



By Electronic Mail (rule-comments@sec.gov)

July 13, 2018

Mr. Brett Redfearn
Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE Washington, D.C. 20549-1090

**Re: SEC Rule 13h-1 Large Trader Implementation Issues for Broker-Dealers
Request for Phase III Extension**

Dear Mr. Redfearn:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to the Securities and Exchange Commission (“Commission”) to request an extension of the exemptive relief that the Commission has granted in connection with Rule 13h-1 under the Securities Exchange Act of 1934 (“Exchange Act”). The Commission issued an order on October 31, 2017 (“October Order”) to exempt broker-dealers from certain recordkeeping and reporting requirements of Rule 13h-1 until November 15, 2018.² The compliance phase currently scheduled to take effect on November 15, 2018 is referred to in the October Order as “Phase III.”

SIFMA has previously described the significant implementation challenges that would have to be resolved to meet the compliance requirements of Phase III. In particular, SIFMA stated in its February 13, 2013 letter to the Commission that “it would require a massive

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² Securities Exchange Act Release Nos. 81993 (October 31, 2017), 82 FR 51449 (November 6, 2017). *See Also* Securities Exchange Act Release Nos. 76322 (October 30, 2015), 80 FR 68590 (November 5, 2015); Securities Exchange Act Release Nos. 70150 (August 8, 2013), 78 FR 49556 (August 14, 2013) (the “August Order”) (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).

Mr. Brett Redfearn

July 13, 2018

Page 2 of 4

restructuring of most of the current execution and clearing flows and systems at considerable cost to aggregate all of [the relevant reporting] information at one broker-dealer” and that “individual broker-dealers must make significant internal changes to their systems, the fundamental restructuring of certain industry standard clearing processes may be required, and concerted and coordinated development activities will be required throughout the broker-dealer industry.”³ These challenges continue to persist and are no less burdensome today. SIFMA also noted in its 2013 letter, and in two subsequent letters,⁴ that the reporting structure that would ultimately be developed and implemented under Phase III would become redundant when the Consolidated Audit Trail (CAT) is instituted.⁵ In other words, developing and implementing a LTID Phase III solution is throw away work. This continues to be true.

Certain aspects of Phase III implementation continue to be infeasible except at a prohibitive cost and involving significant industry coordination for the development of new operational flows and processing standards. With the continuing work on CAT development, the costs of a complicated and specialized Phase III solution will greatly outweigh any temporary benefits. In November 2016, the Commission approved the CAT NMS Plan submitted by the Self-Regulatory Organizations (SROs), and the CAT NMS plan identifies Rule 13h-1 as a reporting requirement that could reasonably be eliminated because it will be superseded by the CAT.⁶ At this point, developing a costly and time-consuming Phase III solution would require significant time and resources that would ultimately be superseded by the CAT. Further, Phase III implementation would require significant additional interpretive guidance, which we have requested from the Commission as far back as February 2013.⁷

With CAT development continuing, we believe that the Phase III compliance deadline should be materially extended. The principal goals of Rule 13h-1 have been accomplished in Phases I & II, as the execution detail of broker dealer proprietary, direct market access, and sponsored access trading activity is now available to the SEC and other regulators via Electronic Blue Sheets. The Commission seemed to acknowledge this in its August 8, 2013 exemptive order on Rule 13h-1 when it indicated that it was providing “exemptive relief limiting short-term compliance costs of [Rule 13h-1] to focus near-term compliance on the large trader information that is likely to be most useful to the Commission.”⁸ Further, the

³ SIFMA Request for Exemptive Relief from certain aspects of Rule 13h-1 (Large Trader Reporting), February 13, 2013 (available at <http://www.sec.gov/comments/s7-10-10/s71010-102.pdf>).

⁴ SIFMA Request for SEC Rule 13h-1 Large Trader Phase III Extension, April 9, 2015 (available at <https://www.sec.gov/comments/s7-10-10/s71010-104.pdf>); SIFMA Request for SEC Rule 13h-1 Large Trader Phase III Extension, March 3, 2017 (available at <https://www.sec.gov/comments/s7-10-10/s71010-1610783-135970.pdf>).

⁵ *Supra* note 3. SIFMA also raised a number of critical interpretive questions that we believe the Commission should address before broker-dealers can develop a compliance solution for Phase III.

⁶ Amended and Restated Consolidated Audit Trail National Market System Plan (CAT NMS Plan) Submission, Submitted February 27, 2015 (available at <http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p602500.pdf>).

⁷ *Supra* note 5 at pages 8-10.

⁸ Securities Exchange Act Release Nos. 70150 (August 8, 2013), 78 FR 49556 (August 14, 2013) (establishing Phase Two and providing for Phase Three).

Mr. Brett Redfearn

July 13, 2018

Page 3 of 4

Commission stated in its October Order that the extension would “allow the Commission to revisit the implementation of Phase Three as it evaluates future developments during this period, including progress in implementing the CAT.”⁹

Based on these statements, broker-dealers subject to Rule 13h-1 have reasonably assumed that the Commission would not implement Phase III without notifying the industry of the results of its evaluation of CAT developments and issue the needed guidance for the implementation of Phase III. As such, broker-dealers have not dedicated resources to Phase III implementation. At this point, in the absence of clarifying guidance from the Commission, broker-dealers would not have sufficient time between now and November 15, 2018 to implement Phase III.

The broker-dealer community continues to support CAT and the overall improvements that it will enable for regulatory surveillance and reporting efficiency. Broker-Dealers subject to Rule 13h-1 should not be held responsible for delays in CAT implementation that are beyond their control, including the current absence of necessary technical specifications, SRO reporting, or a CAT system that is capable of receiving broker-dealer data. The implementation of Phase III would distract the SROs and broker-dealers from their current significant efforts to finalize the CAT technical reporting specifications and subsequently build CAT, thus further delaying the CAT implementation. Continued dedicated focus on CAT will enable the SROs and SEC to most rapidly realize the surveillance benefits of CAT for the overall benefit of the industry and markets.

Based on the foregoing, we respectfully request that LTID Phase III be materially extended to a date no sooner than the earlier date of the full implementation of the CAT or November 15, 2020, at which time the SEC can re-evaluate the progress of the CAT implementation and extend this relief further or provide permanent relief. Simply put, the November 15, 2018 compliance date is not feasible at this point given the remaining need for interpretive guidance, plus the significant systems issues that would have to be resolved for Phase III compliance.¹⁰ And to reiterate, broker-dealers have not engaged in the systems changes necessary for Phase III because of the Commission’s previous statements that it would evaluate progress on the CAT before moving forward with Phase III. If the Commission decides to move forward with Phase III then it should provide the interpretive guidance we

⁹ *Supra* note 2 at footnote 55.

¹⁰ In its February 13, 2013 letter, SIFMA had pointed out that a prime broker or other carrying broker that is not acting as a self-clearing executing broker or clearing broker for the executing broker for a particular transaction (which can occur, for example, in Prime Brokerage, DTC ID, CMTA, and other bulk clearance flows) (an “indirect clearing carrying broker”) generally does not receive underlying disaggregated execution fill details in the ordinary course of performing its clearing activities. Accordingly, SIFMA requests that in connection with any relief issued by the Commission, the Commission also clarify that an indirect clearing carrying broker is not required during Phase II to keep records of, or report, Transaction Data with respect to disaggregated execution trade details (including disaggregated execution times, quantities, venues, and prices). SIFMA believes this clarification would be consistent with the logic behind the August Order’s exclusion of recordkeeping and reporting requirements for “execution time” by indirect clearing carrying brokers.

Mr. Brett Redfearn

July 13, 2018

Page 4 of 4

have requested along with an implementation period of at least 12 months. We urge the Commission to extend Phase III requirements consistent with our request as soon as possible.

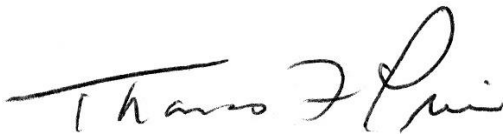
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SIFMA appreciates the Commission's consideration of this request. If you have any comments or questions, please do not hesitate to contact Tom Price at [REDACTED] or T.R. Lazo at [REDACTED].

Respectfully submitted,



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Managing Director and Associate General Counsel
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Thomas F. Price
Managing Director
Operations, Technology & BCP

cc: Jay Clayton, Chairman, SEC
Kara M. Stein, Commissioner, SEC
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