H

Information Required Regarding 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)_____

[ ] ANNUAL FILING: Calendar year ending _____
Items and schedules being updated_____

[ ] INTERIM FILING: Items and schedules being corrected_____

Effective date of each correction_____

[ ] 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

_____ _____
LTID Taxpayer Identification Number

_____
Business Address (Street, City, State, Zip)

Telephone No. (___) ___ - ____ Facsimile No. (___) ___ - ____ Email _____

The Form, schedules, and continuation sheets must be submitted by a natural person who either is the large trader or is a person authorized by the large trader to make this submission. If this authorized person is anyone other than the large trader named above, complete the item immediately below:

_____

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

_____

Relationship to Large Trader

_____

Business Address (Street, City, State, Zip)

Telephone No. (___) ___ - ____ Facsimile No. (___) ___ - ____ 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.

Pursuant to the Securities Exchange Act of 1934, the undersigned has caused this form to be signed on its behalf in the city of _____ and the State of _____ on the _____ day of _____, 2____.

_____

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)

[ ] Broker or Dealer
[ ] Investment Adviser
[ ] Insurance Company
[ ] Other Financial Institution
[ ] Commodity Pool Operator
[ ] Bank
[ ] Investment Company registered under the Investment Company Act
[ ] Pension Trustee
[ ] Holding Company
[ ] Government Securities Broker or Dealer
[ ] Municipal Securities Broker or Dealer
[ ] Futures Commission Merchant
[ ] Other (specify) _____
[ ] Hedge Fund or other Fund not registered under the Investment Company Act

ITEM 2. SECURITIES AND EXCHANGE COMMISSION REGISTRATION

Does the large trader, or any of its affiliates, file any forms with the Commission?

[ ] Yes [ ] No

If yes, specify the forms filed:

-- Use Continuation Sheets if Necessary --

Entity	Form(s) Filed	SEC File No. or CRD Number (if applicable)

ITEM 3. REGULATED ENTITIES

(a) Is the large trader or any of its affiliates registered with the CFTC as a "registered trader" pursuant to sections 4i and 9 of the Commodity Exchange Act?

[ ] Yes [ ] No

If yes, specify the registration number: _____

Is the large trader or any of its affiliates otherwise registered under the Commodity Exchange Act?

[ ] Yes [ ] No

If yes, specify the type of registration and number:

_____
_____
_____
_____

-- Use Continuation Sheets if Necessary --

(b) Is the large trader or any of its affiliates 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?

[ ] Yes [ ] No

If yes, identify each entity and its bank regulator:

_____ _____

_____ _____

(c) Is the large trader or any of its affiliates an insurance company?

[ ] Yes [ ] No

If yes, identify each entity and its insurance regulator:

_____ _____

_____ _____

(d) Is the large trader or any of its affiliates regulated by a foreign regulator?

[ ] Yes [ ] No

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

_____ _____

_____ _____

ITEM 4. ORGANIZATION/INDIVIDUAL INFORMATION

Complete and submit Schedule 4 with this Form.

ITEM 5. LARGE TRADER AFFILIATES

Does the large trader have any affiliates that either exercise investment discretion over accounts that hold NMS securities or that beneficially own NMS securities?

[ ] Yes [ ] No

If yes, identify each affiliate and its relationship to the large trader below.

-- Use Continuation Sheets if Necessary --

Name	Business	Relationship to the Large Trader	LTID (if any)

ITEM 6. LIST OF ACCOUNTS OVER WHICH THE LARGE TRADER EXERCISES INVESTMENT DISCRETION

Complete and submit Schedule 6 with this Form.

SCHEDULE 4 TO FORM 13H

Page ___ of ___ Name of Large Trader _____ LTID _____

ITEM 1. LARGE TRADER ORGANIZATION (check as many as apply)

[ ] Self-Employed (for individuals)
[ ] Otherwise Employed (for individuals)
[ ] Trustee
[ ] Limited Liability Company
[ ] Partnership
[ ] Limited Partnership
[ ] Corporation
[ ] Other _____

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:

-- Use Continuation Sheets if Necessary --

Name	Status (check one for each)	
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner
_____	[ ] General Partner	[ ] Limited Partner

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

-- Use Continuation Sheets if Necessary --

Name	Status (check one for each)		
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee
_____	[ ] Officer	[ ] Director	[ ] Trustee

ITEM 2. JURISDICTION IN WHICH THE LARGE TRADER ENTITY IS INCORPORATED OR ORGANIZED:

_____

(city, state)

ITEM 3. PRINCIPAL PLACE OF BUSINESS, IF DIFFERENT THAN INFORMATION PROVIDED ON THE COVER PAGE:

_____

(street, city, state, zip)

ITEM 4. DESCRIBE THE NATURE OF THE LARGE TRADER ENTITY'S BUSINESS

_____

SCHEDULE 6 TO FORM 13H
LIST OF ACCOUNTS OVER WHICH THE LARGE TRADER EXERCISES INVESTMENT DISCRETION

Page ___ of ___ Name of Large Trader _____ LTID _____

ITEM 1. DESIGNATE THE PERSON(S) TO CONTACT FOR INFORMATION REGARDING TRANSACTIONS EFFECTED THROUGH THE ACCOUNTS LISTED ON THIS SCHEDULE:

-- Use Continuation Sheets if Necessary --

_____
Name and Title of Designated Person

_____
Business Address (street, city, state, zip)

Telephone No. (___) ___ - ____ Facsimile No. (___) ___ - ____ Email_____

ITEM 2. IDENTIFICATION OF ACCOUNTS

-- Use Continuation Sheets if Necessary --

Broker-Dealer	Broker-Dealer Account Number	Account Name	LTIDs of Other Large Traders That Exercise Investment Discretion Over the Account

Large traders are required to disclose their LTID to their executing broker-dealers, including those listed on this schedule if applicable, and to comply with the identification requirements of Rule 13h-1.

INSTRUCTIONS FOR FORM 13H

A. Instructions for Form 13H—Cover Page.
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.

If the filing is an "Initial Filing," indicate the first date on which the aggregate number of transactions effected reached the identifying activity level. An initial filing must include a manually signed Form 13H and all applicable Schedules.

If the filing is an "Annual Filing," indicate the ending date of the applicable calendar year and list the specific Items or Schedules that are amended or changed. If no information has changed, the large trader need only complete and sign the cover pages.

If the filing is an "Interim Filing" indicate the Items and Schedules being corrected and the effective date(s) of the corrections. "Interim Filings" must be filed 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. A large trader must file an "Interim Filing," when, for example, it changes its name, business address, organization type (e.g., a 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 it adds or closes brokerage accounts through which it trades. A large trader also must file an "Interim Filing" to reflect changes in affiliations (e.g., the large trader acquires or is acquired by another entity, an existing affiliate becomes a large trader) and joint account management (e.g., a large trader assumes sole management authority over an account that formerly was jointly managed with another large trader).

If the filing is for "Inactive Status," indicate the date that the large trader qualified 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.

All filings, other than the "Initial Filing," must indicate the applicable LTID assigned by the Commission and the Taxpayer Identification Number of the large trader. A large trader of inactive status that subsequently resumes activities requiring it to file Form 13H will retain the LTID initially assigned by the Commission and must include that LTID in its filing for "Reactivated Status."

B. Instructions for Form 13H—Items 1 through 5.
Item 1. Business of the Large Trader. Specify the type of business engaged in by the large trader by checking one or more of the listed business types. If the large trader is engaged in more than one type of business, check each type that applies to the large trader. If the large trader is an individual, check "Other" and specify the occupation of such individual. Large trader trust companies and thrift institutions must check "Other Financial Institution." The large trader must disclose in Item 1 only those businesses in which it is directly engaged; businesses

engaged in by affiliates of the large trader must be disclosed in Item 5.

Item 2. SEC Registrations. Indicate whether the large trader or any of its affiliates files forms with the Commission. If "Yes" is checked, identify the entity and the applicable form(s) filed.

SEC file numbers may be obtained through EDGAR, and CRD numbers may be obtained by calling the member services office of the Financial Industry Regulatory Authority (FINRA), during normal business hours.

Item 3. Regulated Entities.
Indicate whether the large trader or any of its affiliates is registered with the Commodity Futures Trading Commission as a "Reporting Trader" pursuant to Sections 4i and 9 of the Commodity Exchange Act, or otherwise is registered under the Commodity Exchange Act. If so, for each entity, specify the number and type of registration. Indicate whether the large trader 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, for each entity, identify the bank regulator. Indicate whether the large trader or any of its affiliates is an insurance company and, if so, identify each entity and its insurance regulator. Indicate whether the large trader or any of its affiliates is regulated by a foreign regulator. If so, for each entity, identify the foreign regulator(s). Unlike Item 1, Item 3 applies to the large trader and its affiliates.

Item 4 and Schedule 4. Type of Large Trader.
The large trader must fill out Schedule 4, which captures basic organizational information. The term "executive officer," used in Schedule 4, means "policy-making officer" and otherwise is interpreted in accordance with Rule 16a-1(f) under the Exchange Act. If the entity is incorporated in more than one jurisdiction, all jurisdictions must be identified. All terms, including "limited liability company," have the meanings ascribed to them in the United States.

Item 5. Large Trader Affiliates.
Indicate in Item 5a whether the large trader has any affiliates that either exercise investment discretion over accounts that hold or beneficially own NMS securities. For purposes of the Form, an "affiliate" is any person that, directly or indirectly, controls, is under common control with, or is controlled by the large trader. If "Yes" is checked, identify all affiliates, and describe their businesses and relationships to the large trader (e.g., direct subsidiary, general partner in Limited Partnership A). Disclose in Item 5b names and LTIDs of affiliated large traders (if any).

Item 6 and Schedule 6. List of Large Trader Accounts.
All large traders must fill out Schedule 6, which requires a large trader to list information about the accounts over which the large trader exercises investment discretion. Provide the following information: the name of the registered broker-dealer that holds the account, the account number, the account name, and, if another large trader also exercises investment discretion over an account, the LTID of that other large trader. Large traders may attach internally produced lists of accounts to the Schedule provided that such lists capture all required information in a format substantially similar to the Schedule. If the large trader does not know the LTID of the other large traders at the time of filing (e.g., when it files its "Initial Filing"), it must submit

promptly an "Interim Filing" upon learning those LTIDs. Provide also name(s) and contact information for the person(s) designated to provide information about the transactions effected through these accounts.

Qualifications of the Designated Contact Person. The large trader is required to designate a contact person for information regarding the accounts listed on the Schedule. The designated contact person must: (i) be a natural person; (ii) be employed by or otherwise affiliated with the large trader; (iii) be authorized by the large trader to respond promptly to any inquiries or requests from the Commission.

Requests for Information. The Commission may require the large trader to provide descriptive or clarifying information about the information disclosed in the Form 13H.

* * * * *

By the Commission.

Dated: April 14, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9025 Filed 4–22–10; 8:45 am]

BILLING CODE 8011–01–C