underlying fund after it receives a proxy. SPE also states that ''there is almost never sufficient time for an acquiring fund to seek and actually obtain instructions from its own shareholders as to how to vote a specific proxy solicited by a particular acquired fund.'' SPE further states that ''SPE has no such relationship with any fund and it would be futile for SPE to try to persuade an unrelated acquired fund to transmit its proxy materials to SPE's stockholders.''

4. SPE requests an order under section 554(e) of the APA declaring that the Voting Procedure ''does not cause it to be in violation of Section 12(d)(1) of the Act.'' Section 554(e) of the APA provides that ''[t]he agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.'' SPE states that, if the Commission issues the requested declaratory order, SPE intends to submit the Voting Procedure for shareholder approval on an annual basis ''to insure that its standing proxy voting instructions do not become stale.''

The Commission's Preliminary Views

1. Section 12(d)(1)(F) of the 1940 Act provides a conditional exemption from the restrictions in Section 12(d)(1)(A) on an acquiring fund purchasing or otherwise acquiring a security issued by an underlying fund. The legislative history of Section 12(d)(1)(A) suggests that these restrictions were designed, in part, to address the concern that an acquiring fund could be used by an investment adviser, among others, as a vehicle to control or unduly influence, through voting, threat of redemption or otherwise, an underlying fund for its own benefit and to the detriment of the shareholders of both funds.[1] The conditions contained in the exemption provided by Section 12(d)(1)(F), and in particular the condition requiring voting in accordance with Section 12(d)(1)(E)(iii), attempts to minimize the influence that an acquiring fund may exercise over an underlying fund through voting.[2]

2. Shortly after Section 12(d)(1)(F) was enacted in 1970, the Commission issued a release providing guidance on the various provisions enacted by the new legislation, including specifically the Pass-Through Voting Condition.[3] The 1971 Release stated that the Pass-Through Voting Condition in Section 12(d)(1)(F) ''in effect, requires the fund holding company to make an arrangement with the issuer or principal underwriter of the issuer whereby sufficient proxy solicitation or other material may be transmitted to the fund holding company's security holders so that their instructions may be obtained.'' [4] This approach addresses the concern underlying the restrictions in Section 12(d)(1)(A)—that the fund of funds' investment adviser or another affiliate not exercise undue influence over the management or policies of an underlying fund—by placing the voting of the underlying fund's proxies in the hands of the fund of funds' shareholders (rather than its investment adviser). Consistent with the Commission's analysis in the 1971 Release, the Commission interprets Section 12(d)(1)(F), through the incorporation of the requirement in Section 12(d)(1)(E)(iii), to require SPE, if it chooses the Pass-Through Voting Condition, to have an arrangement with each underlying fund or its principal underwriter whereby SPE will pass through the proxies to SPE's shareholders and vote according to their instructions.

3. In the Commission's preliminary view, SPE's Voting Procedure does not appear to be consistent with the purposes and policies behind Section 12(d)(1)(F) of the Act, or with the guidance that the Commission articulated in the 1971 Release. The Voting Procedure gives the Adviser broad discretion in voting the underlying funds' proxies and thus presents the potential for the Adviser to exercise undue influence over the management and policies of the underlying funds. As to SPE's assertion that soliciting proxies as described in the 1971 Release is ''prohibitively expensive and logistically impractical,'' we note that Section 12(d)(1)(E) requires there to be ''an arrangement'' between the acquiring fund and an underlying fund concerning the voting of proxies, which suggests that at least the logistics of the Pass-Through Voting Condition could be addressed as part of ''the arrangement.'' We also note that funds of funds similar to SPE existed at the time the 1971 Release was issued and the Pass-Through Voting Condition was enacted as an alternative to Mirror Voting, yet Congress nevertheless determined the statutory conditions to be appropriate.[5] To the extent that SPE finds making ''an arrangement'' with an underlying fund under the Pass-Through Voting Condition ''futile,'' SPE has the option of using Mirror Voting. Therefore, absent a request for a hearing that is granted by the Commission, the Commission intends to respond to SPE's application by issuing an order under Section 554(e) of the APA declaring that the Voting Procedure does not satisfy Section 12(d)(1)(F) of the Act.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–19693 Filed 8–13–13; 8:45 am]

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[1] *See* U.S. Securities and Exchange Commission, Investment Trusts and Investment Companies, H.R. Doc No. 279, 76th Cong., 1st Sess., pt. 3, at 2721–95 (1939).

[2] *See Fund of Funds Investments,* Investment Company Act Release No. 27399 (June 20, 2006) at n.11 and accompanying text.

[3] *Changes in the Investment Company Act of 1940 Made by the Investment Company Amendments Act of 1970 (Pub. L. 91–547) Relating to the Repeal and Modification of Exemptions for Certain Companies; The Pyramiding of Investment Companies and the Regulation of Fund Holding Companies; and Rescission of Rule 11b-1 under the Investment Company Act,* Investment Company Act Release No. 6440 (Apr. 6, 1971) (''1971 Release'').

[4] *Id.* at 4.

[5] *See Mutual Fund Legislation of 1967: Hearings on S. 1659 Before the Senate Comm. on Banking and Currency,* 90th Cong., 1st Sess. 882–891 (1967) (statement of Milton Mound, President, First Multifund of America, Inc.).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70150]

Order Temporarily Exempting Certain Broker-Dealers and Certain Transactions From the Recordkeeping and Reporting Requirements of Rule 13h–1 Under the Securities Exchange Act of 1934

August 8, 2013.

On July 27, 2011, the Securities and Exchange Commission (''Commission'') adopted Rule 13h–1 (the ''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') concerning large trader reporting to assist the Commission in both identifying and obtaining trade information for market participants that conduct a substantial amount of trading activity, as measured by volume or market value, in U.S. securities (such persons are referred to as ''large traders'').[1] The Financial Information Forum (''FIF'') and the Securities Industry and Financial Markets Association (''SIFMA,'' and collectively the ''Industry Organizations''), each representing a variety of broker-dealers and other market participants, have requested that the Commission grant certain substantive relief from the broker-dealer recordkeeping and reporting

[1] *See* Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46960 (Aug. 3, 2011) (''Large Trader Adopting Release''). The effective date of Rule 13h–1 was October 3, 2011.

requirements of the Rule.[2] Pursuant to Section 13(h)(6) of the Exchange Act and Rule 13h–1(g) thereunder,[3] the Commission, by order, may exempt from the provisions of Rule 13h–1, 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 Rule 13h–1 to the extent that such exemption is consistent with the purposes of the Exchange Act.

In response to the Industry Organizations' requests and as further discussed below, the Commission extended the compliance date for the broker-dealer recordkeeping, reporting, and monitoring requirements and took a two-phased approach to implementation of the broker-dealer requirements under the Rule. Commencing on November 30, 2012, the first phase of implementation required clearing broker-dealers for large traders to keep records of and report upon Commission request data concerning: (1) proprietary trades by large traders that are U.S.-registered broker-dealers; and (2) transactions effected by large traders through a sponsored access arrangement (collectively, ''Phase One'').[4]

The second phase of implementation concerned those remaining requirements of the Rule that were not covered in Phase One. As more fully described below, the Commission is herein modifying this second phase by limiting the recordkeeping and reporting requirements of the Rule to include transactions effected by large traders through direct market access arrangements (''Phase Two''). The compliance date for Phase Two, as modified, will remain November 1, 2013.[5]

Finally, the Commission is herein establishing a new third phase for which the compliance date will be November 1, 2015. As discussed further below, this new and final phase will include all of the remaining requirements of the Rule that have not been, or will not be, implemented in either Phase One or Phase Two (collectively, ''Phase Three'').

I. Background

A. The Requirements of Rule 13h–1 and Applicable Compliance Dates for Those Requirements

Large Trader Self-Identification. Rule 13h–1 requires that large traders register with the Commission by electronically filing and periodically updating Form 13H.[6] Additionally, promptly after receiving a large trader identification number (''LTID'') assigned by the Commission,[7] a large trader must disclose its LTID to registered broker-dealers effecting transactions on its behalf and identify to each such broker-dealer each account to which the LTID number applies.[8] These requirements have been in effect since December 1, 2011.[9]

Broker-Dealer Recordkeeping and Reporting. Rule 13h–1 also requires that every registered broker-dealer maintain records of data specified in paragraphs (d)(2) and (d)(3) of the Rule (''Transaction Data''), including the applicable LTID(s) and execution time on each component trade, for all transactions effected directly or indirectly by or through: (1) an account such broker-dealer carries for a large trader or an Unidentified Large Trader; [10] or (2) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion.[11] Additionally, where a non-broker-dealer carries an account for a large trader under the Rule, the broker-dealer effecting transactions directly or indirectly for such large trader must maintain records of all Transaction Data.[12]

Rule 13h–1 requires that, upon Commission request, every registered broker-dealer that is itself a large trader or carries an account for a large trader must electronically report Transaction Data to the Commission through the Electronic Blue Sheets (''EBS'') system for all transactions, equal to or greater than the reporting activity level, effected directly or indirectly by or through accounts carried by such broker-dealer for large traders.[13] Additionally, where a non-broker-dealer carries an account for a large trader, the broker-dealer effecting such transactions directly or indirectly for a large trader must electronically report Transaction Data to the Commission through the EBS system. The Rule requires that reporting broker-dealers submit the requested Transaction Data no later than the day and time specified in the Commission's request.[14]

Initially, the compliance date for the broker-dealer requirements was April 30, 2012.[15] To allow additional time for the Commission to examine implementation issues identified by the Industry Organizations subsequent to the Commission's adoption of the Rule, the Commission deferred the initial compliance date and established a two-phased approach to implementation of the broker-dealer requirements.[16] Specifically, the Commission postponed until November 30, 2012, the obligations of clearing brokers for large traders (including the large trader itself if it is a self-clearing broker-dealer) to keep records and report Transaction Data for such customers' transactions that are either (1) proprietary trades by a U.S. registered broker-dealer; or (2) effected through a ''sponsored access'' arrangement (*i.e.,* Phase One).[17] The

[2] *See* Letters from: Manisha Kimmel, Executive Director, FIF, to Robert Cook, Director, and David Shillman, Associate Director, Division of Trading and Markets, Commission, dated January 25, 2012 (''FIF Letter''); Ann L. Vlcek, Managing Director and Associate General Counsel, SIFMA, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated March 29, 2012 (''SIFMA Letter I''); and Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated February 13, 2013 (''SIFMA Letter II''). These letters are available at: *http://www.sec.gov/comments/s7-10-10/s71010.shtml.*

[3] *See* 15 U.S.C. 78m and 17 CFR 240.13h–1(g), respectively.

[4] *See* Securities Exchange Act Release No. 66839 (April 20, 2012), 77 FR 25007, 25008 (April 26, 2012) (''Extension Order I'').

[5] *See infra* note 19.

[6] *See* Rule 13h–1(b)(1)(i)–(iii).

[7] When a large trader files its initial Form 13H filing through EDGAR, the system sends an automatically generated confirmation email acknowledging acceptance of the filing. That email also contains the unique 8-digit LTID number assigned to the large trader.

[8] *See* Rule 13h–1(b)(2). *See also* Large Trader Adopting Release, *supra* note 1, 76 FR at 46971 (''the requirements that a large trader provide its LTID to all registered broker-dealers who effect transactions on its behalf, and identify each account to which it applies, are ongoing responsibilities that must be discharged promptly'').

[9] *See* Large Trader Adopting Release, *supra* note 1, 76 FR at 46960.

[10] The definition of ''Unidentified Large Trader'' is discussed below. *See infra* note 20 and accompanying text. In the context of the broker-dealer recordkeeping and reporting requirements, references in this release to ''large trader'' include Unidentified Large Traders.

[11] *See* Rule 13h–1(d)(1)(i) and (ii).

[12] *See* Rule 13h–1(d)(1)(iii).

[13] Rule 13h–1(a)(8) defines 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.

[14] The Commission will not require reporting earlier than the opening of business of the day following such request, except under unusual circumstances. *See* Rule 13h–1(e). Accordingly, while information must be available on the morning after the transaction was effected, the reporting deadline is based upon the deadline specified in the Commission's request for Transaction Data.

[15] *See* Large Trader Adopting Release, *supra* note 1, 76 FR at 46960.

[16] *See* Extension Order I, *supra* note 4.

[17] *See id.* at 25008–9. A sponsored access arrangement is one where a broker-dealer permits a customer to enter orders into a trading center without using the broker-dealer's trading system (*i.e.,* using the customer's own technology or that of a third party provider). FIF indicated that broker-dealer compliance would be easier for sponsored

Continued

Commission further deferred the compliance date for the recordkeeping and reporting of other large trader transactions until May 1, 2013 [18] and, more recently, the Commission extended that date to November 1, 2013 while it considered the industry's experience with Phase One implementation in further evaluating the requests for relief for the remainder of the Rule.[19]

Broker-Dealer Monitoring. As mentioned above, the recordkeeping and reporting requirements apply to customers that are large traders as well as Unidentified Large Traders. An ''Unidentified Large Trader'' is a person who (1) has not complied with the identification requirements of the Rule; and (2) a registered broker-dealer knows or has reason to know is a large trader based on transactions in NMS securities effected by or through such broker-dealer.[20] The Rule provides a safe harbor for broker-dealers that establish and maintain certain customer monitoring practices. For the purposes of the Rule, a registered broker-dealer is 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 (among other things): (1) identify persons who may be large traders but have not self-identified as required; and (2) inform those persons of the self-identification requirements of the Rule.[21] To take advantage of this safe harbor, broker-dealers are required to have appropriate policies and procedures in place by the Phase Two compliance date, which is November 1, 2013.[22]

B. Relief Requests

The Industry Organizations have requested that the Commission provide certain substantive relief with respect to the recordkeeping and reporting requirements for broker-dealers.[23] In particular, they highlight implementation challenges associated with the Rule's recordkeeping and reporting requirements that have come to light as broker-dealers focused their attention on how to comply with the Rule, in particular with respect to obtaining and reporting the execution time of individual transactions by certain large traders.[24] According to the Industry Organizations, these challenges are most pronounced when a broker-dealer effects transactions for a large trader and processes the activity through a multi-client average price account.[25] As a result of the complexity and additional cost to capture and report disaggregated trades with execution time for large traders whose trades are processed in this manner, the Industry Organizations request relief from the requirement to provide execution times on transactions processed through average price accounts.[26]

The Industry Organizations also request relief for all broker-dealers other than self-clearing and clearing broker-dealers from the recordkeeping and reporting requirements of the Rule.[27] While the Rule focuses the reporting obligation on the universe of clearing brokers that currently report data through the EBS system, the Rule also authorizes the Commission to obtain this data directly from certain non-clearing broker-dealer large traders, as well as broker-dealers that effect transactions, directly or indirectly, for large traders where a non-broker-dealer carries the account. The Industry Organizations have asked the Commission to impose the recordkeeping and reporting requirement exclusively on the clearing brokers that currently report through the EBS system.[28]

In addition, the Industry Organizations argue that the complex structure underlying execution, clearance, and settlement flows of large trader transactions, including the fact that information related to the identity of the large trader and the execution fill details often reside with different broker-dealers, presents challenges to implementation, and that these concerns are most relevant with respect to large trader institutional customers.[29] The Industry Organizations further highlight areas where the burdens as they relate to institutional large trader customers would be most extensive and impose the greatest potential cost for some broker-dealers, particularly for prime brokers, routing broker-dealers, and situations where clearing responsibility is transferred between multiple brokers, and the Industry Organizations request that the Commission provide relief from the recordkeeping and reporting obligations of the Rule for each of those areas.[30]

II. Discussion

The Commission continues to believe that implementation of the large trader reporting requirements contemplated by Rule 13h–1 is necessary to effectively assess the impact of large trader activity on the securities markets in the near term and support the Commission's investigative and enforcement activities. The Commission also believes that it is appropriate and consistent with the Exchange Act to provide exemptive relief limiting short-term compliance costs of the Rule to focus near-term compliance on the large trader information that is likely to be most useful to the Commission.

Accordingly, and as discussed more fully below, the Commission believes that it is appropriate and consistent with the purposes of the Exchange Act to extend the Phase Two November 1, 2013 compliance date for certain registered broker-dealers by temporarily exempting broker-dealers, until November 1, 2015, from the recordkeeping and reporting requirements of Rule 13h–1(d) and (e), except for:

(1) The clearing broker-dealer for a large trader,[31] with respect to [32]

(a) proprietary transactions by a large trader broker-dealer;

(b) transactions effected pursuant to a ''sponsored access'' arrangement; [33] and

access customers because those arrangements typically are distinct from all other business lines of the broker-dealer, with infrastructure that processes this order flow that is separate from the platforms that handle other client and proprietary flows. *See id.* at 25008 n.16.

[18] *See id.* at 25008.

[19] *See* Securities Exchange Act Release No. 69281 (April 3, 2013), 78 FR 20960 (April 8, 2013) (''Extension Order II'').

[20] *See* Rule 13h–1(a)(9).

[21] *See* Rule 13h–1(f).

[22] *See* Extension Order II, *supra* note 19.

[23] *See generally* FIF Letter, SIFMA Letter I, and SIFMA Letter II, *supra* note 2.

[24] *See* SIFMA Letter II, *supra* note 2 at 5. *See also* FIF Letter, *supra* note 2 at 2; and SIFMA Letter I, *supra* note 2 at 5.

[25] *See* FIF Letter, *supra* note 2 at 31–32. *See also* SIFMA Letter I, *supra* note 2 at B–1.

[26] *See, e.g.,* SIFMA Letter I, *supra* note 2 at 5.

[27] *See* FIF Letter, *supra* note 2 at 25–28. *See also* SIFMA Letter I, *supra* note 2 at B–2.

[28] *See* FIF Letter, *supra* note 2 at 26–27. *See also* SIFMA Letter I, *supra* note 2 at B–3.

[29] *See* FIF Letter, *supra* note 2 at 25–28. *See also* SIFMA Letter II, *supra* note 2 at 5–7.

[30] *See* FIF Letter, *supra* note 2 at 25–28. *See also* SIFMA Letter II, *supra* note 2 at 5–7.

[31] In its letter, FIF asked the Commission for ''relief for broker dealers involved in Large Trader transactions that do not have a direct relationship with the Large Trader. Only the self-clearing and clearing broker dealers with a direct relationship with the Large Trader would perform Large Trader Reporting.'' *See* FIF Letter, *supra* note 2, at 2. In Appendix C of its letter, FIF provides an example of the entities for whom it recommends imposing a recordkeeping and reporting obligation. *See id.* at 25. In addition, FIF recommends that the reporting of execution time should rest with the clearing broker for the originating broker, and any prime broker would be relieved from being required to report execution times.

[32] Items (a) and (b) are currently included in Phase One, which was effective beginning on November 30, 2012.

[33] *See infra* note 39 (defining ''sponsored access'' arrangement).

(c) transactions effected pursuant to a ''direct market access'' arrangement [34]; and

(2) a broker-dealer that carries an account for a large trader, with respect to transactions other than those set forth above, and for Transaction Data other than the execution time.[35]

In accordance with Phase One, clearing broker-dealers for large traders have been complying with the recordkeeping and reporting requirements of Rule 13h–1, with respect to (a) proprietary transactions by a large trader broker-dealer, and (b) transactions effected pursuant to a ''sponsored access'' arrangement, since November 30, 2012. As part of Phase Two, in accordance with this Order, clearing broker-dealers for large traders also will have to comply with the recordkeeping and reporting requirements of Rule 13h–1 with respect to transactions effected pursuant to a ''direct market access'' arrangement as of November 1, 2013. In addition, with respect to all other types of transactions, the prime broker or other carrying broker-dealer for a large trader will have to report the applicable LTID, but not the execution time, as of November 1, 2013. Finally, the recordkeeping and reporting requirements with respect to Unidentified Large Traders, and the related monitoring safe harbor provided by Rule 13h–1(f), will apply to broker-dealers that carry an account for a large trader as of November 1, 2013.

The Rule as adopted requires the following broker-dealers to obtain, keep records of, and report Transaction Data to the Commission upon request through the EBS infrastructure: (1) The broker-dealer that ''carries'' the account for the large trader (including the clearing broker for the large trader and the large trader's prime broker, if applicable); (2) broker-dealer large traders, with respect to their proprietary trades and transactions over which they exercise investment discretion; and (3) other brokers that directly or indirectly effect transactions for a large trader, including an executing broker, where a non-broker-dealer carries the large trader's account.[36] As SIFMA notes, at present, carrying brokers-dealers are the primary parties that report through the EBS infrastructure.[37] Accordingly, full compliance with the recordkeeping and reporting provisions of the Rule would require non-carrying broker-dealers to develop connectivity to the EBS system. In its initial exemption, the Commission temporarily limited the broker-dealer recordkeeping and reporting requirements to the clearing broker-dealer for a large trader.[38]

To reduce implementation burdens, the Commission believes that it is appropriate, at this time, to continue to limit the recordkeeping and reporting obligations of the Rule to broker-dealers that carry accounts for large traders, as they are already connected to the EBS system. Accordingly, the Commission is extending its temporary exemption of non-carrying brokers from the reporting requirement of the Rule until November 1, 2015. In other words, for Phase Two, a registered broker-dealer that is itself a large trader but does not self-clear, as well as a broker-dealer effecting transactions directly or indirectly for a large trader where a non-broker-dealer carries the account for the large trader, are both temporarily relieved from the reporting requirements of the Rule and, therefore, they do not need to record and electronically report Transaction Data to the Commission through the EBS system solely for purposes of the Rule. For the types of large traders and transactions subject to reporting in Phases One and Two, the Commission will obtain the Transaction Data it needs from the carrying broker for the large trader, and therefore believes that it is reasonable, at this time, to extend the temporary exemption provided to other types of broker-dealers from the recordkeeping and reporting requirements of the Rule.

With respect to the specific transactions to be recorded and reported by carrying brokers, as part of Phase One, the Commission required recordkeeping and reporting of Transaction Data of proprietary trades by broker-dealer large traders and transactions effected by a large trader through a ''sponsored access arrangement.'' [39] FIF had previously noted that the trading activity of large traders with sponsored access arrangements typically is processed by clearing brokers on infrastructure separate from that used for other customers, so that implementation of the Rule for sponsored access customers would require less effort than for other types of large trader customers.[40] According to the Industry Organizations, many broker-dealers charged with recordkeeping and reporting of Transaction Data under the Rule do not currently have ready access to all of that data for other types of large trader customers, particularly disaggregated trades with execution time, when it resides at unaffiliated broker-dealers. For example, according to the Industry Organizations, while the executing broker knows the execution time of a large trader's transaction, it typically does not have the means to pass that information to the clearing broker for the large trader in a format that is readily reportable through EBS. Accordingly, to comply with the recordkeeping and reporting requirements of the Rule, the clearing broker for the large trader in many cases must make new arrangements to obtain execution time data for large trader customers for reporting through EBS.

Phase Two, as modified herein, represents an important incremental step in the implementation of the Rule that is designed to allow the Commission to collect Transaction Data, including execution time, with respect to an additional group of large traders that are of particular interest to the Commission in fulfilling its regulatory responsibilities. Specifically, Phase Two will include Transaction Data for large trader customers that trade through a ''*direct market access arrangement,*'' which means an arrangement whereby a broker-dealer permits an institutional customer to enter orders into a trading center but such orders flow through the broker-dealer's trading systems prior to

[34] *See infra* note 41 and text following note 41 (defining ''direct market access'' arrangement).

[35] Accordingly, during Phase Two, a registered broker-dealer that is itself a large trader but does not self-clear, as well as a broker-dealer effecting transactions directly or indirectly for a large trader where a non-broker-dealer carries the account for the large trader, will continue to be temporarily relieved from the recording and reporting requirements of the Rule and therefore do not need to record and electronically report Transaction Data to the Commission through the EBS system for purposes of the Rule during Phase Two.

Neither of these temporary exemptions, however, relieves a broker-dealer from any other recordkeeping requirement that would otherwise apply under the federal securities laws, rules, or regulations, including Rules 17a-3 and 17a-4 under the Exchange Act, or any self-regulatory organization rule.

[36] *See* Rule 13h–1(d) and (e), respectively. *See also* Large Trader Adopting Release, *supra* note 1, 76 FR at 46996 (acknowledging SIFMA's comment that ''some broker-dealers do not have access to execution times in a manner that is readily reportable under the EBS infrastructure'' and would need to update their EBS infrastructure to gather that information).

[37] *See* SIFMA Letter I, *supra* note 2, at B–2.

[38] *See* Extension Order I, *supra* note 4, at 25008.

[39] In this context, a ''sponsored access arrangement'' was defined as an arrangement in which a broker-dealer permits a large trader customer to enter orders directly to a trading center where such orders are not processed through the broker-dealer's own trading system (other than any risk management controls established for purposes of compliance with Rule 15c3–5 under the Exchange Act) and where the orders are routed directly to a trading center, in some cases supported by a service bureau or other third party technology provider. *See* Extension Order I, *supra* note 4, 77 FR at 25009 n.22 (referencing the definition of the term used in the adopting release for Rule 15c3–5).

[40] *See* FIF Letter, *supra* note 2 at 5.

reaching the trading center.[41] Because large trader customers that trade through this type of direct market access arrangement have chosen to retain control over critical aspects of the handling of their orders, including the price, size, timing, and routing of individual orders, their order handling decisions are of particular interest to the Commission in conducting market reconstructions and analyses as well as investigations. Direct market access arrangements subject to recordkeeping and reporting in Phase Two, as modified, would include, for example, those where the large trader customer enters individual orders manually or through an algorithm under its control, but those orders flow through the broker-dealer's systems prior to reaching the trading center.[42] Phase Two would not include, for example, large trader customers that delegate to the broker-dealer the discretion to determine the price, size, timing, or routing of individual orders.

From the Commission's perspective, including large trader activity where the large trader retains control over the material terms of the order and uses the broker-dealer primarily as a conduit to an execution venue will capture trading activity that is similar in kind to the sponsored access activity currently captured in Phase One, and is the type of activity for which the precise time and other aspects of the large trader's execution is of substantial regulatory interest. Accordingly, clearing broker-dealers for such large traders will be required to keep records of, and report to the Commission upon request, all of the Transaction Data covered by the Rule, including both LTID number(s) and execution time, on every EBS record for the categories of large trader covered in Phase One and Phase Two.

The Commission believes that capturing all of the Transaction Data for the types of large trader transactions covered by Phases One and Two (as modified herein) is important in the near term to the Commission's enforcement and regulatory programs, and therefore the Commission is requiring the recordkeeping and reporting of this information as of November 1, 2013 (the current compliance date for Phase Two). Accordingly, as of November 1, 2013, clearing broker dealers for a large trader will be required to keep records and report to the Commission upon request all Transaction Data for: (1) Proprietary transactions by a large trader broker-dealer, (2) transactions effected pursuant to a sponsored access arrangement, and (3) transactions effected pursuant to a direct market access arrangement.

With respect to transactions other than those set forth above, broker-dealers that carry an account for a large trader must record and report, as of November 1, 2013, Transaction Data other than execution time (*e.g.,* LTID). The Commission notes that the Industry Organizations have indicated that carrying brokers can readily provide the LTID, because that information is available to them today, and the arrangements to report it to the Commission through the EBS system would not require significant technological development.[43] Given the relatively low implementation burdens, the Commission believes that including the LTID on EBS data for all large traders would be beneficial to the Commission, and help support, for example, its investigative activities and analysis of significant market events.

Finally, the recordkeeping and reporting requirements with respect to Unidentified Large Traders, and the related monitoring safe harbor provided by Rule 13h–1(f), will apply to broker-dealers that carry an account for a large trader as of November 1, 2013. The Commission believes that it is appropriate to apply the provisions that relate to Unidentified Large Traders to the broker-dealers that otherwise will be required to comply with the recordkeeping and reporting requirements as of Phase Two—namely broker-dealers that carry accounts for large traders—and that implementation of such provisions will help foster compliance with the large trader identification requirements.

III. Summary of Phased Implementation

With respect to Phase One and Phase Two, as modified, clearing broker-dealers for large traders[44] must obtain and report Transaction Data that includes *both execution time and LTID* on disaggregated trades for the following types of transactions:

(1) For *Phase One,* which began on November 30, 2012:

(a) proprietary transactions by large traders that are U.S.-registered broker-dealers;

(b) transactions effected by large traders through a sponsored access arrangement; [45] and

(2) for *Phase Two,* which will begin on November 1, 2013: transactions effected by large traders through a direct market access arrangement.[46]

Further, with respect to all other types of transactions, for *Phase Two,* the prime broker or other carrying broker-dealer for a large trader must obtain and report Transaction Data, including LTID, for all such large traders, but is not required to report execution time.

In addition, with respect to the requirements relating to Unidentified Large Traders, which will apply to carrying broker-dealers as of Phase Two, the compliance date for broker-dealers that wish to avail themselves of the monitoring safe harbor provided by Rule 13h–1(f) to establish appropriate policies and procedures is November 1, 2013.

Phase Three, which will begin November 1, 2015, covers the remaining types of large traders and transactions not covered by Phases One and Two. Specifically, all other broker-dealers subject to the recordkeeping and reporting requirements of the Rule (*i.e.,* broker-dealers that are large traders but do not self-clear, and broker-dealers effecting transactions directly or indirectly for a large trader where a non-broker-dealer carries the account for the large trader) are temporarily exempted from recording and reporting Transaction Data through the EBS system for the duration of Phase Two. Unless the Commission otherwise provides in the future, Phase Three will require all broker-dealers subject to the recordkeeping and reporting requirements of Rule 13h–1 to come into full compliance with those provisions.

[41] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792, 69793 (November 15, 2010) (File No. S7–03–10) (''Generally, direct market access refers to an arrangement whereby a broker-dealer permits customers to enter orders into a trading center but such orders flow through the broker-dealer's trading systems prior to reaching the trading center. In contrast, sponsored access generally refers to an arrangement whereby a broker-dealer permits customers to enter orders into a trading center that bypass the broker-dealer's trading system and are routed directly to a trading center, in some cases supported by a service bureau or other third party technology provider.''). The Commission notes that sponsored access arrangements and direct market access arrangements typically are entered into with the executing broker-dealer, which may or may not also be the clearing broker for the large trader.

[42] *See id.* at 69793 (discussing how a direct market access arrangement involves a broker-dealer allowing its customer to use its systems to electronically access an exchange or alternative trading system).

[43] *See, e.g.,* SIFMA Letter II, *supra* note 2 at 3.

[44] *See supra* note 31 and text accompanying note 31.

[45] *See supra* note 39 (defining sponsored access arrangements).

[46] *See supra* note 41 and text accompanying note 41 (defining direct market access arrangements).

IV. Conclusion

It is hereby ordered, pursuant to Exchange Act Section 13(h)(6) and Rule 13h–1(g) thereunder, that broker-dealers are exempted temporarily until November 1, 2015 from the recordkeeping and reporting requirements of Rule 13h–1(d) and (e), except for (1) the clearing broker-dealers for large traders, with respect to (a) Proprietary transactions by a large trader broker-dealer; (b) transactions effected pursuant to a ''sponsored access'' arrangement; [47] and (c) transactions effected pursuant to a ''direct market access'' arrangement; [48] and (2) broker-dealers that carry an account for a large trader, with respect to transactions other than those set forth above, and for Transaction Data other than the execution time.[49]

By the Commission.

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70134; File No. SR–EDGX–2013–26]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

August 8, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to increase the fee charged from $0.0017 per share to $0.0050 per share for orders that yield Flag RW, which routes to CBOE Stock Exchange, LLC (''CBSX'') and adds liquidity. All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to increase the fee charged from $0.0017 per share to $0.0050 per share for orders that yield Flag RW, which routes to CBSX and adds liquidity.

In securities priced at or above $1.00, the Exchange currently assesses a fee of $0.0017 per share for Members' orders that yield Flag RW. The Exchange proposes to amend its Fee Schedule to increase this fee to $0.0050 per share for Members' orders that yield Flag RW. The proposed change represents a pass through of the rate of $0.0050 that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is charged for routing orders in select symbols to CBSX when it does not qualify for a volume tiered discount.[4] DE Route passes through this rate on CBSX to the Exchange and the Exchange, in turn, passes through this rate to its Members.

The Exchange notes that the proposed change is in response to CBSX's July 2013 fee change where CBSX exempted select symbols out of its standard fee structure.[5] Instead, CBSX amended its fee schedule to assess a fee of $0.0050 per share for maker transactions in such symbols and a rebate of $0.0045 per share for taker transactions in such symbols.[6] The Exchange notes that its internal billing system is unable to assign different rates by symbols. Therefore, due to internal system limitations and to protect the Exchange from potentially significant financial loss for orders routed to CBSX in the select symbols, it is necessary that the Exchange assess a flat fee of $0.0050 per share for all orders that yield Flag RW. The Exchange further notes that routing through DE Route is voluntary and that Members would continue to be able to send orders in symbols that CBSX does not subject to the $0.0050 per share fee directly to CBSX if they so choose.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on August 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Fee Change for Flag RW

The Exchange believes that its proposal to increase the charge for Members' orders that yield Flag RW from $0.0017 to $0.0050 per share represents an equitable allocation of reasonable dues, fees, and other charges

[47] *See supra* note 39 (defining sponsored access arrangements).

[48] *See supra* note 41 and text accompanying note 41 (defining direct market access arrangements).

[49] *See supra* note 35.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' EDGX Rule 1.5(n).

[4] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered discount on CBSX, its rate for Flag RW will not change.

[5] Securities Exchange Act Release No. 69916 (July 2, 2013), 78 FR 41158 (July 9, 2013) (SR–CBOE–2013–065). CBSX lists these select symbols in footnote 6 to its fee schedule. CBSX, CBOE Stock Exchange Fees Schedule, *available at http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf* (last visited July 23, 2013).

[6] CBSX, CBOE Stock Exchange Fees Schedule, *available at http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf* (last visited July 23, 2013).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).