

Client Alert

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SEC Delays Effectiveness of Large Trader Reporting for Some Broker-Dealers

By Daniel A. Nathan

The SEC's "large trader" rules that apply to clearing firms and certain other firms will kick in this November. Thanks to a [recent SEC release](#), some firms are getting a two-year compliance reprieve, but they must develop the procedures and systems for reporting large trader activity within those two years.

The SEC adopted Rule 13h-1 on July 27, 2011, with the goal of enabling the SEC to assess the impact of large trader activity on the securities markets and to support its investigative and enforcement activities. In brief, Rule 13h-1 requires a large trader – defined as a person who exercises investment discretion over one or more accounts, and whose transactions in NMS (national market system) securities equal or exceed 2 million shares or \$20 million during any calendar day, or 20 million shares or \$200 million during any calendar month – to identify itself to the SEC and file certain information on Form 13H. The SEC then assigns the trader a large trader identification number (LTID).

Rule 13h-1 also imposes recordkeeping and reporting obligations on broker-dealers with respect to large traders that trade through them. In general, every broker-dealer that is itself a large trader or carries an account for a large trader must report – electronically through the SEC's Electronic Blue Sheet (EBS) system – certain information concerning all trades over a certain size placed by a larger trader through the firm.

The SEC originally established two phases for implementing broker-dealers' obligations. The recent SEC release now limits the scope of the obligations under the second phase of the rollout, and creates a third phase that delays the remaining obligations under the rule. The SEC's revised timetable resulted from a request by industry organizations that highlighted implementation challenges related to the recordkeeping and reporting requirements and, in particular, the requirement that the broker-dealers obtain and report the execution times of large traders' transactions.

Phase One of the broker-dealer obligations began on November 30, 2012, requiring clearing broker-dealers for large traders to keep records and report transaction data for proprietary trades by large trader broker-dealers and transactions effected pursuant to a sponsored access arrangement (that is, when a BD permits a large trader to enter orders directly into a trading center, and they are not processed through the BD's own trading system). Under Phase Two, clearing broker-dealers will have to comply by November 1, 2013, with the recordkeeping and reporting obligations for large traders' transactions effected pursuant to "direct market access" (that is, when a BD permits customers to enter orders through the BD's trading systems into a trading center). In addition, as to all other types of transactions, the broker managing the account of a large trader will have to report the trader's LTID to the SEC, but not the execution time of the trade. Phase Two also implements the requirement that broker-dealers comply with the recordkeeping and reporting requirements for "Unidentified Large Traders," that is,

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traders who have not identified themselves to the SEC and who the broker-dealer has reason to know is a large trader based on its trading activity.

The SEC did not push back the November 1, 2013 compliance date, but it limited the number of firms that have to meet that deadline. The principal effect of the SEC's release is to create a Phase Three, that extends until November 1, 2015, the recordkeeping and reporting requirements as to non-carrying broker-dealers, that is, broker-dealers that are large traders but do not self-clear, as well as broker-dealers effecting transactions for large traders whose accounts are carried by non-broker-dealers. Thus, only the broker-dealers that carry accounts for large traders – which are already connected to EBS by virtue of being clearing firms – will be subject to the November 1, 2013 deadline, and the rest of the industry can delay its compliance with the rule's recordkeeping and reporting obligations for two more years.

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