Responses to Frequently Asked Questions Concerning Large Trader Reporting

(Modified by the SEC: 02/22/2016)

Responses to these frequently asked questions on Rule 13h-1 under the Securities Exchange Act of 1934 and Form 13H were prepared by and represent the views of the staff of the Division of Trading and Markets ("Staff"). They are not rules, regulations, or statements of the Securities and Exchange Commission ("Commission"). Further, the Commission has neither approved nor disapproved these interpretive answers. Additional information on Rule 13h-1 and Form 13H can be found in the Commission's adopting release, available at: http://www.sec.gov/rules/final/2011/34-64976.pdf

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Section 1. Large Trader Identification

Question 1.1: What is an NMS Security?

Answer: "NMS Security" is defined in Rule 600(b)(46) (17 CFR 242.600(b)(46)) as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options."

In general, the term "NMS Security" refers to exchange-listed equity securities and standardized options, but does not include exchange-listed debt securities, securities futures, or open-end mutual funds, which are not currently reported pursuant to an effective transaction reporting plan.

As of March 2012, the current effective transaction reporting plans and the effective national market system plan for the reporting of transactions in listed options that are relevant for purposes of Rule 13h-1 include:

The Consolidated Tape Association ("CTA") Plan applies to the last sale price reporting of an "Eligible Security" as defined in the plan. In general terms, the CTA plan applies to New York Stock Exchange (Network A) and NYSE Arca, NYSE Amex and other regional exchange (Network B) listed common stock, long-term warrants, preferred stock, and American Depository Receipts. The text of the CTA Plan is available at: http://www.nyxdata.com/CTA

The OTC UTP Plan applies to the consolidated reporting of transactions for issues listed on the NASDAQ Stock Exchange. The text of the OTC UTP Plan is available at: http://www.utpplan.com

The Options Price Reporting Authority ("OPRA") Plan applies to the consolidated reporting of transactions in eligible option contracts listed and traded on national securities exchanges. The text of the OPRA Plan is available at: http://www.opradata.com/overview/opra_over.jsp#

Question 1.2: Does the identifying activity level apply to a person's activity in a single security or to all of a person's trading?

Answer: Rule 13h-1(a)(1)(i) defines a "large trader" as a person that "[d]irectly or indirectly… exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security… by or through one or more registered broker-dealer, in an aggregate amount equal to or greater than the identifying activity level."

Rule 13h-1(a)(7) defines the term "identifying activity level" as "aggregate transactions in NMS securities" that are equal to or greater than the specified levels. Further, as provided in Rule 13h-

1(c), a trader should take into consideration its aggregate trading in all NMS securities effected through broker-dealers when calculating its threshold activity level.

Rule 13h-1 requires, when calculating the threshold trading level, that transactions not be netted within or among accounts. In other words, the identifying activity level applies to all of a person's trading activity in the aggregate.

For purposes only of calculating the identifying activity level threshold, if more than one large trader exercises investment discretion over a single account, then each person need only count the particular transactions that they effected. Note, however, that all transactions in the account would still need to be tagged with all applicable LTID numbers, since LTID numbers are tagged to accounts.

Question 1.3: How are options calculated for purposes of the identifying activity level?

Answer: As provided in Rule 13h-1(a)(7), the identifying activity level means aggregate transactions in NMS securities that are equal to or greater than:
i. During a calendar day, either two million shares or shares with a fair market value of $20 million; or
ii. During a calendar month, either twenty million shares or shares with a fair market value of $200 million.

The Rule defines "transaction" to mean "all transactions in NMS securities, excluding the purchase or sale of such securities pursuant to exercises or assignments of option contracts," except for certain specifically enumerated transactions.

For equity options, Rule 13h-1(c)(1)(i) provides that "the volume or fair market value of the equity securities underlying transactions in options on equity securities, purchased and sold, shall be aggregated." For index options, Rule 13h-1(c)(1)(ii) provides that "the fair market value of transactions in options on a group or index of equity securities (or based on the value thereof), purchased and sold, shall be aggregated."

As noted in the Adopting Release (34-64976), "for purposes of the identifying activity level with respect to options, only purchases and sales of the options themselves, and not transactions in the underlying securities pursuant to exercises or assignments of such options, need to be counted."

Volume Calculation

Equity Options. To calculate the volume of equity options for purposes of Rule 13h-1, the number of contracts should be multiplied by the applicable multiplier. For example, 500 contracts x 100 shares of the underlying per contract = 50,000 shares.

Index Options. Volume does not need to be calculated for index options.

Fair Market Value Calculation

Equity Options. Subsequent to the Adopting Release (34-64976), where the value of equity options was to be calculated by using the value of the securities underlying the option, the Commission issued an Exemptive Order (34-76322) to permit equity options to be valued using premium paid. Accordingly, the fair market value of equity options may be calculated based on the premium paid for the option. The following example shows how to calculate the value of an equity option using premium paid:

An investor a person purchases 200 call options on ABC stock, each with a 100 multiplier, for a premium of $15 per share. The fair market value of the options trade would be calculated as follows: 200 contracts x 100 shares per contract x $15 premium price = $300,000.

Index Options. The following example shows how to calculate the value of an index option:

An investor purchases 100 put contracts on an index for $51.00 per unit, at a strike price of 1375, and where the option uses a 100 multiplier. The value of these index options for purposes of Rule 13h-1 would be $510,000, calculated as follows: 100 contracts x $51.00 price per unit x $100 contract multiplier = $510,000.

Question 1.4: Do riskless principal transactions count toward the executing broker-dealer's identifying activity level?

Answer: If a broker-dealer holds a customer order as agent and, after receiving the order, effects a riskless principal transaction with its customer, such activity does not need to be considered towards the broker-dealer's identifying activity level since, for purposes of Rule 13h-1 only, it would lack the requisite degree of investment discretion to characterize it as large trader activity.

Question 1.5: If a large trader parent company decides to use optional suffixes to sub-identify persons under its control, can it assign the same suffix to multiple entities (e.g., separate entities within a common business line)?

Answer: Yes. Large traders may assign a common suffix to sub-identify multiple persons under its control. Use of a common suffix for separate affiliates should reflect a commonality among the affiliates (e.g., similar business line, similar geographic location, similar reporting line, etc.). Use of suffixes is intended to facilitate the ability of a large trader to identify various sub-groups within a large trader, and thereby facilitate the large trader's ability to accurately and efficiently track with more particularity the trading for which it exercises investment discretion.

Question 1.6: I previously self-identified as a Large Trader based on options trading, but do not meet the threshold as calculated under the Exemptive Order (34-76322) discussed in Question 1.3, above. Do I need to continue to file Form 13H?

Answer: Such traders may file for inactive status by submitting Form 13H-I through EDGAR (without needing to wait the required full calendar year required by paragraph (b)(3)(iii) of Rule 13h-1), after which no further Form 13H filings would be due unless and until the trader subsequently effects transactions that reach or exceed the identifying activity threshold (at which point the trader would need to file Form 13H-R through EDGAR to reactivate its status).

Section 2. Form 13H

Question 2.1: How do I access Form 13H?

Answer: Form 13H is an online web-based electronic form available only to persons with EDGAR access. For reference purposes, a paper copy of the form can be found on the Commission's website: http://www.sec.gov/about/forms/secforms.htm.

If a filer does not yet have EDGAR access, then in order to gain the necessary permission and access to file documents through the EDGAR system, a filer must first submit Form ID to obtain a Central Index Key (''CIK'') and other EDGAR access codes (including a password). Form ID must be submitted through EDGAR's Filer Management website (https://www.filermanagement.edgarfiling.sec.gov). A step-by-step Reference Guide for how to complete and submit Form ID is available here: http://www.sec.gov/info/edgar/quick-reference/form-id.pdf. Additional FAQs on the Form ID process can be found here: http://www.sec.gov/info/edgar/form-id-faq.pdf.

Filers should have only one CIK number, and should use their existing CIK (if applicable) to file Form 13H. If a filer was previously a paper-based broker-dealer filer, it can convert to an electronic filer to enable it to electronically file Form 13H. Paper-based filers may apply to convert to electronic filers at https://www.filermanagement.edgarfiling.sec.gov/.

Once a filer has a CIK and password, the filer may then access Form 13H through the EDGAR filer website (https://www.edgarfiling.sec.gov). After logging on to the EDGAR filer website, the web-based Form 13H is available by clicking on the "Form 13H" hyperlink on the left hand side of the screen under "Online Forms". Form 13H must be completed and submitted electronically through the EDGAR filer website.

More information on accessing and using EDGAR is available in the EDGAR Filer Manual, available at: http://www.sec.gov/info/edgar/edmanuals.htm. Volume I of the Filer Manual is a reference for those that need to obtain EDGAR access and for those that are new to EDGAR. Volume II focuses on the filing process and illustrates each step of the process to submit an electronic submission. Volume II contains specific instructions for Form 13H.

If you have technical questions relating to EDGAR that are not addressed in those documents, EDGAR Filer Support and Filer Technical Support can be reached at (202) 551-8900.

Question 2.2: What is meant by "accounts of the large trader" in Item 5(b)?

Answer: The term refers to ownership of the large trader partnership entity, not the accounts that may be managed by the large trader.

Question 2.3: Does Item 6 of Form 13H require the identification of only registered broker-dealers that effect transactions in NMS securities?

Answer: Item 6 requires the identification of registered broker-dealers at which the large trader or its Securities Affiliates have an account for the trading of NMS securities. For example, if a large trader has a relationship with 10 registered broker-dealers, it should list each broker-dealer in Item 6 (even if the large trader only effected transactions through 8 of those entities during the reporting period). At their option, large traders also may list non-registered broker-dealers (e.g., non-U.S.), and may also list broker-dealers that handle accounts involving financial instruments other than NMS securities.

Question 2.4: When is the first annual filing due?

Answer: Rule 13h-1(b)(1)(ii) specifies that an annual filing must be made "within 45 days after the end of each full calendar year". Because Rule 13h-1 was effective on October 3, 2011, no full calendar year has elapsed for 2011. Accordingly, no annual filing is required for 2011. For large traders who registered by the December 1, 2011 compliance date, the first annual filing will be required for the period ending December 31, 2012.

For large traders who register starting in 2012, an annual filing is required at the end of each calendar year. For example, if a trader met the identifying activity level on October 16, 2012 and filed an initial Form 13H on October 22, 2012, its first annual filing would be due for the period ending December 31, 2012.

Question 2.5: If a large trader files an amended Form 13H to reflect changes made during the fourth calendar quarter, will the large trader still be required to file the mandatory annual updated Form 13H?

Answer: Yes. Regardless of whether any amended Forms 13H are filed, large traders also are required to file Form 13H annually, within 45 days after the calendar year-end. In future system enhancements, the Staff will consider the possibility of allowing large traders to check both the “annual filing” and “amended filing” file types, in order to allow a large trader to satisfy both the amended 4th quarter filing (Form 13H-Q) as well as the annual update (Form 13H-A), as long as the submission is made within the period permitted for the 4th quarter amendment (i.e., promptly after the quarter’s end).

UPDATE: Large traders may now complete an "annual filing" (Form 13H-A) and also designate it as an "amended filing" (Form 13H-Q). Doing so allows a large trader to satisfy both the amended 4th quarter filing (Form 13H-Q) as well as the annual update (Form 13H-A), as long as the submission is made within the period permitted for the 4th quarter amendment (i.e., promptly after the 4th quarter's end).

Section 3. LTID Numbers

Question 3.1: How will I receive my LTID number?

Answer: For filings made prior to July 2012, the Commission mailed the assigned LTID number to the Authorized Person identified on the Form 13H filing. For initial Form 13H filings submitted after July 2012, EDGAR automatically assigns the 8-digit "root" LTID number. Filers receive their unique LTID number in the automatically generated email that EDGAR sends to a filer confirming that the Form 13H filing has been accepted. Please note that this email also includes other EDGAR-generated tracking numbers (e.g., the accession number), which are not related to the LTID number. Large traders should retain this email for future reference.

Question 3.2: What is the format of the LTID and the optional suffix?

Answer: The LTID is a total of 13-characters. The first 8 characters constitute the root LTID number, which is assigned to the large trader by the Commission in response to the submission of an initial Form 13H filing. The root number is followed by a dash and a maximum 4-digit suffix (suffixes are optional and are assigned by a large trader at its discretion; suffixes may be assigned to multiple entities under common control of the large trader, for example among affiliates that reflect a commonality (e.g., a similar business line)). Suffixes should be numbers, not letters, and should be right-justified with zeros used as placeholders (e.g., a suffix of “1” would be reflected as “-0001”). For example, an LTID number could look like: “12345678-0001.” If the large trader did not assign itself any suffixes, a broker-dealer should append four zeros to the root number (i.e., “-0000”), so that the LTID number contains the full 13 characters (e.g., “12345678-0000”).

Question 3.3: How should Unidentified Large Traders be designated by broker-dealers?

Answer: For Unidentified Large Traders, broker-dealers should assign their own unique identifying number to each person it identifies as an Unidentified Large Trader. The unique identifier should conform to the format of the LTID (i.e., it should contain 13 characters, including an 8 character root number, followed by a dash, and 4 characters in the suffix field) and should begin with the letters “ULT” (e.g., “ULT00001-0000”). In addition, under Rule 13h-1(d)(3), for transactions effected directly or indirectly by or through the account of an Unidentified Large Trader, broker-dealers are also required to maintain information for such Unidentified Large Trader including the person or entity’s name, address, date the account was opened, and tax identification number(s).

Section 4. Broker-Dealer Recordkeeping and Reporting

Question 4.1: Do the recordkeeping and reporting requirements of Rule 13h-1 apply only to NMS securities?

Answer: Yes.

Question 4.2: For purposes of Rule 13h-1, do the purchase or sale of securities pursuant to options exercises and assignments need to be reported?

Answer: No. The recordkeeping and reporting provisions of Rule 13h-1 are applicable to "transactions," which, pursuant to Rule 13h-1(a)(6), excludes the purchase or sale of securities pursuant to exercises or assignments of options contracts. Accordingly, if a broker-dealer reports the purchase or sale of the underlying security in connection with the exercise or assignment of an options contract and such transaction involves the account of a large trader, then the broker-dealer does not need to supply an LTID number or report any information in the execution time field for the transaction in the underlying security.