June 22, 2010

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Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NW
Washington, DC 20549-1090

Re: Comment on Proposed Rule on Large Trader Reporting System; File Number S7-10-10.

Dear Ms. Murphy:

The American Benefits Council (the "Council") appreciates the opportunity to offer comments on a proposed new rule which would create new reporting requirements for large traders and the broker-dealers who process their trades. As a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees, the Council commends the Securities and Exchange Commission (Commission) for its regulatory efforts to try to detect and deter fraudulent and manipulative activity and other trading abuses and to study market activity. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The Council also commends the SEC for recognizing that there are certain transactions involving retirement plans that should be exempted when determining whether reporting thresholds have been met, including rollovers from qualified retirement plans or individual retirement accounts (IRAs) to other retirement plans or IRAs and employee awards, allocations, sales, grants or exercise of options or other rights to acquire employer securities in connection with an issuer benefit plan or compensatory arrangement.

The Council requests that the Commission include three additional retirement plan transactions within the exception so that these rather common but often singular (or at least not very frequent) events do not trigger the reporting requirements. The first transaction that should be exempted is a significant repositioning of portfolio balances by very large defined benefit plans. For example, if a multi-billion dollar plan changes from a 60/40 equity/fixed income split to a 50/50 split, this one transaction could trigger the reporting obligation without an exception. Clearly, this would be a one-time event even if it takes several months to complete.

The second transaction that should be exempted occurs when the sponsor of a defined contribution retirement plan decides to change the investment lineup available to participants. This could occur either when there is a change in service providers or coincident with a major change in plan design. In these situations, participant account balances are mapped over to equivalent funds of the new investment offering. Again, a single, discrete event could trigger the reporting obligation without an exception. Clearly, this type of activity would not be expected to recur at any point in the foreseeable future.

The third transaction that should be exempted is plan activity in connection with acquisitions and divestitures of businesses which may precipitate a large movement of participants out of a plan, either because of a spin off of a defined benefit or defined contribution plan or participants given the opportunity to transfer 401(k) balances to receiving company plans. Although some of these transfers would involve movement of assets ("in kind" transfer) rather than an actual sale of assets, record ownership would change nevertheless. The rule should clarify that this type of significant short-term transaction event is exempt.

At the very least, the Commission should create a simplified one-page reporting obligation that is both the first and last report that must be filed for the above-requested exemptions absent additional transactions that reach the reporting level.

The Council also recommends that for any significant retirement plan transactions that are not exempt, the Commission clarify that only the trustee of the retirement plan is required to self-identify as a large trader. The Council is concerned that the expansive definition of "large trader" in the context of qualified retirement plans could result in multiple reporting obligations for the same trading activity. The definition cited by the proposal is borrowed from Section 13(h) of the Securities Exchange Act of 1934 and says that any person will be a "large trader" that "directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transaction for the purchase or sale of any NMS security for or on behalf of such accounts ... in an amount equal to or greater than the identifying activity level." This definition could be read to include the plan sponsor and other parties involved in plan administration which would result in duplicate filings. Therefore, the Council requests that the Commission clarify that the reporting obligation in that situation is limited to the plan's trustee.

Again, the Council appreciates the opportunity to comment on the proposed regulation and commends the SEC. The Council believes the changes we have suggested will improve the regulation and clarify reporting obligations. We believe that the American Benefits Council offers an important and unique perspective of the employer sponsors of, and service providers to, retirement plans and we would be happy to provide any additional information you might need as you work through the process. If you need additional information or comments, please contact the undersigned at 202-289-6700.

Sincerely,

Jan Jacobson
Senior Counsel, Retirement Policy