

Securities and Exchange Commission

§ 240.13h-1

said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and Title)

(Date)

[56 FR 30069, July 1, 1991, as amended at 61 FR 24656, May 15, 1996; 62 FR 544, Jan. 3, 1997; 67 FR 36705, May 24, 2002; 73 FR 17814, Apr. 1, 2008]

§ 240.13f-1 Reporting by institutional investment managers of information with respect to accounts over which they exercise investment discretion.

(a)(1) Every institutional investment manager which exercises investment discretion with respect to accounts holding section 13(f) securities, as defined in paragraph (c) of this section, having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100,000,000 shall file a report on Form 13F (§ 249.325 of this chapter) with the Commission within 45 days after the last day of such calendar year and within 45 days after the last day of each of the first three calendar quarters of the subsequent calendar year.

(2) An amendment to a Form 13F (§ 249.325 of this chapter) report, other than one reporting only holdings that were not previously reported in a public filing for the same period, must set forth the complete text of the Form 13F. Amendments must be numbered sequentially.

(b) For the purposes of this rule, "investment discretion" has the meaning set forth in section 3(a)(35) of the Act (15 U.S.C. 78c(a)(35)). An institutional investment manager shall also be deemed to exercise "investment discretion" with respect to all accounts over which any person under its control exercises investment discretion.

(c) For purposes of this rule "section 13(f) securities" shall mean equity securities of a class described in section 13(d)(1) of the Act that are admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered secu-

rities association. In determining what classes of securities are section 13(f) securities, an institutional investment manager may rely on the most recent list of such securities published by the Commission pursuant to section 13(f)(4) of the Act (15 U.S.C. 78m(f)(4)). Only securities of a class on such list shall be counted in determining whether an institutional investment manager must file a report under this rule (§ 240.13f-1(a)) and only those securities shall be reported in such report. Where a person controls the issuer of a class of equity securities which are "section 13(f) securities" as defined in this rule, those securities shall not be deemed to be "section 13(f) securities" with respect to the controlling person, provided that such person does not otherwise exercise investment discretion with respect to accounts with fair market value of at least \$100,000,000 within the meaning of paragraph (a) of this section.

(Secs. 3(b), 13(f) and 23 of the Exchange Act (15 U.S.C. 78c(b), 78m(f) and 78w))

[43 FR 26705, June 22, 1978, as amended at 44 FR 3034, Jan. 15, 1979; 64 FR 2849, Jan. 19, 1999; 76 FR 71876, Nov. 21, 2011]

§ 240.13h-1 Large trader reporting.

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

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

(i) Directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level; or

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

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

(3) The term *control* (including the terms *controlling*, *controlled by* and *under common control with*) means the possession, direct or indirect, of the

power to direct or cause the direction of the management and policies of a person, whether through the ownership of securities, by contract, or otherwise. For purposes of this section only, any person that directly or indirectly has the right to vote or direct the vote of 25% or more of a class of voting securities of an entity or has the power to sell or direct the sale of 25% or more of a class of voting securities of such entity, or in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity.

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

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

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

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

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

(iii) Any transaction that constitutes a gift;

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

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

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

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

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

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

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

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

(8) The term *reporting activity level* means:

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

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

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

(9) The term *Unidentified Large Trader* means each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this section that a registered broker-dealer knows or has reason to know is a large trader. For purposes of determining under this section whether a registered broker-dealer has reason to know that a person is large trader, a

registered broker-dealer need take into account only transactions in NMS securities effected by or through such broker-dealer.

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

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

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

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

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

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

(ii) *Compliance by controlled person*. A large trader shall not be required to separately comply with the requirements of this paragraph (b) if one or more persons controlled by such large trader collectively comply with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) of this section applicable to such large trader with respect to all of its accounts.

(iii) *Inactive status*. A large trader that has not effected aggregate trans-

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Identifying symbol assigned to the security;

(iii) Date transaction was executed;

(iv) The number of shares or option contracts traded in each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an option contract, whether the transaction was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment;

(v) Transaction price;

(vi) Account number;

(vii) Identity of the exchange or other market center where the transaction was executed.

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

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

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

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

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

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

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

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

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

(e) *Reporting requirements for brokers and dealers.* Upon the request of the Commission, every registered broker-dealer who is itself a large trader or carries an account for a large trader or an Unidentified Large Trader shall electronically report to the Commission, using the infrastructure supporting § 240.17a-25, in machine-readable form and in accordance with instructions issued by the Commission, all information required under paragraphs (d)(2) and (d)(3) of this section for all transactions effected directly or

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

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

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

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

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

(g) *Exemptions.* Upon written application or upon its own motion, the Commission may by order exempt, upon specified terms and conditions or for stated periods, any person or class of persons or any transaction or class of transactions from the provisions of this section to the extent that such exemption is consistent with the purposes of the Securities Exchange Act of 1934 (15 U.S.C. 78a).

[76 FR 47002, Aug. 3, 2011]

§ 240.13k-1 Foreign bank exemption from the insider lending prohibition under section 13(k).

(a) For the purpose of this section:

(1) *Foreign bank* means an institution:

(i) The home jurisdiction of which is other than the United States;

(ii) That is regulated as a bank in its home jurisdiction; and

(iii) That engages directly in the business of banking.

(2) *Home jurisdiction* means the country, political subdivision or other place in which a foreign bank is incorporated or organized.

(3) *Engages directly in the business of banking* means that an institution engages directly in banking activities that are usual for the business of banking in its home jurisdiction.

(4) *Affiliate, parent* and *subsidiary* have the same meaning as under 17 CFR 240.12b-2.

(b) An issuer that is a foreign bank or the parent or other affiliate of a foreign bank is exempt from the prohibition of extending, maintaining, arranging for, or renewing credit in the form of a personal loan to or for any of its directors or executive officers under section 13(k) of the Act (15 U.S.C. 78m(k)) with respect to any such loan made by the foreign bank as long as:

(1) Either:

(i) The laws or regulations of the foreign bank's home jurisdiction require the bank to insure its deposits or be subject to a deposit guarantee or protection scheme; or

(ii) The Board of Governors of the Federal Reserve System has determined that the foreign bank or another bank organized in the foreign bank's home jurisdiction is subject to comprehensive supervision or regulation on