FINANCIAL INFORMATION FORUM

5 Hanover Square
New York, New York 10004

212-422-8568

Via Electronic Delivery

March 27, 2015

Mr. Stephen Luparello
Director, Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE,
Washington, DC 20549-1090

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

Dear Mr. Luparello,

The Financial Information Forum (FIF)[1] respectfully requests relief from two aspects of Rule 13h-1 ("the Rule"). Specifically, FIF requests relief (1) from Rule 13h-1 obligations for Large Traders that fall below an options premium threshold ("Options Premium Threshold Request") and (2) with respect to the current November 1, 2015 compliance date for Phase Three of the Rule ("Phase 3 Request"). Each of these requests is discussed in more detail below.

Options Premium Threshold Request

FIF members include full-service and retail broker dealers that have been monitoring for Large Traders since November 2013. In that time, retail investors have triggered the Large Trader threshold typically as a result of trading low-priced, out-of-the-money options on high priced stocks.[2] One retail broker dealer with 365 Large Traders indicated that 95% of their Large Traders are the result of the current options calculation. These individuals are confused by their Large Trader obligations. Additionally, they have struggled with the self-identification process that includes both initial and ongoing requirements.
In order to address investor concerns, FIF recommends using an "options premium" threshold, where the price paid to acquire an option is used to determine if a client meets the Large Trader Threshold (i.e., Options Premium x # of Contracts x Contract Multiplier). For example, "if 200 ABC options (with a multiplier of 100) are purchased at an options premium of $400 then the aggregate transaction value would be $8 million (i.e., 200 x 400 x 100 = $8,000,000). This method is consistent with the Large Trader calculation for index options also described in FAQ 1.3[3]

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[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

[2] For example, an FIF member firm reported that of the retail accounts that triggered the options threshold, 41% of the options traded were greater than 5 points out-of-the-money.

[3] "Calculation of the value of an index option is calculated as follows. Footnote 64 of the Adopting Release (34-64976) provided the following example: "if ABC Index has a multiplier of 100, a person who purchased 200 ABC call options for $400 would have effected aggregate transactions of $8 million (i.e., 200 x 400 x 100 = $8,000,000)." By way of another example, consider an investor that wants to purchase 100 contracts of puts on an index, at a strike

The FIF recommends maintaining a triggering activity level for the "options premium" threshold consistent with Rule 13h-1(a)(7), such that the triggering activity level would be based on a market value of $20 million daily or $200 million monthly.[4]

The current threshold calculation for determining the value of options transactions is based on the underlying value of shares associated with an option ("underlying value" approach) as described in FAQ 1.3:

> To calculate the value of options for purposes of Rule 13h-1, the value of the securities underlying the option should be used. For example, consider a call option with a $20 strike price (with a 100 multiplier) that is trading at a price of $4, where the underlying stock is trading at $22 at the time of the transaction. For purposes of Rule 13h-1, 10 contracts would be calculated as follows: 10 contracts x 100 shares per contract x $22 market price of the underlying = $22,000.

FIF believes that the "underlying value" threshold does not reflect the true economic value being transacted at time of the options trade and the associated market impact. Investors that meet the "underlying value" threshold rarely exercise their options and in many cases could not do so based on the size of their accounts. FIF performed a survey of its members and found that the average frequency of exercise was less than 2% for Large Traders that met the threshold based on the options calculation. Additionally, firms provided anecdotal data on account size with one firm indicating that the account size for this class of Large Traders averaged $835,000 for the roughly 2,000 Large Traders meeting the "underlying value" threshold. Another firm indicated that the average account size for 90% of their accounts was less than $555,000 with an average across all accounts of $2.5 million.[5] Given the account size associated with this class of investor it is unlikely that they would have the ability to exercise these out of the money options.

FIF believes exemptive relief for the class of Large Traders that fall below the options premium threshold is appropriate based on the demographics of investors that have been identified as Large Traders based on the current "underlying value" threshold. The adopting release of the Rule states that the purpose of Rule 13h-1 is to "reliably identify the most significant of these market participants and promptly and efficiently obtain information on their trading on a market-wide basis." [6] Simply put, these investors are not significant market participants. As an example, one such Large Trader triggered the underlying value threshold by purchasing $800 of "out-of-the-money" options.

Imposing Large Trader obligations on this class of investors adds no regulatory value and only serves to diminish the quality of the retail investor experience. Providing the requested relief would relieve these

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price of 1375, where the index is trading at 1380, and where the option uses a 100 multiplier. If the quoted price for these puts is $51.00 per unit, the price per contract would be $5,100. The value of these index options for purposes of Rule 13h-1 would be: 100 contracts x $51 price per unit x $100 contract multiplier = $510,000."

[4] This is the current approach for both equities and index options.

[5] This same firm also indicated that excluding the top 50% of accounts, the average account size was under $56,000

[6] 76 FR 46963

investors from the cumbersome process of registering on the SEC EDGAR website, obtaining access codes via a Form ID process, as well as filling out Form 13h on an annual or potentially more frequent basis, as required. To highlight the complicated nature of this process, it is worth noting that instructions for filling out Form 13H are embedded in Volume II of the 570 page EDGAR Manual. We believe that the relief requested is consistent with the intent of the Rule and the Commission's role as the investor's advocate.

Phase 3 Relief

On August 8, 2013, the Commission published the 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 2013 Relief") which established Phase 3 of the Rule. Phase 3 of the Rule, currently set to begin on November 1, 2015 "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." At this time, FIF respectfully requests that Phase 3 of the Rule be eliminated since the goals of the Rule have been achieved by Phase 1 and Phase 2 of the Rule.

As stated earlier, the intent of the rule was to focus on reporting activity associated with the most significant market participants that may contribute to market volatility. Those market participants are precisely those covered by Phase 1 and 2 of the Rule, including proprietary trading, sponsored access and direct market access participants. Additionally, the adopting release of the Rule stated that the Rule requirements "are designed to address the near-term need for access to more information about large traders and their activities." Rather than continue to incur implementation costs associated with Phase 3 of the Rule, FIF believes it would be a better use of resources to allow firms to focus on the development of the Consolidated Audit Trail. With the February 27, 2015 submission of the Amended Consolidated Audit Trail (CAT) NMS Plan, the Commission is in the position to move CAT forward.

It is also worth noting that the August 2013 Relief was the result of extensive discussion between the Commission and the industry primarily focusing on the reengineering effort that would be required to accommodate all requirements of the Rule. The CAT NMS Plan specifically addresses these concerns by incorporating customer data as part of new order reports.[7]

If it is not possible to eliminate Phase 3 of the Rule, FIF recommends postponing the compliance date for five years to allow for the full implementation of CAT. Extending the compliance date of Phase 3 of the Rule, will allow firms to focus on CAT and give the Commission time to ensure that Rule requirements are satisfied by CAT.

We look forward to continued discussions on this topic and urge swift action in light of the November 2015 compliance date.

[7] See FIF CAT WG: Preliminary Large Trader Rule (Rule 13h-1) – CAT (Rule 613) Gap Analysis (Feb. 11, 2014), available here.

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Regards,

Mary Lou VonKaenel

Mary Lou VonKaenel
Managing Director
Financial Information Forum

cc: The Honorable Mary Jo White, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel J. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Gary Goldsholle, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets
Richard Holley III, Assistant Director, Division of Trading and Markets