INVESTMENT COMPANY INSTITUTE

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June 22, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Large Trader Reporting System (File No. S7-10-10)

Dear Ms. Murphy:

The Investment Company Institute[1] supports the Commission's efforts to improve the transparency of current trading practices and market participants. As the events of May 6, 2010 illustrated, the Commission currently is unable to gather the information necessary to quickly and efficiently assess market events and trading activity. The proposed large trader reporting system is a credible step towards improving the availability of market information to the Commission.[2]

A large trader reporting system would enhance the Commission's ability to identify the effects of certain large trader activity on the markets, reconstruct trading activity following periods of unusual market activity, and analyze market events and trading activity for regulatory purposes. As proposed, however, new Rule 13h-1 and Form 13H raise significant concerns relating to the burdens and costs of developing and operating a large trader reporting system that would be imposed upon investment advisers to registered investment companies that would qualify as large traders. Moreover, when considering the proposed large trader reporting system, the Commission must take into account the associated costs and burdens of its consolidated audit trail proposal,[3] which may obviate the need for

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $11.97 trillion and serve almost 90 million shareholders.

[2] *See* SEC Release No. 61908 (April 14, 2010), 75 FR 21456 (April 23, 2010) ("Release"), available at http://www.sec.gov/rules /proposed/2010/34-61908.pdf.

[3] *See* SEC Release No. 62174 (May 26, 2010), 75 FR 32555 (June 8, 2010), available at http://www.sec.gov/rules/proposed/2010/34-62174.pdf.

certain provisions of the large trader reporting system. For these reasons, as discussed below, we recommend that the Commission make certain changes to the proposal to better balance the Commission's need for information with the burden on large traders of collecting it.

I. Summary of Recommendations

Recommendations Regarding Commission's Large Trader Reporting System

- **Confidential Treatment of Trade Information**
    - The Institute recommends that the Commission adopt the proposed confidentiality provisions to ensure the protection of the information on Form 13H and to ensure that the information is used solely for the regulatory purposes described in the proposal. The Institute also recommends that the Commission regularly examine broker-dealers, and consider enforcement actions, for failures to comply with their stated policies and procedures to control information leakage.
- **Aggregation and Disaggregation of Affiliates**
    - The Institute recommends that the Commission eliminate the emphasis on filing at the parent company and, instead, permit a parent company – whether domiciled in the United States or elsewhere – to report only for some of its large trader affiliates and permit certain large trader affiliates to report separately. The Institute also recommends that the Commission develop a system of assigning related Large Trader Identification Numbers ("LTIDs") within a single complex.
    - The Institute recommends that the Commission permit investment advisers who may not yet meet the applicable threshold level of trading to satisfy the definition of a large trader to register voluntarily and make the requisite filings.
- **Schedule 6 to Form 13H**
    - The Institute recommends that the Commission permit large traders to list on proposed Schedule 6 the broker-dealers through which they execute transactions, instead of each account held by such broker-dealers, in recognition of current industry practices and the burdens and costs that would be associated with producing account information.
    - Alternatively, the Institute recommends that the Commission permit large trader investment advisers and broker-dealers to report the ALERT ID[4] for advisers' client accounts instead of the broker-dealer account numbers.

[4] As discussed below, ALERT ID is an account identification number provided to advisers subscribing to certain Omgeo systems.

  - The Institute recommends that the Commission clarify that the term "account" refers to advisers who have collective investment discretion over a particular custodial account. Thus, the Commission should not require advisers to identify other advisers of a client account that trade separately in a different custodial account without collaboration between the advisers.

- **Form 13H**

  - The Institute recommends that the Commission provide guidance clarifying that a large trader must file its "Initial Filing" of Form 13H "promptly," meaning without delay but, in no circumstances, later than thirty days after the trader qualifies as a large trader.

  - The Institute recommends that the Commission clarify that the "Interim Filing" that a large trader must file once it receives its LTID should be filed promptly following the end of the next calendar quarter.

Compliance Date

- The Institute recommends that the Commission provide a longer period to comply with the new rule (*e.g.*, one year).

Interaction with Commission's Consolidated Audit Trail Proposal

- The Institute recommends, in light of the costs and burdens of the large trader proposal and the costs that will be associated with the consolidated audit trail proposal, that the Commission amend the proposal to require only that large traders: (1) identify themselves to the Commission; and (2) provide their LTID to broker-dealers that execute transaction on their behalf. Large traders would still be required to provide additional information to the Commission upon request.

II. Introduction

The Commission has proposed to require certain large-volume, high-frequency traders ("large traders") to self-identify to the Commission by filing proposed Form 13H after first effecting transactions that reach the proposed identifying activity level. Upon filing Form 13H, a large trader would be issued a LTID, which would be required to be disclosed to every registered broker-dealer that effects transactions on its behalf. The large trader also would be required to identify each account held by that broker-dealer through which it trades, and it would be required to update its Form 13H quarterly (if information reported on the form has changed) and annually. Broker-dealers that effect transactions for large trader customers would be required to maintain and produce records of these customers' trades to the Commission.

III. Recommendations Regarding Commission's Large Trader Reporting System

While the Institute supports the concept of a large trader reporting system, the proposal in its current form raises concerns for investment advisers to registered investment companies that would qualify as large traders under the proposal.[5] We therefore recommend that the Commission take several steps to ensure that there are no unintended consequences for large traders under the proposal. Most significantly, the Commission should: assure that the information reported pursuant to the proposal is kept confidential; provide greater flexibility to large traders within a complex organization to file in aggregate or separately, as the parent company determines; eliminate the reporting requirement for account information on Schedule 6 of proposed Form 13H; and extend the compliance period to provide large traders with adequate time to develop the systems necessary to comply with the proposed rule.

A. Confidential Treatment of Trade Information

The proposal contains confidentiality provisions exempting Form 13H from disclosure under the Freedom of Information Act. The Institute believes it is critical that the Commission adopt these provisions. Without confidential treatment, the disclosure of the information on Form 13H could severely compromise the privacy rights of large trader's clients and result, for example, in the exposure of valuable information held by investment advisers (*i.e.*, their client lists). Indeed, we would oppose the adoption of the proposal if the proposed confidentiality provisions were not adopted.

The need for confidentiality regarding the information on Form 13H is not limited to disclosure by the Commission. It is equally critical that this information be kept confidential by the broker-dealers to which it is reported and used solely for the regulatory purposes described in proposed Rule 13h-1. As we have stated in several letters to the Commission, the confidentiality of information about fund trades is of significant importance to Institute members.[6] Any misuse of this information by broker-dealers can lead to frontrunning of fund trades, adversely impacting the price of the stock that a fund is buying or selling on behalf of its shareholders.[7] We therefore recommend that the Commission regularly examine broker-dealers, and consider enforcement actions, for failures to comply with their stated policies and procedures to control information leakage.

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[5] Between January 2005 and April 2010, the percent of fund complexes that traded equity securities (buying and selling) exceeding $200 million in a calendar month ranged from a low of 33 percent to a high of 51 percent, as determined from Institute calculations based on confidential data submitted to the Institute for its monthly Trends Report.

[6] *See, e.g.*, Letters from Paul Schott Stevens, President, Investment Company Institute, to Christopher Cox, Chairman, Securities and Exchange Commission, dated September 14, 2005, August 29, 2006, and September 19, 2008.

[7] *See* Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated April 21, 2010.

B. Aggregation and Disaggregation of Affiliates

As recognized by the Commission throughout the proposal, many financial service organizations have complex structures with numerous affiliates, many of which are operated or governed independent of one another and of their parent, that would become subject to proposed Rule 13h-1. To address concerns raised by commenters in previous Commission proposals regarding the proposed reporting burdens of a large trader reporting system,[8] the Commission's current proposal would require that only the parent company need file Form 13H to limit the filing and self-identification burdens that would be imposed to a relatively small group of persons while "allowing the Commission to identify the primary institutions that conduct a large trading business."[9] We appreciate the Commission's efforts to limit the reporting burdens within a financial services organization when there are multiple entities that would qualify for large trader status. For many entities that are part of a larger financial complex, however, including many investment advisers, the reporting by a parent on a consolidated basis would be more operationally cumbersome, costly, and difficult to undertake than completing Form 13H and reporting the proposed information on an entity-by-entity basis. The Institute therefore recommends several changes to the proposal to provide flexibility to the proposed reporting requirements.

1. Separate Reporting

Affiliates within a complex financial services organization typically have developed individualized trading platforms and systems tailored to the services they offer which, in many cases, are not integrated with the systems of other entities in the organization. Developing and implementing systems to consolidate, and to regularly monitor, the data as envisioned by the Commission in the proposal would necessitate significant time and resources. Furthermore, separate filing of Form 13H by affiliates within a single organization, as opposed to filing on a consolidated basis by the parent, could be important for confidentiality, supervisory, and legal purposes. For example, disclosure of the information on Form 13H could severely compromise the privacy rights of investment adviser clients, and large holding companies that sit atop separate broker-dealer, investment adviser, and investment company entities could be faced with breaching firewalls between different segments of their businesses if compelled to report on an aggregate basis. Similarly, persons that would fall within the scope of the proposed rule may be subject to existing rules that prohibit them from communicating with one

[8] *See* SEC Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991) and SEC Release No. 33608 (February 9, 1994), 59 FR 7917 (February 17, 1994).

[9] Under the proposal, a controlling person would not have to file as a large trader only if all entities that it controls discharge all of the responsibilities of the controlling person under the proposed rule.

another (*e.g.*, advisers subject to Rule 17a-10 under the Investment Company Act of 1940[10]), making consolidated reporting a difficult proposition.[11]

For these reasons, we recommend that the proposal be modified to eliminate the emphasis on filing at the parent company level. Specifically, we recommend that the proposal permit a parent company to report only for some of its affiliates and permit certain affiliates to report separately. Greater flexibility in the form of filing either at the parent level, at the controlled affiliate level, or in some combination thereof when multiple entities qualify (either individually or in aggregate with others) as large traders within a complex financial organization would reduce the compliance burden of monitoring and aggregating information between these entities. Such flexibility also would permit a complex organization to determine how best to allocate its resources and develop its systems to provide the Commission with the information it seeks instead of forcing a one-size fits all framework on very different business organizations.[12]

The Release states that requiring reporting either at the parent level or by all controlled persons with investment discretion over accounts addresses the Commission's concern that persons within a large financial services organization might divide their trading among each other for the purpose of circumventing classification as a large trader. Our recommendation would not side step the Commission's goal of identifying all large traders because all of the entities within an organization would be captured on one or more Forms 13H.[13] The parent company could still qualify as a large trader and be tasked with reporting with respect to its trading activity and the trading activity of any control persons not reporting separately.

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[10] Subject to two conditions, Rule 17a-10 permits (1) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but which are affiliated persons of a fund that it does advise (*e.g.*, other funds in the fund complex), and (2) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice. The conditions are: (1) the subadvisory relationship must be the sole reason why section 17(a) of the Investment Company Act prohibits the transaction; and (2) the participating subadviser and any subadviser of the participating fund or portion of a fund's portfolio must be prohibited by their advisory contracts from consulting with each other concerning securities transactions of the participating fund or portion.

[11] For example, achieving aggregate reporting in these circumstances without violating information barriers would entail, among other requirements, dedicating separate personnel and resources that are "above the wall" and adopting appropriate policies and procedures to govern these groups.

[12] We recommend that the Commission develop a system of assigning related LTIDs within a single complex. Having the same numbers at the beginning of a LTID, or some similar pattern, for affiliated large traders should assist both large traders and broker-dealers in complying with the proposed rule.

[13] The Commission would still be able to quickly identify the institution in the corporate hierarchy responsible for specific trading activity because proposed Form 13H would require reporting of the LTID for any large trader affiliates. Significantly, our recommendation would not change the proposed definition of a large trader.

2. Voluntary Filings

We recommend that the Commission permit investment advisers who may not yet meet the applicable threshold level of trading to satisfy the definition of a large trader to register voluntarily and make the requisite filings. This would alleviate monitoring burdens on traders that know they are likely to meet the large trader threshold activity level at some point, and would help ensure that such persons are in compliance with the proposed rule when they reach that threshold. This would be particularly important to the parent of a small group of separately operating financial affiliates who would have difficulty monitoring the identifying activity threshold across multiple entities. In addition, permitting persons who do not on their own meet the definition of a large trader to file Form 13H would allow a parent organization the option of complying with proposed Rule 13h-1 by filing Form 13H on an entity-by-entity basis, as we recommended above.

3. Foreign Entities

The proposal would extend to foreign large traders regardless of their legal domicile to the extent they effect transactions in NMS securities through a registered broker-dealer and otherwise satisfy the proposed definition of a large trader. Many of these entities have U.S. affiliates, including investment advisers, which conduct business in the United States independent of the operations, systems, and legal regime of the foreign parent company and likely would qualify as large traders on their own. As with complex organizations domiciled in the United States, we recommend that the Commission permit a foreign parent company to report only for some of its large trader affiliates and permit other affiliates to report separately. This would ease significantly the burden of collecting and aggregating data between cross-border affiliates within the same financial entity without affecting the information that would be provided to the Commission.

C. Schedule 6 to Form 13H

The Institute recommends several significant changes to Schedule 6 to proposed Form 13H, which Form would require large traders to identify (1) each account held by a broker-dealer through which it trades and (2) LTIDs of other large traders that exercise investment discretion over an account, to reflect investment company industry operations and practices.

1. Broker-Dealer Account Identification

Many investment advisers have a large number of discretionary advisory clients, and effect transactions on behalf of such clients through a substantial number of different broker-dealers, through multiple prime brokers, and, in the case of multi-managed accounts, in concert with other advisers. The proposal seems to assume that for each advisory client, the investment adviser opens, or utilizes an existing, brokerage account that can be easily identified by name and number. In practice, however,

each transaction can be executed on behalf of many clients.[14] With respect to each such transaction, although a particular broker-dealer may have assigned an account number for its own internal recordkeeping purposes, the adviser does not have this information.

Most advisers communicate order allocation and settlement instructions with broker-dealers using Omgeo systems entitled OASYS, Global OASYS, Central Trade Manager, and TradeSuite.[15] Client accounts at each adviser are identified in these systems by using a unique numerical code called an "ALERT ID."[16] Advisers keep their client list updated in the ALERT system and identify broker-dealers that should be provided access to the lists of the advisers' accounts, as identified by an ALERT ID. Broker-dealers are able to download the client-specific information (including name and custodial bank) from the ALERT system which matches an adviser's client identifiers with a broker-dealer's internal identifier, so that trades can be properly settled to the correct custodian bank. Thus, advisers do not keep or update broker-dealer account numbers for their numerous clients.

As a result, it would be extremely difficult for many investment adviser large traders to complete the proposed account identification section in Schedule 6.[17] Instead, investment advisers

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[14] Advisers commonly combine brokerage orders of advised accounts, or "bunch" transactions, when those accounts are contemporaneously purchasing or selling the same security to achieve best execution, reduce the costs of confirmations, and treat all accounts fairly by reducing the risk of favoring any particular client. Advisers then formally allocate the filled trades to each account following the advisers' written allocation procedures that expressly authorize aggregation of client orders. *See* SEC Staff No-Action Letter, *SMC Capital, Inc.,* (publicly available September 5, 1995), available at http://ftp.sec.gov/divisions/investment/noaction/smccapital090595.htm.

[15] Omgeo is a joint venture between the Depository Trust & Clearing Corporation and Thomson Reuters. Omgeo is an operations service provider that automates trade life cycle events, including allocation, confirmation/affirmation, settlement notification, enrichment, operational analytics and counterparty risk management between counterparties to trades.

[16] The ALERT ID is also known in the industry as the ALERT Code, Access Code, Autex code/number, and the ALERT Access Code.

[17] Aside from the difficulty in, and costs associated with, gathering and updating account information in the form sought by the Commission, we question the Commission's need for account information. The Commission has defined a large trader in terms of investment discretion, acknowledging that the large trader's client is not responsible for the large trader's investment or trading decision even though it has a beneficial interest in the account over which the large trader has investment discretion. Thus, in the case of a disruptive market event, the Commission appears to be interested in knowing which large trader directed that certain securities be traded. If, as proposed, the large trader discloses its LTID to the broker-dealer and the broker-dealer marks that LTID on each trade executed for that large trader (regardless of the client account on whose behalf the large trader instructed the trade), the Commission should be able to collect the information it needs. The identity of a large trader's client accounts would be superfluous. In the unusual event where the Commission may desire account level information, it can request the information from a broker-dealer or large trader as needed instead of requiring, as a matter of course, the production of voluminous amounts of information, with the attendant burdens and costs associated with gathering, maintaining, and producing such information.

should be required only to list the broker-dealers through which they execute transactions,[18] as the Institute has previously recommended, and to provide additional information to the Commission upon request.[19] Coupled with the provision to provide the broker-dealer with the LTID each time a large trader transacts, this change would permit the Commission to achieve the objective of the large trader reporting system without imposing impractical and burdensome requirements on investment advisers.

The difficulty in account identification would be magnified if the Commission determines to not adopt our recommendation to permit disaggregation of large trader entities for reporting purposes, because of the tremendous burdens placed on a parent company to identify all brokerage accounts of its various affiliates.[20] It would be unreasonable to direct a parent organization to create the infrastructure necessary to look through each of its affiliates to compile its account information in order to report on a consolidated basis, when the same information could be provided to the Commission simply by having each affiliate report its information individually on proposed Form 13H.[21]

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[18] If the Commission were to adopt the Institute's recommendation in this letter that investment advisers be required to list on Form 13H the broker-dealers through which they execute transactions, instead of the advisers' account information, it would be imperative that the broker-dealer list be kept confidential. Disclosure of approved broker-dealers for certain advisers (and by implication broker-dealers that are not approved for use or that were removed from an approved list) could, for example, negatively impact the stock price of a broker that is a public company. *See* "*Another Long Day for Lehman*," http://www.forbes.com/2008/07/10/lehman-banking-rumors-biz-wall-cx_lm_0710lehman.html (July 10, 2008).

[19] *See* Letter from Amy B.R. Lancellotta, Associate General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated December 11, 1991, and Letter from Paul Schott Stevens, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated April 18, 1994. Additionally, many investment advisers maintain approved broker-dealer lists in the ordinary course of business, and have processes for adding and deleting broker-dealers as well as reviewing trades with a broker-dealer not on the approved list. Reporting data at a broker-dealer level and not at an account level, therefore, would greatly reduce the compliance burden for a large trader.

[20] Our members exercise investment discretion over millions of individual client accounts. One member, for example, explained that it has discretionary authority over 500,000 client accounts. We question whether the Commission truly is interested in receiving these massive lists of accounts, particularly in light of the concerns we have raised regarding the costs and burdens of gathering and monitoring this information. In addition, if the Commission proceeds with the proposed requirement to produce account information, we request that it clarify who will have access to the Forms 13H and who will be reviewing the account information.

[21] Reporting at the parent company level would not be a simple process of manually combing multiple Forms 13H from affiliates into a single Form 13H for the complex financial organization. The parent company would need to develop an automated system across the complex to ensure quality control between the various affiliates, especially parent companies that operate autonomous affiliates, such as where the affiliate was acquired and might have a different legacy system or the affiliate is a foreign entity. Further, parent companies would undoubtedly have questions regarding reconciliation between its affiliates, and the information submitted to the parent by the affiliates, that would need to be resolved before the parent company could file the Form 13H on behalf of the complex. The development of the new processes and systems to gather, verify, and maintain the information to be in compliance with the proposal would require a substantial effort on behalf of parent companies that would be costly, time consuming, and resource intensive.

As an alternative, if the Commission determines that it requires more granular information than an investment adviser's broker-dealer list and LTID, we recommend that the Commission permit investment advisers and broker-dealers to report on Schedule 6 to Form 13H the ALERT ID for advisers' client accounts, instead of broker-dealer account numbers. By allowing advisers and broker-dealers who subscribe to the ALERT system to report the ALERT ID for covered transactions, the Commission would significantly reduce the burden of complying with the proposal for these market participants.

2. LTIDs of Other Advisers

Schedule 6 to proposed Form 13H would require a large trader to identify the LTIDs of other large traders that exercise investment discretion over an account. The term "account," however, is not defined in the proposal. We recommend that the Commission clarify that this term refers to advisers who have collective investment discretion over a particular custodial account. The Commission should not require advisers to identify other advisers of a client account that trade separately in a different custodial account without collaboration between the advisers. Mutual funds, insurance companies, pension funds, endowments, and foundations could have numerous advisers that manage a group of assets. In most cases, except for mutual funds, the identity of these advisers is not public. In the case of multi-managed accounts, each account adviser generally has its own separate custodial account to ensure that trading is not duplicated by different advisers, and advisers will place trades with the broker-dealer they choose.

D. Form 13H Issues

The Institute requests clarification on several issues relating to the filing of Form 13H.

1. Clarification Regarding Timing of Initial Filings

The proposal would require that large traders file Form 13H "promptly" after first effecting transactions that reach the identifying activity level. This filing would be identified on Form 13H as an "Initial Filing." The instructions for Form 13H state that an Initial Filing must indicate the date on which the aggregate number of transactions effected reached the identifying activity level. Neither the Release nor the instructions provide any guidance with respect to the Commission's expectation as to what constitutes "prompt" filing. We recommend that the Commission provide guidance in the adopting release clarifying that, for purposes of the Initial Filing, promptly means without delay but, in no circumstances, later than thirty days after the large trader has met the identifying activity level. By allowing large traders up to thirty days to make their Initial Filing, the Commission would balance the burden on persons newly subject to the reporting obligation,[22] or complex organizations with newly qualifying affiliates, with the Commission's stated goal of promptly receiving useful data to study the markets.

[22] A thirty-day period would be particularly helpful for small entities meeting the identifying activity level for the first time.

2. Clarification Regarding Interim Filings

The Institute notes that in the Instructions for Form 13H, the Release specifies that an "Interim Filing" 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. In the discussion of Form 13H and the instructions thereto, the Commission states that, "after receiving its LTID, a large trader would need to file promptly an "Interim Filing" to include the LTID and any new information." We recommend that, as with other Interim Filings, the Commission clarify that this filing – including the large trader's LTID – would be required promptly after the end of the next calendar quarter, as set forth in the instructions for Form 13H.

IV. Burden Estimates

We believe the Commission has significantly underestimated the burden large traders would face when complying with the proposed rule. The Commission has estimated that it would take a large trader approximately twenty hours to calculate whether its trading activity qualifies it as a large trader, complete the Initial Filing, 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 has further stated that a large trader's existing systems to capture trading activity would be sufficient without further modification to determine whether a large trader has met the identifying activity level.

Our members indicate that it will be necessary to spend a significant amount of time over and above the Commission's estimates to comply with the proposed rule. First, only some of the requisite data is located at the premises of the potential large trader. As discussed above, account information, which is a considerable part of the data being sought, is not automatically available to the large trader.[23] Second, in those cases in which the data is available currently, it is not in an automated form. After identifying the processes that complex organizations will follow to implement and comply with the proposal, software changes will need to be developed to update or build automated systems.

V. Compliance Date

The proposal would require large traders and broker-dealers to comply with new Rule 13h-1 within three months and six months, respectively. Given the burdens discussed above associated with developing systems to comply with the proposed rule, we believe these time periods are insufficient. Most significantly, new systems will have to be developed, built, and tested after large traders sort through the complexities of the proposed rule and its application to their multi-faceted organizations. In addition, resources and budgets will have to be secured, and many entities that would be classified as large traders under the proposed rule are already into next year's budget timeline. This also will be occurring within the context of implementation of other Commission trading proposals either recently

[23] Account information may, for example, be retained by an independently operated affiliate or, in the case of a multi-managed account, another adviser.

adopted or currently being considered. We recommend, therefore, that the Commission provide a longer period to comply with the new rule (*e.g.*, one year) to permit large traders to develop the systems necessary to comply with the rule while balancing the developmental costs, complexities, and burdens of such systems.

VI. Interaction with Commission's Consolidated Audit Trail Proposal

The Commission has proposed to require self-regulatory organizations to jointly develop, implement, and maintain a consolidated audit trail.[24] We support the development of a consolidated order tracking system and believe that it would significantly improve the ability of the Commission to conduct comprehensive trading analysis.[25] The adoption of a consolidated audit trail across the markets would eliminate the need for the large trader reporting system, as proposed, because the information captured in the proposals would be duplicative.[26] Given the concerns we have raised regarding the costs, burdens, and operational challenges of the large trader proposal, together with the inevitable costs that will be associated with the consolidated audit trail proposal, we recommend that the Commission amend the large trader proposal to help reduce the costs to the industry of these two proposals.

Specifically, given the interaction of the large trader reporting system with the consolidated audit trail, we recommend that the Commission consider amending the proposal to retain the part of the proposal that would require large traders to identify themselves to the Commission, and to provide their LTID to broker-dealers that execute transactions on their behalf, but eliminate the proposed requirements for reporting account information and making quarterly filings.[27] Large traders would still be required to provide additional information to the Commission upon request. We believe this alternative approach would address in the near term the Commission's current need for information about large traders and their activities without imposing undue regulatory burdens on large traders.[28]

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[24] *See supra* note 3.

[25] We currently are reviewing the details of the Commission's consolidated audit trail proposal and will submit more detailed comments by the close of the proposal's comment period on August 9, 2010.

[26] The only data element in the large trader proposal that would not be readily available through a consolidated audit trail would be the identity of a large trader. The Commission's consolidated audit trail proposal, however, would require that, if the large trader proposal were adopted, the LTID be reported to the central repository as part of the identifying customer information.

[27] As discussed in this letter, both of these requirements are extremely burdensome and raise difficult compliance issues for large traders. We would not object, however, to the quarterly reporting requirement if the Commission were to adopt our recommendation that large traders be required only to list the broker-dealers through which they execute transactions instead of being required to list account information.

[28] The Commission has proposed that the national market system plan creating the consolidated audit trail and a central repository would be filed within ninety days of approval of the consolidated audit trail proposal. Market participants would then be required to comply with the consolidated audit trail proposal two years after adoption. Even if the Commission

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If you have any questions on our comment letter, please feel free to contact me directly at (202) 326-5815, Heather Traeger at (202) 326-5920, or Ari Burstein at (202) 371-5408.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan
General Counsel

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Robert W. Cook, Director
James Brigagliano, Deputy Director
Division of Trading and Markets

Andrew J. Donohue, Director
Division of Investment Management
U.S. Securities and Exchange Commission

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does not provide a longer compliance period for the large trader proposal, as we have recommended in this letter, we believe that the benefits to be gained by the Commission through the format of collecting information, during the period between the implementation of the consolidated audit trail proposal and the large trader proposal, would not outweigh the burden and costs of the large trader proposal as proposed.