

**MEMO# 24381**

June 23, 2010

# ICI Comment Letter on SEC Large Trader Reporting Proposal

[24381]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 32-10  
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 17-10  
ETF ADVISORY COMMITTEE No. 25-10  
EQUITY MARKETS ADVISORY COMMITTEE No. 23-10  
SEC RULES MEMBERS No. 54-10 RE: ICI COMMENT LETTER ON SEC LARGE TRADER  
REPORTING PROPOSAL

As we previously informed you, the Securities and Exchange Commission has issued a proposal that would require: (1) certain large-volume, high-frequency traders (“large traders”) to self-identify to the SEC (*i.e.*, register); and (2) broker-dealers that effect transactions for large trader customers to maintain and produce records of these customers’ trades to the Commission. [\[1\]](#) According to the Release, the proposal is intended to bolster the Commission’s regulatory and enforcement capabilities by increasing its ability to reliably identify large traders and their affiliates, obtain far more promptly trading data on the activity of large traders, including execution time, and aggregate and analyze trading data among affiliated large traders. The Institute has filed a comment letter with the Commission, which is attached and briefly summarized below.

## I. Recommendations Regarding Commission’s Large Trader Reporting System

While supporting the concept of a large trader reporting system, the letter states that the proposal in its current form raises concerns that would be addressed by the following recommendations.

## **A. Confidential Treatment of Trade Information**

The letter states that the Institute would oppose the adoption of the proposal if the proposed confidentiality provisions were not adopted. It explains that the need for confidentiality regarding the information on proposed Form 13H is not limited to the Commission but extends to the large trader identification number ("LTID") and the broker-dealers to which it is reported. The letter recommends that the Commission examine and, as appropriate, consider enforcement actions for failures by broker-dealers to comply with their policies and procedures to control leakage of confidential information.

## **B. Aggregation and Disaggregation of Affiliates**

The letter explains that, for many entities that are part of a larger financial complex, the proposed aggregation process would be more operationally cumbersome, costly, and difficult to undertake than completing Form 13H and reporting the proposed information on an entity-by-entity basis.

### *1. Separate Reporting*

The letter recommends that the proposal be modified to eliminate the focus of filing at the parent company and to permit a parent company to report only for some of its large trader affiliates and permit certain affiliates to report separately. It states that greater flexibility in the form of filing either at the parent level, at the controlled affiliate level, or in some combination thereof when multiple entities qualify as large traders within a large financial organization would reduce the compliance burden of monitoring and aggregating information between these entities. Importantly, it would permit a complex organization to determine how best to allocate its resources and develop its systems to provide the Commission with the information it seeks instead of forcing a one-size fits all framework on very different business organizations. [\[2\]](#)

### *2. Voluntary Filings*

The letter recommends that the Commission permit persons who may not yet meet the applicable threshold level to satisfy the definition of a large trader to register voluntarily and make the requisite filings. The letter states that this approach would alleviate monitoring burdens on traders that know they are likely to meet the large trader threshold activity level at some point, and would help ensure that such persons are in compliance with the proposed rule when they reach that threshold.

### *3. Foreign Entities*

As with complex organizations domiciled in the United States, the letter recommends that the Commission permit a foreign parent company to report only for some of its large trader affiliates and permit other affiliates to report separately. The letter explains that allowing for disaggregation in this way would ease significantly the burden of collecting and aggregating data between cross-border affiliates within the same financial entity without affecting the information that would be provided to the Commission.

## **C. Schedule 6 to Form 13H**

The letter recommends several significant changes to Schedule 6 to proposed Form 13H, which Form would require large traders to identify (1) each account held by a broker-dealer through which it trades and (2) LTIDs of other large traders that exercise investment

discretion over an account, to reflect investment company industry operations and practices.

### *1. Broker-dealer Account Identification*

The letter states that it would be extremely difficult for many investment adviser large traders to complete the proposed account identification section in Schedule 6 because, although a particular broker-dealer may have assigned an account number for its own internal recordkeeping purposes, the adviser does not have this information. Thus, the letter recommends that advisers should be required only to list the broker-dealers through which they execute transactions and to provide additional information to the Commission upon request. Coupled with the provision to the broker-dealer of the LTID each time a large trader transacts, the letter explains that this change would permit the Commission to achieve the objective of the large trader reporting system without imposing impractical and burdensome requirements on investment advisers.

As an alternative, if the Commission determines that it requires more granular information than an adviser's broker-dealer list and LTID, the letter recommends that the Commission permit investment advisers and broker-dealers to report on Schedule 6 to Form 13H the ALERT ID for advisers' client accounts, instead of broker-dealer account numbers. [\[3\]](#)

### *2. LTIDs of Other Advisers*

The letter recommends that the Commission clarify that the term "account" refers to advisers who have collective investment discretion over a particular custodial account. It states that the Commission should not require advisers to identify other advisers of a client account that trade separately in a different custodial account without collaboration between the advisers.

## **D. Form 13H Issues**

### *1. Clarification Regarding Timing of Initial Filings*

The proposal would require that large traders file Form 13H "promptly" after first effecting transactions that reach the identifying activity level. The letter recommends that the Commission provide guidance in the adopting Release clarifying that, for purposes of the Initial Filing, promptly means without delay but, in no circumstances, later than thirty days after the large trader has met the identifying activity level. By allowing large traders up to thirty days to file their Initial Filing, the letter explains that the Commission would balance the burden on persons newly subject to the reporting obligation, or complex organizations with newly qualifying affiliates, with the Commission's stated goal of receiving promptly useful data to study the markets.

### *2. Clarification Regarding Interim Filings*

In the discussion of Form 13H and the instructions thereto, the Commission states that, "after receiving its LTID, a large trader would need to file promptly an "Interim Filing" to include the LTID and any new information." The letter recommends that, as with other Interim Filings, the Commission clarify that this filing – listing the large traders LTID – would be required promptly at the end of the next calendar quarter, as set forth in the instructions for Form 13H.

## II. Burden Estimates

The letter states that the Commission has significantly underestimated the burden large traders would face when complying with the proposed rule. The letter specifically outlines some of the burdens and costs to large traders including that: (1) only some of the requisite data is located at the premises of the potential large trader; and (2) in those cases in which the data is available currently, it is not in an automated form.

## III. Compliance Date

Instead of three months, the letter recommends that the Commission provide a longer compliance period (e.g., one year). The letter states that a longer timeframe should permit large traders to develop the systems necessary to provide the Commission with the information it seeks while balancing the developmental costs, complexities, and burdens of such systems.

## IV. Interaction with Commission's Consolidated Audit Trail Proposal

The letter notes that, in addition to the large trader reporting proposal, the Commission has proposed to require self-regulatory organizations to jointly develop, implement, and maintain a consolidated audit trail. [4] It states that a consolidated order tracking system would eliminate the need for the large trader reporting system as proposed. To better balance the costs and burdens of the large trader proposal, the letter, therefore, recommends that the Commission retain the part of the proposal that would require large traders to identify themselves to the Commission, and to provide their LTID to broker-dealers that execute transactions on their behalf, but eliminate the proposed requirements for reporting account information and making quarterly filings. The letter explains that large traders would still be required to provide additional information to the Commission upon request, and concludes that this alternative approach would address in the near term the Commission's current need for information about large traders and their activities without imposing undue regulatory burdens on large traders.

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[Attachment](#)

### endnotes

[1] See Memorandum to Closed-End Investment Company Committee No. 9-10, ETF (Exchange-Traded Funds) Committee No. 10-10, ETF Advisory Committee No. 18-10, Equity Markets Advisory Committee No. 16-10, and SEC Rules Committee No. 20-10 [24311], dated May 21, 2010 and SEC Release No. 61908 (April 14, 2010) 75 FR 21456 (April 23, 2010) ("Release"), available at <https://www.sec.gov/rules/proposed/2010/34-61908.pdf>.

[2] The letter also recommends that the Commission develop a system of assigning related LTIDs within a single complex to assist large traders in complying with the proposed rule.

[3] An ALERT ID is the unique numerical code assigned to an adviser's client accounts by Omgeo for use in its clearing and settlement systems, including OASYS, Global OASYS,

Central Trade Manager, and TradeSuite. Omgeo is a joint venture between the Depository Trust & Clearing Corporation and Thomson Reuters, which provides clearing and settlement services.

[4] See SEC Release No. 62174 (May 26, 2010), 75 FR 32555 (June 8, 2010), available at <https://www.sec.gov/rules/proposed/2010/34-62174.pdf>.

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