SEC Issues Exemptions from Large Trader Reporting Rule

Today, the SEC issued an order temporarily exempting broker-dealers from the recordkeeping, reporting, and monitoring requirements of its large trader reporting rule (Rule 13h-1) that are scheduled to go into effect on April 30, 2012.[1] The order also granted permanent exemptions from the definition of the term "transaction" for certain capital markets transactions.

Temporary Exemptions for Broker-Dealers from Recordkeeping, Reporting and Monitoring Requirements

The SEC's order exempts registered broker-dealers from Rule 13h-1's recordkeeping and reporting requirements until May 1, 2013, except that a clearing broker-dealer for a large trader[2] where such large trader either (1) is a U.S.-registered broker-dealer or (2) trades through a sponsored access arrangement[3] is temporarily exempted from the recordkeeping and reporting requirements only until November 30, 2012. The order also exempts all registered broker-dealers from the requirement to monitor their customers' accounts for unidentified large traders until May 1, 2013.

The SEC noted that the temporary exemptions would provide the SEC an opportunity to work with market participants to more fully examine implementation issues and assess the appropriateness of further exemptive relief.

A number of issues associated with implementing the broker-dealer requirements have been raised, such as the extent to which registered broker-dealers, other than the clearing broker-dealer, in the chain of a transaction must comply with recordkeeping, reporting, and monitoring duties under Rule 13h-1. There are also operational issues associated with providing execution times on trades made out of average price processing accounts.

Permanent Exemptions for Certain Capital Markets Transactions

The SEC permanently exempted certain capital markets transactions from the definition of "transaction" for purposes of the large trader identifying activity level calculation. The exempted transactions include:

- transactions that are part of an offering of securities by or on behalf of an issuer, or by an underwriter on behalf of an issuer, or an agent for an issuer, whether or not such offering is subject to registration under the Securities Act of 1933, regardless of whether such transaction is effected through the facilities of a national securities exchange, and
- sales of securities by a selling shareholder in connection with an initial public offering or in a registered secondary offering if such selling shareholder is a current or former employee of the

[1] SEC Order Temporarily Exempting Broker-Dealers from the Recordkeeping, Reporting, and Monitoring Requirements of Rule 13h-1 under the Securities Exchange Act of 1934 and Granting an Exemption for Certain Securities Transactions, Exchange Act Release No. 66839 (Apr. 20, 2012), *available at* http://sec.gov/rules/exorders/2012/34-66839.pdf.

[2] The term "a clearing broker-dealer for a large trader" refers to self-clearing and clearing broker-dealers that have a direct relationship with the large trader (including the large trader broker-dealer itself, if self-clearing).

[3] A "sponsored access arrangement" in this context refers to an arrangement in which a broker-dealer permits a large trader customer to enter orders directly to a trading center where such orders are not processed through the broker-dealer's own trading system (other than risk management controls established for the purpose of compliance with SEC Rule 15c3-5) and where the orders are routed directly to a trading center, in some cases supported by a service bureau or other third party technology provider.

issuer and the securities being sold were acquired as part of the person's compensation as an employee of the issuer.

These exemptions allow certain offerings, such as "dribble out" programs and offerings "crossed" on a national securities exchange, to be exempt from the large trader calculation to the same extent as primary offerings not conducted on an exchange. In addition, the exemption for current and former employee selling shareholders excludes certain of such shareholders' transactions, like issuer transactions, from the large trader identifying activity level calculation. The selling shareholder exemption is not available for private equity funds, hedge funds, and other non-natural person shareholders.

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