Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2015–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–BX–2015–060*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–060 and should be submitted on or before November 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–28144 Filed 11–4–15; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76322]

Order Exempting Certain Large Traders From the Self-Identification Requirements of Rule 13h–1 Under the Securities Exchange Act of 1934, and Exempting Certain Broker-Dealers From the Recordkeeping, Reporting, and Monitoring Responsibilities Under the Rule

October 30, 2015.

On July 27, 2011, the Securities and Exchange Commission (''Commission'') adopted Rule 13h–1 (the ''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') to assist the Commission in both identifying and obtaining information on market participants that conduct a substantial amount of trading activity, as measured by volume or market value, in U.S. securities (such persons are referred to as ''large traders'').[1] The Rule requires certain large traders to identify themselves to the Commission by filing Form 13H and separately requires certain broker-dealers to maintain records of large trader transaction information and report such information to the Commission upon request as well as monitor customer trading to help promote compliance with the Rule by traders. Since December 1, 2011, persons whose trading activity reached or exceeded the identifying activity level specified in the Rule have been required to identify themselves to the Commission by filing Form 13H through the Commission's EDGAR system. The Commission implemented the broker-dealer recordkeeping, reporting, and monitoring requirements of the Rule in phases through a series of exemptive orders establishing certain delayed compliance dates,[2] and currently certain broker-dealers are required to keep records of and report to the Commission upon request transaction data for certain of their customers that are either a large trader or an Unidentified Large Trader.[3]

Most recently, the Commission established a compliance date of November 1, 2013 for Phase Two of the Rule, which, among other things, implemented the recordkeeping and reporting responsibilities for an additional category of traders and also implemented the monitoring requirements under the Rule to require certain broker-dealers to monitor their customers' trading activity in order to promote awareness of and foster compliance with the self-identification requirements of the Rule.[4] At that time, the Commission stated that the compliance date for Phase Three of the Rule would be November 1, 2015.[5]

The Commission has received a request from the Financial Information Forum (''FIF'') to exempt options traders from the requirements of the Rule conditioned upon such traders not exceeding the ''identifying activity level'' (*i.e.,* the threshold at which a person triggers the self-identification requirements of the Rule) as calculated based on the gross *premium* of the options trades.[6] FIF asserts that such relief would appropriately limit the identification requirements of the Rule by exempting from the Rule a class of persons whose options trading is unlikely to have a market impact.[7] In addition, FIF requested that the Commission permanently exempt broker-dealers from the recordkeeping and reporting requirements of Phase Three of the Rule, or alternatively postpone the compliance date of the Phase Three requirements until November 1, 2020.[8] The Securities Industry and Financial Markets Association (''SIFMA'') also has requested that the Commission permanently exempt broker-dealers from the recordkeeping and reporting

[1] *See* Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46960 (Aug. 3, 2011) (''Adopting Release''). The effective date of Rule 13h–1 was October 3, 2011.

[2] *See* Securities Exchange Act Release Nos. 70150 (August 8, 2013), 78 FR 49556 (August 14, 2013) (establishing Phase Two and providing for Phase Three); 69281 (April 3, 2013), 78 FR 20960 (April 8, 2013) (extension of the compliance date); and 66839 (April 20, 2012), 77 FR 25007 (April 26, 2012) (establishing Phase One).

[3] Rule 13h–1(a)(9) defines ''Unidentified Large Trader'' as ''each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader.'' The Rule provides that, for purposes of determining whether a registered broker-dealer has reason to know that a person is a large trader, ''a registered broker-dealer need take into account only transactions in NMS securities effected by or through such broker-dealer.'' Rule 13h–1(a)(9).

[4] *See* Securities Exchange Act Release No. 70150, *supra* note 2 (establishing the November 1, 2013 compliance date for customer monitoring responsibilities). *See also* note 27, *infra,* and accompanying text.

[5] Phase Three includes all of the remaining requirements of Rule 13h–1 that were not implemented in either Phase One or Phase Two. In particular, Phase Three would require reporting of execution time on trades for additional categories of persons beyond those covered in Phases One and Two.

[6] *See* Letter from Mary Lou VonKaenel, Managing Director, FIF, to Stephen Luparello, Director of the Division of Trading and Markets, Commission, dated March 27, 2015 (''FIF Letter''), *available at: http://www.sec.gov/comments/s7-10-10/s71010.shtml.* Currently, the fair market value of equity options is calculated based on the value of the underlying securities. *See* Rule 13h–1(c)(1)(i).

[7] *See* FIF Letter, *supra* note 6, at 2–3.

[8] *See* FIF Letter, *supra* note 6, at 3.

requirements of Phase Three of the Rule, or alternatively postpone the compliance date of the Phase Three requirements until November 1, 2020.[9]

For the reasons explained below, the Commission believes that providing exemptive relief for equity options traders and deferring Phase Three are appropriate. Accordingly, the Commission is: (1) Conditionally exempting equity options market participants from the self-identification requirements of the Rule if they have not met or exceeded the alternative threshold described below that is applicable to equity options trading; [10] and (2) temporarily exempting broker-dealers until November 1, 2017 from the remaining recordkeeping and reporting obligations of the Rule beyond those established in Phases One and Two.[11]

I. Background

A. Large Trader Status

The Rule defines a large trader as a person who ''directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the *identifying activity level''* (emphasis added).[12] The identifying activity level contains daily and monthly share volume and fair market value thresholds, namely: aggregate transactions in NMS securities that are equal to or greater than (1) during a calendar day, either 2 million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either 20 million shares or shares with a fair market value of $200 million.[13]

In establishing the current identifying activity level for equity derivative securities, the Commission stated that the Rule was intended to focus on the potential impact of options transactions on the market for the underlying security.[14]

Specifically, for equity options,

- share volume is calculated by multiplying the number of contracts by the option contract's specified multiplier; and
- fair market value is calculated using the value of the securities underlying the option.[15]

At the time the Commission adopted Rule 13h–1, the Commission stated that this approach was consistent with Section 13(h)(1) of the Exchange Act, which sought to promote the Commission's ability to ''monitor[ ] the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value . . .'' in that the methodology considers the equivalent exercise value of the options on the date of purchase.[16] This approach eliminates the need to track and separately consider exercise and instead preemptively identifies traders whose options trading may be of a sufficient magnitude to potentially affect the underlying stock if the positions are exercised.

B. The Requirements of Rule 13h–1

1. Large Trader Self-Identification

As noted above, the Rule requires large traders to self-identify to the Commission on Form 13H and periodically update their Form 13H submission,[17] obtain a unique large trader identification number (''LTID'') from the Commission,[18] and provide this number to their brokers and identify each account to which the LTID applies.[19] These large trader responsibilities are referred to collectively as the ''*Self-Identification Requirements.*''

2. Broker-Dealers' Recordkeeping and Reporting Responsibilities Regarding Unidentified Large Traders and the Customer Monitoring Safe Harbor

Under Rules 13h–1(d) and (e), registered broker-dealers are responsible for, among other things, keeping records of and reporting to the Commission upon request data for their customers that are large traders or Unidentified Large Traders.[20] Specifically, Rule 13h–1 requires that every registered broker-dealer maintain records of data specified in paragraphs (d)(2) and (d)(3) of the Rule (''Transaction Data''), including the applicable LTID(s) and execution time on each component trade, for all transactions effected directly or indirectly by or through: (1) An account such broker-dealer carries for a large trader or an Unidentified Large Trader; or (2) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader under the Rule, the broker-dealer effecting transactions directly or indirectly for such large trader or Unidentified Large Trader must maintain records of all Transaction Data.[21] These recordkeeping obligations are referred to collectively as the ''*Recordkeeping Responsibilities.*'' The Rule also requires that, upon Commission request, every registered broker-dealer that is itself a large trader or carries an account for a large trader or an Unidentified Large Trader must electronically report Transaction Data to the Commission through the Electronic Blue Sheets (''EBS'') system for all transactions, equal to or greater than the reporting activity level, effected directly or indirectly by or through accounts carried by such broker-dealer for large traders or Unidentified Large Traders.[22] Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting such transactions directly or indirectly for a large trader or Unidentified Large Trader must electronically report Transaction Data to the Commission through the EBS system.[23] The Rule requires that reporting broker-dealers submit the requested Transaction Data no later than the day and time specified in the

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[9] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Stephen Luparello, Director of the Division of Trading and Markets, Commission, dated April 9, 2015 (''SIFMA Letter''), *available at: http://www.sec.gov/comments/s7-10-10/s71010.shtml.*

[10] As discussed below, with respect to any persons that previously registered as a large trader on account of their equity options transactions, this exemption relieves those persons from continued compliance with the periodic filing obligations as long as they do not otherwise meet or exceed the identifying activity level in the future.

[11] Phases One and Two are discussed below. *See infra* text accompanying notes 53 and 54.

[12] *See* Rule 13h–1(a)(1).

[13] *See* Rule 13h–1(a)(7).

[14] *See* Adopting Release, *supra* note 1, 76 FR at 46967 (noting that this focus reflected and was consistent with Section 13(h) of the Exchange Act).

[15] Examples of how to calculate the identifying activity for options transactions were provided in the Adopting Release, *supra* note 1, 76 FR at 46967. In contrast, for index options, share volume is not calculated because index options do not overlie shares and fair market value is calculated by multiplying together the index multiplier, the number of options, and the price per contract.

[16] *See* Adopting Release, *supra* note 1, 76 FR at 46967, text accompanying n.65.

[17] *See* Rule 13h–1(b)(1)(i)–(iii). Form 13H and all updates to it are filed electronically through the Commission's EDGAR system.

[18] When a large trader files its initial Form 13H filing through EDGAR, the system sends an automatically generated confirmation email acknowledging acceptance of the filing. That email also contains the unique 8-digit LTID number assigned to the large trader.

[19] *See* Rule 13h–1(b)(2). *See also* Large Trader Adopting Release, *supra* note 1, 76 FR at 46971 (''the requirements that a large trader provide its LTID to all registered broker-dealers who effect transactions on its behalf, and identify each account to which it applies, are ongoing responsibilities that must be discharged promptly'').

[20] *See* note 3, *supra.*

[21] *See* Rule 13h–1(d)(1)(iii).

[22] *See* Rule 13h–1(e).

[23] *See id.*

Commission's request.[24] These reporting obligations are referred to collectively as the ''*Reporting Responsibilities.*'' The Commission has implemented the Recordkeeping and Reporting Responsibilities in phases, as discussed in greater detail below.[25]

Rule 13h–1(f) provides a safe harbor that is designed to reduce broker-dealers' recordkeeping and reporting burdens with respect to Unidentified Large Traders by, among other things, providing relief for when a broker-dealer shall be deemed to know or have reason to know that a person is a large trader and thus subject to reporting obligations related to Unidentified Large Traders under Rule 13h–1. Under the safe harbor, a registered broker-dealer is deemed not to know or have reason to know that a person is a large trader if it does not have actual knowledge that a person is a large trader and it establishes policies and procedures reasonably designed to identify customers whose transactions at the broker-dealer equal or exceed the identifying activity level and, if so, to treat such persons as Unidentified Large Traders and notify them of their potential reporting obligations under this Rule.[26] Collectively, these broker-dealer undertakings are referred to as the ''*Customer Monitoring Obligations.*'' The Customer Monitoring Obligations are intended to promote awareness of and foster compliance with the Rule among persons who might not otherwise be aware of the large trader reporting requirements.[27]

As noted above, the Commission previously granted broker-dealers temporary exemptions from the Customer Monitoring Obligations.[28] As of November 1, 2013, to avail themselves of the safe harbor, broker-dealers with recordkeeping and reporting responsibilities were required to implement the Customer Monitoring Obligations.

II. Exemptive Relief

Pursuant to Section 13(h)(6) of the Exchange Act and Rule 13h–1(g) thereunder,[29] the Commission, by order, may exempt from the provisions of Rule 13h–1, upon specified terms and conditions or for stated periods, any person or class of persons or any transaction or class of transactions from the provisions of Rule 13h–1 to the extent that such exemption is consistent with the purposes of the Exchange Act.

FIF requests that the Commission grant exemptive relief for options traders that would be conditioned upon such traders' activity not exceeding the Rule's identifying activity threshold based on the gross premiums paid for the options as opposed to the value of the underlying stock at the time of the trade.[30] FIF notes that some of its members, particularly brokers with retail customers, have identified through their Customer Monitoring Obligations a number of retail customers that met or exceeded the threshold based primarily on such customers' equity options trading, particularly in deep out-of-the-money options on high priced underlying stocks.[31] According to FIF, customers that meet the ''underlying value'' threshold rarely exercise their options, and many of them would be unable to do so based on their account balances.[32] FIF argues that exemptive relief for all options traders conditioned upon a premium-based threshold calculation would appropriately focus the Rule on traders who are more significant participants in the U.S. securities markets and who are more likely to trade options at levels and in a manner that could have a market impact.[33]

In addition, both FIF and SIMFA request that the Commission permanently exempt broker-dealers from the additional recordkeeping and reporting requirements of Phase Three of the Rule, which have not yet been implemented.[34] In the alternative, FIF requests an extension of Phase Three by an additional five years[35] and SIFMA requests an extension to the earlier of full implementation of a Consolidated Audit Trail (''CAT'') or November 1, 2020.[36] Both FIF and SIFMA stated that their request would allow firms to focus their resources on implementing a CAT.[37]

A. Exemption From the Self-Identification Requirements for Equity Options Traders

As discussed above, the current identifying activity level methodology for equity options was designed to focus on the potential impact of options transactions on the market for the underlying securities. Based on its experience and the experience of its member firms, however, FIF suggests that the current methodology designates as large traders some persons who rarely exercise their options and whose aggregate equity options transactions, considering the actual premium paid for the options, are not of a large enough fair market value to have an impact either on the options market or the underlying equities markets.

In particular, FIF notes that this issue appears to be especially pronounced for market participants, particularly individual non-professional investors, who transact in deep out-of-the money options on high-priced securities.[38] While such transactions may have large exercise values, the premium paid for the options may be modest due to the deep-out-of-the-money nature of the contract, and, importantly, exercise among these traders is very infrequent, according to FIF. FIF's members reported that, among their customers that became large traders as a result of options transactions, such customers very rarely exercised their options,[39] and FIF asserts that many may have lacked the resources to do so.[40] In other words, the current methodology for calculating the fair market value of equity options has resulted in the self-identification as large traders of a number of investors who trade equity options, yet such investors' activity is

[24] *See id.*

[25] *See* Section II.D, *infra.*

[26] *See* Rule 13h–1(f).

[27] *See* Adopting Release, *supra* note 1, 76 FR at 46997.

[28] *See* Securities Exchange Act Release Nos. 66839 and 69281, *supra* note 2.

[29] *See* 15 U.S.C. 78m and 17 CFR 240.13h–1(g), respectively.

[30] FIF requests that the alternative ''options premium'' threshold be consistent with Rule 13h–1(a)(7), which establishes the daily and monthly market value thresholds of the identifying activity level as $20 million and $200 million, respectively. *See* FIF Letter, *supra* note 6, at 2.

[31] *See* FIF Letter, *supra* note 6, at 1.

[32] *See* FIF Letter, *supra* note 6, at 2.

[33] *See* FIF Letter, *supra* note 6, at 2–3.

[34] *See* FIF Letter, *supra* note 6, at 3 and SIFMA Letter, *supra* note 9, at 2–3.

[35] *See* FIF Letter, *supra* note 6, at 3.

[36] *See* SIFMA Letter, *supra* note 9, at 2. *See also* Rule 613; Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[37] *See* FIF Letter, *supra* note 6, at 3 and SIFMA Letter, *supra* note 9, at 2.

[38] *See* FIF Letter, *supra* note 6, at 1.

[39] FIF reports that it surveyed its members and found that customers that became large traders as a result of options transactions (''Equity Options LT Customers'') exercised their options less than 2% of the time on average. *See* FIF Letter, *supra* note 6, at 2.

[40] FIF states that, ''[g]iven 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.'' *See id.* To support this conclusion, FIF provides anecdotal data: A firm with approximately 2,000 Equity Options LT Customers reported that the average account value was $835,000. Another FIF member firm reported that: The average account size for 90% of its Equity Options LT Customers was less than $555,000; the average value across all Equity Options LT Customer accounts was $2.5 million; and excluding the top 50% of its Equity Options LT Customer accounts, the average account size was under $56,000. *See id.* FIF suggests that without sufficient assets or collateral, such customers would not be able to outright purchase or otherwise finance their acquisition of the underlying securities in an amount that equals or exceeds the $20 million threshold.

unlikely to have a material impact either on the options market or the underlying equities markets for the purposes of Rule 13h–1.

In order to alleviate the burdens on these persons without undermining the purposes of Section 13(h), the Commission hereby is providing a conditional exemption from the Self-Identification Requirements for persons that trade equity options if: (1) The aggregate value of their equity option transactions based on premium paid,[41] combined with the aggregate value of their transactions in all other NMS securities (if any), does not reach or exceed the current fair market value thresholds of the identifying activity level; and (2) they also do not reach or exceed the share volume thresholds of the identifying activity level.[42] Accordingly, this exemptive relief makes the calculation of fair market value for equity options consistent with how index options are valued under the identifying activity level.[43]

This relief utilizes the existing fair market value thresholds of the identifying activity level and references premium paid instead of the price of the underlying at the time of the trade.[44] The Commission is persuaded that valuing equity options using premium paid and applying the existing fair market value thresholds appropriately focuses the Rule on persons whose transactions are more likely to have a market impact and therefore warrant triggering the Self-Identification Requirements. In particular, as FIF has stated, the current methodology impacts a number of equity options traders, many of whom reach the threshold by purchasing options that are deep out of the money and who do not otherwise trade in an amount required to reach the identifying activity level. When these options expire out of the money and are not exercised, the position does not result in any trading in the underlying securities, and thus valuing such options with reference to the price of the underlying security is unlikely to be a useful method to identify traders with the potential to have a market impact on the underlying equities.[45] Using premium paid to value equity options instead will focus the identification requirement on options traders who trade options in larger amounts that thus may be more likely to have a market impact regardless of whether the positions are ultimately exercised. In addition, employing the existing fair market value thresholds to the new premium-based methodology for equity options allows all trading in NMS securities to be easily aggregated for purposes of determining large trader status.[46] For these reasons, the Commission believes that calculating the fair market value for equity options by referencing the premium paid for the options is a better overall indicator, for purposes of Rule 13h–1, of potential market impact and provides appropriate relief to equity options traders. Accordingly, the Commission finds the exemptive relief to be consistent with the purposes of the Exchange Act.

Applying the Threshold Permitted by this Conditional Exemption. Equity Option Transactions Example. For example, during a calendar day, a person purchases 200 call options on ABC stock, each with a 100 multiplier, for a premium of $15 per share, where the underlying stock is trading at $1,000 at the time of the transaction. This transaction reaches the identifying activity level under the current calculation methodology,[47] pursuant to which the options are valued as follows: 200 contracts × 100 shares per contract × $1,000 (the market price of the underlying stock at the time of the trade) = $20 million. Therefore, this transaction would cause the person to qualify as a large trader. However, under this exemptive relief, the fair market value of the options trade would be calculated as follows: 200 contracts × 100 shares per contract × $15 premium price = $300,000. In this case, the transaction price of $300,000 is less than the identifying activity level of $20 million. Further, the daily share volume would be calculated as follows: 200 contracts × 100 shares of the underlying per contract = 20,000 shares, which also is less than the identifying activity level of 2 million shares. Therefore, the person would qualify for this exemption from the Self-Identification Requirements and would not be required to register as a large trader on the basis of this particular options trade alone.

''Mixed'' Transactions Example. By way of another example, consider a person that, during a calendar day, (1) purchases: (a) 100 call options, each with a 100 multiplier, for a premium of $15 per share, where the underlying stock is trading at $1,000 at the time of the transaction; and (b) 100 contracts of puts on an index, where each option uses a $100 multiplier, for $50 per unit; and (2) sells 100,000 shares of an exchange-traded fund (''ETF'') for $100 per share. Under the current method, the fair market value of each transaction would be calculated as follows:

- 100 call option contracts × 100 (contract multiplier) x $1,000 (price of the underlying stock) = $10 million
- 100 index puts × $100 (contract multiplier) x $50 (price per unit) = $500,000
- 100,000 ETF shares × $100 (price per share) = $10 million

Collectively, for purposes of the identifying activity level, the transactions would be valued at $20,500,000 ($10 million + $500,000 + $10 million), which is greater than the daily value threshold ($20 million). Accordingly, the person would be required to self-identify to the Commission as a large trader.

To determine whether the large trader qualifies for this exemptive relief, the equity options would be valued as follows:

- 100 call option contracts × 100 (contract multiplier) × $15 (premium price) = $150,000
- 100 index puts × $100 (contract multiplier) × $50 (price per unit) = $500,000

[41] To calculate premium paid for an options trade, multiply together the number of options contracts involved, the premium paid, and the applicable multiplier. For an example, *see infra* Section II.A.3.

[42] Neither FIF nor SIFMA have requested exemptive relief for persons who become large traders as a result of reaching the identifying activity level *share* volume thresholds applicable to equity options, and the Commission is not herein granting such relief.

[43] *See* Rule 13h–1(c)(1)(ii) (concerning the fair market value of index options). *See also* Adopting Release, *supra* note 1, 76 FR at 46967 (noting, in footnote 64 and the accompanying text, how to determine the fair market value of index (and equity) options).

[44] *See* Rule 13h–1(c)(1)(i) (concerning the fair market value of equity securities underlying transactions in stock options).

[45] Only purchases and sales of equity options and not transactions in the underlying securities pursuant to exercises or assignments count toward the identifying activity level. *See* Rule 13h–1(a)(6). Purchases and sales pursuant to exercises or assignments were expressly excluded from the identifying activity level calculation to avoid double-counting. *See* Adopting Release, *supra* note 1, 76 FR at 46967. The Commission notes that traders may trigger the Self-Identification Requirements when they trade out of the position they obtained by exercising their options.

[46] Further, as noted above, for purposes of the identifying activity level under Rule 13h–1(c) (i) and (ii), fair market value of equity options is calculated differently than that for index options; the fair market value of equity options is calculated based on the value of the underlying security, while the fair market value of index options is calculated based on the premium paid for the contract. As a result, it is easier to reach the identifying activity level by transacting in options on an exchange-traded fund overlying a securities index than it is to transact in index options on the same securities index. This relief harmonizes the fair market value calculations for equity options overlying index-tracking securities (such as index-based exchange traded funds) with the calculations for index options, thereby eliminating the Self-Identification Requirements as a consideration for investors choosing between options products with comparable exposures.

[47] The daily market value threshold of the identifying activity level is $20 million.

- 100,000 ETF shares × $100 (price per share) = $10 million

The person qualifies for exemption from the Self-Identification Requirements (*i.e.,* does not have to identify as a large trader based on this day's transactions alone) because: (1) The daily share volume threshold of the identifying activity level (2 million shares) is not reached; [48] and (2) the value of the equity options under the alternative methodology ($150,000), when combined with the fair market value of the index option and ETF transactions ($500,000 and $10 million, respectively), is less than the daily identifying activity level threshold ($20 million).[49]

B. Broker-Dealers May Update Their Monitoring Safe Harbor Policies and Procedures To Use the New Methodology

Paragraph (f) of Rule 13h–1 provides a safe harbor to reduce broker-dealers' burdens in connection with monitoring their customers' trading for purposes of identifying possible large traders. To take advantage of the safe harbor, broker-dealers must have policies and procedures reasonably designed to identify persons who have reached or exceeded the identifying activity level [50] but not identified themselves to the broker-dealer as a large trader, treat such persons as Unidentified Large Traders, and inform such persons of the obligations under Rule 13h–1. A broker-dealer that updates its policies and procedures to reflect the terms of the exemptive relief described above will be able to avail itself of the monitoring safe harbor.

C. Relief for Equity Options Large Traders Who Already Self-Identified

For any person that previously reached the identifying activity level as a result of the fair market value of their equity options transactions and previously self-identified to the Commission as a large trader, but who otherwise does not presently meet the identifying activity level as calculated under the exemptive relief provided herein, the Commission finds that it is consistent with the purposes of the Exchange Act to allow such person to file for inactive status without waiting the required full calendar year provided in paragraph (b)(3)(iii) of Rule 13h–1.

To take advantage of this relief, a large trader must file for *inactive status* by submitting Form 13H electronically through EDGAR.[51] After filing for inactive status, the large trader is relieved from the Self-Identification Requirements, and thereafter is not required to file any further amendments or annual updates to Form 13H through EDGAR, unless and until the large trader subsequently effects transactions that reach or exceed the identifying activity level, accounting for the relief granted herein for calculating equity options activity. If a large trader that has filed for inactive status later reaches or exceeds the identifying activity level, using premium paid to calculate the fair market value of subsequent equity options transactions, then the large trader must promptly file Form 13H with the Commission for *reactivated status* and promptly thereafter notify its broker-dealers of its reactivated status and update them regarding the applicability of the large trader's LTID and the accounts to which it applies.

D. Temporary Exemption From Phase Three of the Recordkeeping and Reporting Responsibilities

As noted above, the Commission has implemented the Recordkeeping and Reporting Responsibilities applicable to clearing brokers for large traders in phases. In Phase One, which began on November 30, 2012, the Commission required clearing brokers for large traders (including the large trader itself if it is a self-clearing broker-dealer) to keep records and report Transaction Data for large traders' transactions that were either (1) proprietary trades by a U.S. registered broker-dealer; or (2) effected through a ''sponsored access'' arrangement; [52] otherwise, broker-dealers were temporarily exempted from the Recordkeeping and Reporting Responsibilities.[53] In Phase Two, which began on November 1, 2013, the Commission again temporarily exempted broker-dealers, until November 1, 2015, from the Recordkeeping and Reporting Responsibilities, except for: (1) The clearing broker-dealer for a large trader, with respect to (a) proprietary transactions by a large trader broker-dealer; (b) transactions effected pursuant to a ''sponsored access'' arrangement; and (c) transactions effected pursuant to a ''direct market access'' arrangement; and (2) a broker-dealer that carries an account for a large trader, with respect to transactions other than those set forth above, and for Transaction Data other than the execution time.[54] The Commission also established Phase Three, which requires full compliance with the Recordkeeping and Reporting Responsibilities for all applicable broker-dealers starting November 1, 2015.[55]

When the Commission adopted the Rule, it characterized the large trader reporting requirements as ''relatively modest steps'' to ''address the Commission's near-term need for access to more information about large traders and their trading activities. . . .'' [56] After the Commission adopted the Rule, industry commenters began to identify specific implementation challenges and offered more detailed estimates of the cost of full compliance with the Recordkeeping and Reporting Responsibilities. Such concerns led the Commission to implement the Recordkeeping and Reporting Responsibilities in phases.[57]

Additionally, since adopting the Rule, the Commission adopted Rule 613, which directed the self-regulatory organizations (''SROs'') to jointly submit a plan to create a comprehensive CAT that would allow regulators to efficiently and accurately track all activity throughout the U.S. markets in National Market System (NMS) securities.[58] When the Commission adopted that rule, it stated that, while certain aspects of Rule 13h–1 are not addressed by Rule 613, Rule 613 may

[48] The share volume calculation of the three transactions is as follows: (100 call option contracts x 100 contract multiplier) + 0 (index options have no underlying shares) + 100,000 ETF shares = 110,000 shares.

[49] $150,000 + $500,000 + $10 million = $10,650,000, which is less than the daily market threshold of the identifying activity level ($20 million).

[50] *See* Rule 13h–1(f)(1).

[51] The specific form type in EDGAR to file for inactive status is Form 13H–I. After filing for inactive status, the large trader also may inform the broker-dealers through which it transacts of its inactive status. Broker-dealers are not required to keep records of transactions by inactive large trader customers after receiving notice of inactive status from such trader with respect to transactions effected subsequent to such notification. *See* Adopting Release, *supra* note 1, 76 FR at 46976.

[52] *See* Securities Exchange Act Release No. 66839, *supra* note 2, 77 FR at 25008–9. A sponsored access arrangement is one where a broker-dealer permits a customer to enter orders into a trading center without using the broker-dealer's trading system (*i.e.,* using the customer's own technology or that of a third party provider). At the time, FIF indicated that broker-dealer compliance would be easier for sponsored access customers because those arrangements typically are distinct from all other business lines of the broker-dealer, with infrastructure that processes this order flow that is separate from the platforms that handle other client and proprietary flows. *See id.,* 77 FR at 25008, n.16.

[53] *See id.,* 77 FR at 25010.

[54] *See* Securities Exchange Act Release No. 70150, *supra* note 2, 78 FR at 49558–9.

[55] *See id.,* 78 FR at 49560.

[56] *See* Adopting Release, *supra* note 1, 76 FR at 46963.

[57] *See* note 2, *supra.*

[58] Among other things, Rule 613 requires the self-regulatory organizations to jointly submit an NMS plan to create, implement and maintain a consolidated audit trail, and specifies the type of data to be collected and reported to a central repository.

supersede certain of the broker-dealer Recordkeeping and Reporting Responsibilities of Rule 13h–1.[59] Specifically, the Commission stated: ''[t]o the extent that . . . data reported to the central repository under Rule 613 obviates the need for the EBS system, the Commission expects that the separate [trade] reporting requirements of Rule 13h–1 related to the EBS system would be eliminated.''[60]

The SROs submitted the initial CAT NMS plan to the Commission on September 30, 2014, and filed an amended plan on February 27, 2015.[61] As of the date of this Order, an NMS plan for a CAT has not yet been published for notice and comment. Accordingly, the Commission continues to rely on, among other things, information available through the Recordkeeping and Reporting Responsibilities as implemented through Phases One and Two. In light of the fact that there is no approved CAT NMS plan, the Commission is hesitant at this time to require broker-dealers to incur the costs associated with the remaining Phase Three Large Trader data while the timing of a CAT remains unclear.

However, the Commission finds that it is consistent with the purposes of the Exchange Act to delay Phase Three, temporarily exempting broker-dealers until November 1, 2017 from the Recordkeeping and Reporting Responsibilities, except for: (1) The clearing broker-dealer for a large trader, with respect to (a) proprietary transactions by a large trader broker-dealer; (b) transactions effected pursuant to a ''sponsored access'' arrangement; and (c) transactions effected pursuant to a ''direct market access'' arrangement; and (2) a broker-dealer that carries an account for a large trader, with respect to transactions other than those set forth above, and for Transaction Data other than the execution time. While FIF and SIFMA have requested a permanent exemption, or alternatively an additional 5-year deferment of the compliance date for Phase Three,[62] the Commission believes at this time that a 2-year extension of the Phase Three compliance date provides sufficient time for the Commission to consider whether to revisit compliance with all of the Recordkeeping and Reporting Responsibilities. Specifically, two years will give the Commission enough time to evaluate future developments, including any investment in or progress on a CAT.[63]

III. Conclusion

It is hereby ordered, pursuant to Section 13(h)(6) of the Exchange Act and Rule 13h–1(g) thereunder, that:

(1) Persons transacting in equity options are exempt from the Self-Identification Requirements if: (1) The aggregate value of their equity option transactions, calculated based on premium paid, combined with the aggregate value of their transactions in all other NMS securities (if any), does not reach or exceed the fair market value thresholds of the identifying activity level; and (2) they also do not reach or exceed the share volume thresholds of the identifying activity level.

(2) A large trader whose transactions in NMS securities since October 3, 2011 reached the identifying activity level one or more times because of the fair market value of its equity options transactions and who would have qualified in each instance for relief under this exemption is exempt from its responsibilities under Rule 13h–1(b)(1)(ii), 13h–1(b)(1)(iii), and 13h–1(b)(2), if such trader files for inactive status by submitting Form 13H and does not subsequently effect transactions that reach or exceed the identifying activity threshold using premium paid to calculate the fair market value of equity options transactions.

(3) Broker-dealers are exempted temporarily until November 1, 2017 from the recordkeeping and reporting requirements of Rule 13h–1(d) and (e), except for (1) clearing broker-dealers for large traders with respect to (a) proprietary transactions by a large trader broker-dealer, (b) transactions effected pursuant to a ''sponsored access'' arrangement, and (c) transactions effected pursuant to a ''direct market access'' arrangement; and, for other types of transactions, (2) broker-dealers that carry an account for a large trader for Transaction Data other than the execution time.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–28147 Filed 11–4–15; 8:45 am]

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[59] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45734 (August 1, 2012).

[60] *Id.,* text accompanying n.95.

[61] Pursuant to Rule 613, the SROs were required to file the CAT NMS Plan on or before April 28, 2013. At the SROs' request, the Commission granted exemptions to extend the deadline for filing the CAT NMS Plan to December 6, 2013, and then to September 30, 2014. *See* Securities Exchange Act Release Nos. 69060 (Mar. 7, 2013), 78 FR 15771 (Mar. 12, 2013) and 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013).

[62] *See* FIF Letter, *supra* note 6, at 3 and SIFMA Letter, *supra* note 9, at 2–3.

[63] *See* note 60, *supra,* and accompanying text.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76316; File No. SR–NASDAQ–2015–122]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Risk Monitor Mechanism

October 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend Chapter VI, Section 19 entitled ''Risk Monitor Mechanism'' by reserving this rule and relocating the rule governing the Risk Monitor Mechanism into NOM Rule at Chapter VII, Section 6(f)(i), entitled ''Market Maker Quotations'' which contains similar market maker[3] risk monitor tools. The Exchange is also modifying the language currently contained in Chapter VI, Section 19.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to NOM Rules at Chapter VII, Section 5, entitled ''Obligations of Market Makers'', in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a NOM Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.