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Mr. David S. Shillman
Associate Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

March 29, 2012

Re: SEC Rule 13h-1 (Large Trader Reporting Rule): SIFMA Recommendation for
        Alternative Implementation Timeframe for Broker-Dealers

Dear Mr. Shillman,

    The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the
continuing dialogue we have had with the Securities and Exchange Commission ("SEC") staff
on implementation issues regarding the SEC's final rule on large trader reporting.[2] This
dialogue has greatly assisted SIFMA firms in understanding many components of the new rule.
As you know, though, firms are still in need of considerable information from the staff in order
to proceed with certain implementation tasks, and there are basic challenges firms face in
implementing the rule. We discuss these issues below and recommend an alternative timeframe
for implementing Rule 13h-1 as a way in which to address these issues and ensure that there is
no inadvertent, adverse impact on our markets.

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[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset
managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation,
job creation and economic growth, while building trust and confidence in the financial markets. 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] Large Trader Reporting, Rel. No. 34-64976 (76 FR 46,960) (Aug 3, 2011), *available at*
http://www.sec.gov/rules/final/2011/34-64976fr.pdf.

It is clear from the adopting release on Rule 13h-1 that the SEC's intentions were to impose minimum costs on broker-dealers with this new rule by requiring the addition of only two fields on the Electronic Blue Sheet ("EBS") reports, the Large Trader ID ("LTID") and the execution time. We believe that the SEC significantly underestimated the challenges firms face in capturing and transmitting execution times and the resulting costs and time required for firms to revamp their systems to do so. For example, executing brokers will incur significant development costs and time in modifying their trading systems to pass execution times on to carrying broker-dealers that have the large trader reporting duties under Rule 13h-1 ("reporting brokers"). Reporting brokers will be required to invest substantial time and effort to capture the execution times from their internal systems or from executing brokers in order to facilitate the collection and reporting of execution times via the EBS system. Finally, in some cases, such as with average price transactions, it is not practicable to provide the execution time through the EBS system.

In light of the many open interpretative questions and the challenges associated with the implementation of the final rule, we respectfully request that the SEC provide for a staged implementation approach for the industry along the lines of that recommended below. Such an approach would allow firms more time to obtain the answers they need to their interpretive questions and to develop and implement the required systems and processing changes in a thoughtful, careful manner. We look forward to continuing to work with you on implementing this new rule and appreciate your consideration of such a staged implementation approach.

Key Open Issues

SIFMA believes that there are two primary hurdles that prevent broker-dealers from proceeding with the implementation of the new large trader reporting rule. First, the SEC has not yet issued formal guidance related to key reporting and information capture requirements under Rule 13h-1. The issues here are complex and need to be addressed as soon as possible in a set of SEC Frequently Asked Questions ("FAQs"). Second, the new EBS record layout changes and technical specifications recently released by FINRA and ISG for large trader reporting pose considerable challenges for broker-dealers.[3] For one, the implementation timelines and the testing schedule set forth in Rule 13h-1 and in the FINRA/ISG Notice need to be reconciled.

Additional information on these concerns is provided in the chart below.

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[3] Effective August 31, 2012, FINRA member firms will be required to submit new data elements to FINRA and the other Intermarket Surveillance Group ("ISG") interested members. *See* FINRA Regulatory Notice 11-56: FINRA and ISG Enhance Electronic Blue Sheet Submissions (December 2011) ("FINRA/ISG Notice").

Key Open Issues
Formal guidance (in the form of FAQs) is needed from the SEC on certain aspects of Rule 13h-1, including but not limited to:[4] • Reporting of execution times on average price allocations. • Reporting of execution times for transactions that are executed and cleared by different broker-dealers. • The question of whether street-side executions that are processed through average price processing accounts must be reported and, if reportable, what LTID, if any, is required to be included on the record. • The question of whether registered broker-dealers that indirectly effect transactions for a large trader and that are not the carrying broker for such large trader's account have an obligation to record and report LTIDs.
Inconsistent implementation and testing timelines for Rule 13h-1 and the FINRA/ISG enhancements to EBS submission formats, and other implementation burdens. • The FINRA/ISG Notice states that a testing facility will only be available beginning July 31, 2012 – a full three months after the April 30, 2012 large trader compliance deadline. • It is unclear how LTIDs and execution times can be reported between April 30, 2012 and August 31, 2012, the date when the new EBS record layout goes into effect. • Implementation of Rule 13h-1 and of the non Rule 13h-1 related changes under the FINRA/ISG Notice require the same operations and technology resources to perform the analysis, development, testing and implementation, thus placing additional burdens on those resources.

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[4] Additional specific questions on which we have requested guidance are listed in Appendix A.

Recommended Alternative Timeframe for Implementation

In light of the unresolved interpretive and implementation issues discussed above, SIFMA recommends the following staged implementation approach for the broker-dealer recordkeeping and reporting requirements under Rule 13h-1.

Rule 13h-1 Recordkeeping and Reporting Requirements	Compliance Deadline
Stage 1. LTIDs for all transactions would be recorded and reported by the reporting broker.[5] Execution times for non-average price trades[6] that are executed and cleared by the same broker-dealer, and for which the executing broker-dealer has direct access to the execution time (e.g., because the executing and clearing services are housed in the same unit), would be recorded and reported by the reporting broker.[7]	Ten months from the time the SEC provides written guidance regarding open interpretive questions pertaining to reporting and recordkeeping under Rule 13h-1, and assuming a four-month testing period using FINRA's customer test website.
Stage 2. Execution times for all non-average price transactions would be recorded and reported by the reporting broker.	Six months after the completion of Stage 1.

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[5] We believe that average price processing accounts do not need to be reported under Rule 13h-1. However, to provide transparency on executions and execution times, these transactions may need to be reported. If so, we request that an exemption be provided for the requirement to provide the LTIDs for reporting related to these accounts.

[6] For purposes of this letter, average price trades include traditional institutional average price trades and compressed trades.

[7] The expectation is that the executing broker and the clearing broker for the executing broker would need to enhance their systems to ensure the clearing broker receives execution times on street side transactions. However, regulatory relief should be granted to prime brokers from having to receive individual transaction information including execution time to the extent that the clearing broker that clears the street side settlement has the large trader-specific information, including LTID and execution time.

Depending on the guidance received from the SEC with respect to the unresolved interpretive questions and implementation issues, SIFMA may consider requesting additional exemptions from the requirements of Rule 13h-1 in certain situations.

In situations where the execution time is not reported on the EBS, we suggest that reporting brokers leave the execution time field blank or, alternatively, use a specific identifier to indicate that the execution time is intentionally not being provided. For average price transactions that are executed by the reporting broker, the SEC could request execution time information from the reporting broker.

Further, considering the challenges outlined below, it is the recommendation of SIFMA that execution times for average price transactions not be provided via the EBS system. Instead, execution times would be provided via the consolidated audit trail ("CAT") when it is in effect.[8]

Discussion

Challenges Associated with Recording and Reporting Execution Times

Under current market structure, reporting brokers in many circumstances face overwhelming challenges in obtaining execution times for large traders because of the complexities that exist in processing and settling trades. These challenges are particularly acute for the average pricing of client allocations representing multiple executions, which in all cases do not track execution information at the individual account level. There does not currently exist a mechanism for communication of execution times between executing and clearing brokers.

The practice of providing average price executions is fundamental to current trading practices and associated execution fee structuring, and is often requested by market participants so that they can receive one transaction execution report instead of hundreds of independent execution reports as their orders are executed in the market. As a result, trading, recordkeeping, and clearing systems now widely use omnibus, average price accounts that consolidate many executions into average price transactions that are sent for confirmation to the client (potentially a large trader) without details on the individual executions and the execution times associated with them.

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[8] Consolidated Audit Trail, Rel. No. 34-62174 (75 FR 32,556) (June 8, 2010), *available at* http://www.sec.gov/rules/proposed/2010/34-62174fr.pdf.

In addition, the internal systems of firms that both clear and execute trades often are not integrated. To reduce the costs of multiple small executions, the internal systems of clearing brokers that execute the transactions often do not link the individual component trades on the executing side (where execution times are stored) to the compressed transactions on the clearing side (where EBS reporting generally occurs).

The issues associated with capturing execution times are even more significant in the context of trades executed away from reporting brokers. A wide range of introducing broker, executing broker, clearing broker, and prime broker relationships exist, and a single order may be passed between multiple registered broker-dealers for purposes of execution and clearing. The execution time is required to be retained by the executing broker and provided to a customer upon request, but it is not passed to the other broker-dealers involved in the transaction as execution time is not a data element required by clearing firms to fulfill their clearing and settlement obligations under clearing agreements.

Moreover, clearing broker-dealers have little ability to compel an executing broker to provide them with the execution time information. Many executing brokers would have little incentive to develop the systems necessary to transmit execution times to reporting brokers other than the potential threat that carrying brokers would refuse to clear customer orders communicated without execution times, which does not seem like a productive or appropriate approach. At a minimum, a mechanism would need to be developed to enable executing brokers to provide execution times to the reporting broker and compliance with the provision of this information would need to be mandated by the SEC.[9]

Executing brokers and, most acutely, introducing brokers, would face a unique challenge in implementing the necessary system changes to capture and report execution times because they are dependent on the many third-party vendors (e.g., Broadridge, SunGard, Bloomberg, LAVA and Fidessa) to provide trade data systems. In these cases, brokers cannot make the system changes themselves and must rely on vendors to commit financial and human resources to effect system changes that are necessary for regulatory purposes. In addition, because of this outsourcing arrangement, the timing and implementation of the system changes cannot be controlled by the broker-dealer community.

All of these factors make the capture and transmission of execution time especially challenging, particularly within the current timeframe established in Rule 13h-1. To further illustrate the complexities surrounding the reporting of execution times, we set forth in

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[9] The SEC could compel executing brokers to provide execution times to reporting brokers by requesting execution times directly from the executing brokers under the SEC's books and records Rule 17a-4(j), but this still would require building a platform that would support the communication of this information.

Appendix B three different clearing and execution arrangements that SIFMA has identified as examples highlighting the challenges for recording and reporting execution times.

Furthermore, we would like to emphasize that, in addition to the complexities associated with reporting execution times via EBS, the positions that the SEC puts forth in any guidance provided in response to the interpretive questions raised by SIFMA also will impact the timeframe in which firms will be able to implement the requirements under Rule 13h-1.

Technical Timing Issues

The technical specifications for the enhancement of EBS to support the additional fields for LTID and execution time were only recently made available on December 13, 2011 through the FINRA/ISG Notice. Based on the information in the Notice, it does not appear that the EBS will be able to support the additional fields until August 2012. As such, SIFMA seeks guidance on the method by which firms would begin to capture LTIDs and execution times for provision to the SEC under Rule 13h-1 before the new EBS platform is launched. Imposing interim requirements would introduce inefficiencies and impact systems development for the enhanced EBS platform because the same teams of personnel would be needed to work on both an interim method for capturing data and the permanent solution. Furthermore, any interim work would not necessarily have any ongoing utility.

We also believe it is important that the SEC recognize that the FINRA/ISG Notice contained other, non Rule 13h-1 related EBS enhancements that the industry had not expected,[10] and that these changes will require the same resources at many firms as those that are tasked with Rule 13h-1 implementation.

Finally, SIFMA strongly encourages the SEC to defer the requirement to provide execution times on average price transactions until it can incorporate this requirement in CAT. As SIFMA has discussed with the SEC, the development of systems that could provide the volume of information required to feed execution times on average price trades to EBS would require firms to embark on a Herculean effort that most likely would become obsolete upon the implementation of CAT. We believe it would be more efficient to require this detail when new systems that are truly designed for the capture and reporting of execution detail become available. As noted above, individual execution times, if needed, should be available from the executing broker.

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[10] Under FINRA Regulatory Notice 11-56, FINRA and ISG are requiring several unexpected enhancements, most notably the submission of EBS reports in three different formats: (i) account number and date; (ii) account number, symbol and date; and (iii) date range and executing firm CRD number or entering firm MPID.

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SIFMA supports the goals of Rule 13h-1 and appreciates the opportunity to work with the SEC staff in implementing Rule 13h-1. We look forward to discussing the above implementation steps, recommended timeframes, and open issues with you.

If you have any comments or questions, please do not hesitate to contact me at avlcek@sifma.org or (202) 962-7300.

Respectfully submitted,

/s/ Ann L. Vlcek

Ann L. Vlcek
Managing Director and Associate General
Counsel

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
Robert W. Cook, Director, Division of Trading and Markets
Richard R. Holley, Assistant Director, Division of Trading and Markets
Robert L.D. Colby, Davis Polk & Wardwell LLP

SIFMA Member Firms' Open Questions – Guidance Requested from the SEC

1. If a large trader's LTID changes, does a broker-dealer need to link the new LTID to the historical records associated with the large trader's old LTID? Will SEC large trader requests based on the new LTID require trading information associated with the old LTID to be reported?

2. LTIDs apply at the broker-dealer account level, rather than the trade level. However, operational and settlement accounts could be used for tens or hundreds of large traders. Can the LTID field for these accounts be left blank on broker-dealer EBS reports to the SEC?

3. Would the SEC provide an exemption from the broker-dealer reporting requirement for a non-clearing broker-dealer that is a large trader for its own account but does not carry accounts for large traders or effect trades for large traders whose accounts are carried by non-registered broker-dealers?

4. There are a number of transaction flows where execution time is not readily available or is not known by the reporting broker. Please confirm it is acceptable for the execution time to be left blank or populated with a default value in the following use cases:

    a. Reporting of customer allocations, since there is no single execution time that would apply to the allocation. Customer allocations can be made up of many executions or a specific client may not be clearly linked to specific executions.

    b. Reporting by a carrying/clearing/prime broker of a client trade executed away since the execution time is not transmitted to the carrying/clearing/prime broker.

    c. Step-in and CMTA-in and give-ups.

    d. Shares transferred to an account at another broker-dealer.

5. A CMTA is an agreement by which an investor may enter derivative (e.g., listed equity option) trades with a limited number of different brokers and later consolidate these trades with one brokerage house for clearing. When the position is consolidated, some brokers will 'give up' their position to the clearing firm. This issue is practically identical to that of prime brokers / clearing firms for trades executed away because execution time is not passed from the executing broker to the clearing broker.

    a. Can the execution time field be left blank?

    b. If it cannot be left blank, what execution time should be provided for CMTA transactions? For example and similar to equities, should it be the time the option trade was executed?

    c. Since there is no regulatory mandate to pass along the execution time on CMTA trades (similar to the issue re: trades done away, as discussed previously with the staff in a meeting), would the SEC staff consider issuing such a mandate?

6.   There are a number of transaction flows where the LTID is not readily available or is not known by the reporting broker. Please confirm it is acceptable for the LTID field to be left blank or populated with a default value in the following use cases:

    a. Reporting of individual executions which make up an average price or other allocation since they are not associated with a specific customer. Firms often use generic or omnibus accounts for the processing of street-side executions associated with customer allocations; however, these accounts are not tied to any one particular customer.

    b. Step-out give-ups, since the account is not carried by the executing broker.

7.   We understand Rule 13h-1 requires a large trader to provide its LTID to every registered broker-dealer that effects transactions on its behalf. If the large trader directly faces a registered broker-dealer with a Rule 13h-1 reporting duty, is it sufficient for the large trader to disclose its LTID only to that broker-dealer, or must the large trader provide its LTID to every broker-dealer in the chain of the transaction?[11]

8.   Rule 13h-1 requires that a broker-dealer "report all transactions that it effected through the accounts of a large trader without excluding any transactions listed in Rule 13h-1(a)(6)." This was apparently in response to a commenter's concern that its infrastructure may not collect sufficient data to allow the broker-dealer to exclude excepted transactions when reporting transaction data to the SEC. However, the electronic blue sheets do not currently require that gifts, underwritings, journal entries, position movements, stock loans, and repurchase agreements, etc. be reported, and so broker-dealers do not currently have the infrastructure to report these types of transactions. Will the SEC provide relief to broker-dealers from the requirement to report such transactions?

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[11] Large traders are concerned with providing their LTID to every broker-dealer in the chain of the transaction. Their concerns are more fully discussed in Appendix B.

Challenges Associated with Reporting Execution Times

Average Price Transactions

Average price transactions pose the greatest challenge to reporting brokers. For customer fairness and efficiency purposes, executing broker-dealers use average price accounts to buy or sell a security in small increments throughout a trading session. The executing broker-dealer then allocates the average price transactions into the customers' accounts after market close. The time of allocation is recorded but, as a result of the average price processing, the allocation time is different than the execution time. Indeed, the execution time for individual client transactions is not normally known by the reporting broker, unless it is also the executing broker, because executions in average price accounts are not reported to institutional clients in the normal course of business and as such have never been captured with the record of allocation of the average price trade. The Commission has provided relief relating to these processes in numerous Rule 10b-10 no-action letters.[12] For this reason, it is difficult to provide individual execution times for transactions in average price accounts, whether in April of 2012 or later. While the executing broker could provide the reporting broker with the time at which the purchase or sale was allocated to its client's account, this time does not reflect the actual execution time of the particular client transaction and will therefore be of limited value to the SEC. As we do not believe that the SEC, in adopting Rule 13h-1, expected the market to abandon the use of average price accounts in order to be able to provide execution times on the EBS, we believe that the SEC should allow the execution time for these transactions to be left blank, or reflect the time of allocation, regardless of whether the reporting broker is also the executing broker for the transaction.

Further complications arise in the trading of securities that are listed on both a U.S. exchange and one or more foreign exchanges. In seeking the best price for orders in such securities, executing brokers may fill part of the order on a U.S. exchange and part on a foreign exchange. The average price on the fully-executed order reflects prices in different currencies. At the end of the trading day, the executing broker typically reports only the average price of that order to the clearing broker. In the case of multiple orders for the same client, the executing broker may report an aggregate price for the bunched orders in the same security executed that day. It would be exceptionally costly and burdensome for the executing broker or the clearing broker to isolate and report the individual execution prices and times for such trades on U.S. exchanges.

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[12] *See*, e.g., SEC No Action Letter, ChaseMellon Shareholder Services, Nov. 23, 1999 (1999 SEC No-Act. LEXIS 933).

Where the Reporting Broker Is Not the Executing Broker

Reporting brokers generally do not have access to the execution time when a third party broker executes the trade. Reports using EBS reflect clearing events rather than executions, and do not currently require the reporting of execution time. Although the executing broker may have the execution time, the executing broker does not currently transmit the execution time to the reporting broker, nor does it have an obligation under Rule 13h-1 to do so. Therefore, where the reporting broker does not execute the trade, the reporting broker has no direct means to obtain the execution time, nor does the reporting broker have a means to ascertain the correctness or data quality of execution times even if reported by the executing broker.

To obtain the execution time, the reporting broker would need to develop arrangements with each executing broker to provide execution times. Many executing brokers do not currently use the EBS system and have little incentive to develop the systems necessary to transmit execution times to reporting brokers other than the potential threat that carrying brokers would refuse to clear customer orders communicated without execution times.

We also note that Rule 13h-1 states in broad terms that large traders have a duty to provide their LTID to all registered broker-dealers effecting transactions on behalf of the large trader.[13] For example, a large trader is required to provide its LTID to the registered broker-dealer with which it has a relationship, and to any broker-dealer to whom that broker-dealer routes the large trader's trade. The requirement to provide the LTID to all broker-dealers effecting transactions on behalf of the large trader results in three notable issues. First, because numerous broker-dealers may be included in the execution chain, and these firms use differing systems to communicate data to each other, the requirement to provide the LTID to all broker-dealers will require broker-dealers and large traders to engage in substantial systems enhancements and industry-wide normalization of systems. Second, large traders are justifiably concerned that providing their LTID to all broker-dealers in the execution chain would cause the trading intentions reflected in the order to be linked directly to their firm. In fact, many large traders prohibit executing brokers from sharing their identity with any parties in the execution chain other than the executing and clearing broker-dealer out of concerns that such parties could use that knowledge in ways that could harm their clients. They will therefore be hesitant to disclose their LTID to every broker-dealer in the chain. Third, large traders have practical concerns about providing their LTID to all broker-dealers in the execution chain, given that the large trader often does not know the

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[13] SEC Rule 13h-1(b)(2).

identity of each broker-dealer involved in effecting their transactions.[14] It is unlikely that the broker-dealers involved will transfer information between each other based on LTIDs.

In any event, for the execution time to be reported through the EBS system, reporting and executing brokers would need to design and implement new systems for transferring execution times from executing brokers to reporting brokers, and then build out the EBS system to capture and report this information. For example, the communication protocols and data feeds (e.g., FIX) would need to be enhanced and standardized industry-wide to transmit execution time from the executing brokers to the reporting brokers. This is a significant undertaking, involving an industry-wide standardization of systems, and cannot be completed by April 30, 2012. For example, the Options Clearing Corporation has begun a project to build the capability to send execution times for Clearing Member Trading Agreement trades from the executing broker to the clearing broker, but this is not expected to be completed until the fourth quarter of 2012 at the earliest.

Execution Times Are Not Stored in the Clearing System of a Reporting Broker

As we noted in our June 24, 2010 comment letter on the proposed large trader rule, even where a single broker-dealer both executes and clears a transaction, there are difficulties associated with implementing the recordkeeping and reporting requirements of the rule.

Although firms store execution times for individual transactions, the execution times are not readily reportable because they are stored in the execution system, rather than in the clearing system that reports to the EBS. To transmit the execution time across the firm, significant reprogramming and systems enhancements are required to be implemented within the firm.

Challenges for Reporting the LTID on Average Price Processing Accounts

It is current industry practice to bunch the execution of average price transactions from multiple customers in an omnibus processing account. These processing accounts are not tied to any one particular customer account and so customers cannot provide LTIDs to brokers associated with these processing accounts. If firms were to tag these accounts with the LTIDs of the underlying customer accounts, there could potentially be hundreds of LTIDs associated with the account and thus reported for any single transaction. Pursuant to informal Staff guidance, we do not believe that it is the SEC's intention to require large trader

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[14] In light of this concern, SIFMA recommends an alternative requirement, whereby the large trader should only need to provide its LTID to the broker-dealer that has a reporting duty under Rule 13h-1. This would be the first broker-dealer in the chain of transaction (i.e., the carrying broker) in most cases except where the large trader's account is carried by a non-registered broker-dealer, in which case the large trader must provide its LTID to the first registered broker-dealer in the chain of the transaction.

reporting on such omnibus processing accounts on the basis that these are not "accounts" for purposes of Rule 13h-1; instead, only the "true" customer accounts should be reportable under Rule 13h-1. However, if these accounts are required to be reported under Rule 13h-1, we request that the SEC provide an exemption from reporting the LTIDs for such accounts. Providing the LTIDs for each transaction in an average price processing account would require significant systems changes, and would not provide the SEC with useful data about the underlying transactions and large traders. The costs of changing this processing would be particularly acute for small introducing firms that currently provide clearing firms only the compressed trades resulting from multiple executions; these firms would face costs to revise their systems as well as increased per-trade fees from vendors and clearing firms. Furthermore, the SEC can obtain information about the transactions executed in these accounts by requesting from the carrying broker-dealer information about the underlying large trader accounts.