

MEMO# 24360

June 14, 2010

ICI Draft Comment Letter on SEC Large Trader Reporting Proposal; Comments Due to ICI by June 21

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 11-10
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 14-10
ETF ADVISORY COMMITTEE No. 22-10
EQUITY MARKETS ADVISORY COMMITTEE No. 20-10
SEC RULES COMMITTEE No. 25-10 RE: ICI DRAFT COMMENT LETTER ON SEC LARGE TRADER REPORTING PROPOSAL; COMMENTS DUE TO ICI BY JUNE 21

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 prepared a draft comment letter, which is attached and briefly summarized below.

Comments on the proposal are due to the SEC on Tuesday, June 22. If you have comments on the attached draft letter, please provide them to Heather Traeger via e-mail at htraeger@ici.org or by phone at 202/326-5920 by Monday, June 21.

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 draft 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

The draft 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 draft 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. Account Identification

The letter states that it would be impossible for many investment adviser large traders to complete the items in Form 13H in its current form 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 explain 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. [\[3\]](#)

D. Form 13H

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 draft 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; (2) in those cases in which the data is available currently, it is not in an automated form; and (3) the reporting obligations under proposed Rule 13h-1 require information that differs from the information provided in other reports that must be filed with the Commission.

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 draft 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 draft 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.

Heather L. Traeger
Associate Counsel

[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 <http://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] The letter also seeks clarification as to how a large trader would provide on Form 13H the LTID for "all other large traders that exercise investment discretion over that account it identifies" in the case of a client account subadvised by multiple families of advisers (e.g., a fund of funds).

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