FS Regulatory Brief

SEC Issues Exemptions from the Large Trader Reporting Rule

On April 20, 2012, the Securities and Exchange Commission ("SEC") issued an order temporarily exempting broker-dealers from the recordkeeping, reporting and monitoring requirements of new Rule 13h-1 under the Securities Exchange Act of 1934 (Rule 13h-1 or the Large Trader Reporting Rule) and granting a permanent exemption for certain securities transactions.

The Large Trader Reporting Rule, adopted by the SEC in July 2011, requires entities that meet the definition of a "large trader" to register with the SEC on Form 13H, and for broker-dealers to meet recordkeeping, reporting and monitoring obligations with respect to large traders who execute trades through them.[1]

Industry groups had asked the SEC for additional time to come into compliance with the new rule, and time to develop, test, and implement the necessary systems changes once the examination of implementation issues was complete. The SEC noted that the extension should also allow time for consideration of a variety of implementation concerns relating to the application of the rule to broker-dealers other than the large trader's clearing broker, and in cases where the large trader customer is neither a US-registered broker-dealer nor a sponsored access customer, and to consider the need for additional exemptive relief.

Temporary exemptions for broker-dealers from recordkeeping, reporting and monitoring requirements

The SEC's order temporarily exempts registered broker-dealers from Rule 13h-1's recordkeeping and reporting requirements until <u>May 1, 2013</u>, <u>except</u> that clearing broker-dealers for a large trader that either (1) is a US registered broker dealer,[2] or (2) trades through a sponsored access arrangement,[3] are temporarily exempted from the recordkeeping and reporting provisions until <u>November 30, 2012.</u>

The SEC also exempted registered broker-dealers from compliance with the obligation to monitor their customers' accounts for large trader activity until <u>May 1, 2013.</u>

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[1] For more information concerning the Large Trader Reporting Rule, please see our FS Regulatory Brief, *The SEC's New Large Trader Reporting Requirements Place New Regulatory Obligations on Both Asset Managers and Broker-Dealers*, available at http://www.pwc.com/us/en/financial-services/regulatory-services/publications/fs-regulatory-brief-large-trader-reporting-requirements.jhtml.

[2] This includes the large trader broker-dealer itself, if self clearing.

[3] A "sponsored access arrangement" in this context refers to 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.

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Permanent exemption for certain transactions

In addition, the SEC's order permanently exempts the following transactions from the definition of the term "transaction" under Rule 13h-1(a)(6) for the sole purpose of determining whether an entity's trading activity requires it to self-identify as a large trader:

- Any transaction that is part of an offering of securities by or on behalf of an issuer, or by an underwriter on behalf of an issuer, or an agent for an issuer, whether or not such offering is subject to registration under the Securities Act of 1933, regardless of whether such transaction is effected through the facilities of a national securities exchange; and
- Sales of securities by a selling shareholder in connection with an initial public offering or in a registered secondary offering if such selling shareholder is a current or former employee of the issuer and the securities being sold were acquired as part of the person's compensation as an employee of the issuer.

The exemption thus provides that certain offerings, as well as sales by issuer employees in an initial public offering or registered secondary offering, are excluded from the calculation to determine whether an entity is a large trader.

According to the SEC, this limited exemption will continue to ensure that Rule 13h-1 provides a mechanism for the agency to gather data on large traders -- while providing limited relief to issuers and selling shareholders who would not otherwise meet the definition of large trader in the absence of these capital market transactions. Further, the SEC believes that because such transactions typically are infrequent in nature and are distinguishable in character from secondary market activity that is the focus of Rule 13h-1, the exemption should preserve the SEC's ability to identify large traders while reducing burdens placed on issues and shareholders.

Additional information

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