



## **Rule 13h-1 and Form 13H**

May 4, 2018

Rule 13h-1 under the Securities Exchange Act of 1934 is designed to assist the SEC in identifying and obtaining trading information on market participants that conduct a substantial amount of trading activity, measured by volume or market value, in the U.S. securities markets.

A “large trader” is defined as a person or business entity whose transactions in Exchange Act Section 12 registered and U.S. exchange-listed securities, National Market System (“NMS”) securities, equals or exceeds the “identifying activity level”, which is two million shares or \$20 million in any calendar day, or \$200 million during any calendar month. The definition covers a firm 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.”

According to SEC Staff interpretations, “the identifying activity level applies to all of a person’s trading activity in the aggregate” and “[f]or 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.” Each trade in an account must have a large trader identification number (“LTID”).

NMS securities include listed options and equity securities listed on the NYSE, NYSE Amex and Nasdaq, as well as equity securities listed on other U.S. national exchanges. The scope of securities that fall under this definition is narrower than the scope of securities that trigger Form 13F filing.

Once achieving this threshold, large traders are required within 10 days to file Form 13H with the SEC, via EDGAR. A firm filer requests and obtains a CIK code number after which it accesses Form 13H electronically on EDGAR and files. The large trader must disclose its LTID to every broker-dealer effecting transactions on its behalf. The large trader must identify to each of its broker-dealers all accounts to which the LTID applies.

Generally, for filing purposes, Form 13H data compilation and filing is handled at the group level – by a single company that exerts control over multiple companies that trade and where there is a commonality in managing assets on a discretionary basis. Here, a single Form 13H is filed. Here, there is a common suffix to sub-identify multiple persons under the filer’s control – the actual traders. Use of a common suffix for separate affiliates reflects a commonality among the affiliates (e.g., similar business line, similar geographic location, similar reporting line, etc.).

In addition to its initial Form 13H filing, a large trader must submit (1) an Annual Filing to the SEC within 45 days after the end of each full calendar year (generally, February 14) and (2) if any of the information contained in its Form 13H becomes inaccurate for any reason, an Amended Filing no later than the end of the calendar quarter in which the information became stale.

Non-U.S. investment advisers that are large traders by placing trades through SEC-registered broker-dealers must comply with the rule's filing and disclosure requirements.<sup>1</sup>

Rule 13h-1 imposes on broker-dealers effecting transactions monitoring and record-keeping requirements. A large trader is obligated to provide accurate and materially complete information to its broker-dealers and to provide reasonable assistance to them in carrying out their monitoring and record-keeping requirements.

The SEC does not supervise large filers. In fact, the SEC does not supervise SEC registered broker-dealers or investment advisers. The U.S. regulatory system is based upon full and fair disclosure, not merit regulation or a system of supervision. Firms self-supervise.

That being the case, it is open to the SEC to investigate breaches of Rule 13h-1 and Form 13H and, if warranted, bring an enforcement action.

A broker-dealer through whom a large trader trades may end its relationship with a large trader due to breaches of the large trader's obligations – failure to provide an LTID, persistent late filings, failure to amend filings, evading Form 13H filing requirements or filing a materially false Form 13H.

The SEC receives information about large trades through Form 13H disclosures and broker-dealer reports.

The SEC is able to request information about trades executed before a firm files a Form 13H, if it knows or has reason to believe that a firm that has qualified as a large trader has not filed a Form 13H. Ignorance of the law would not be an excuse for not having filed a Form 13H.

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<sup>1</sup> Where the laws of a foreign jurisdiction prevent a non-U.S. large trader (whether itself a broker-dealer or adviser) from disclosing certain personal identifying information of an underlying principal, the foreign large traders or its representatives may request an exemption from the SEC pursuant to Section 36 of the Exchange Act and Rule 13h-1(g). There are no assurances that such an exemption would be given.