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August 16, 2011

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Large Trader Reporting*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled "Large Trader Reporting" (RIN: 3235-AK55). We received the rule on July 28, 2011. It was published in the *Federal Register* as a final rule on August 3, 2011. 76 Fed. Reg. 46,960. The rule has a stated effective date of October 3, 2011, and a compliance date of December 1, 2011.

The final rule is meant to both identify and obtain trading information on market participants that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets. The rule will require a "large trader," defined as a person whose transactions in National Market System securities equal or exceed 2 million shares or \$20 million during any calendar day, or 20 million shares or \$200 million during any calendar month, to identify itself to the Commission and make certain disclosures to the Commission on Form 13H. Upon receipt of Form 13H, the Commission will assign to each large trader an identification number that will uniquely and uniformly identify the trader, which the large trader must then provide to its registered broker-dealers. Such registered broker-dealers will then be required to maintain records of two additional data elements in connection with transactions effected through accounts of such large traders (the large trader identification number, and the time transactions in the

account are executed). In addition, the rule requires that such broker-dealers report large trader transaction information to the Commission upon request through the Electronic Blue Sheets systems currently used by broker-dealers for reporting trade information. Finally, certain registered broker-dealers subject to the rule will be required to perform limited monitoring of their customers' accounts for activity that may trigger the large trader identification requirements.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy
Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"LARGE TRADER REPORTING"
(RIN: 3235-AK55)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) identified certain costs and benefits of this final rule and determined that its estimates of the costs and benefits are appropriate.

The Commission believes that the benefits of this rule include enhancing its ability to: (1) reliably identify large traders and their affiliates, (2) more promptly obtain trading data on the activity of large traders, including execution time, and (3) aggregate and analyze trading data among affiliated large traders. In addition to those benefits, the Commission also expects that investors will likewise benefit from the Commission's enhanced access to information to identify large traders and obtain prompt data on their activity that the Commission would be able to employ in carrying out its regulatory mission.

The Commission identified costs of this rule associated with large traders and with broker-dealers. According to the Commission, the primary costs to large traders are the requirements to self-identify, to file the required form, and to inform broker-dealers. The Commission estimates that the costs associated with registration of large traders will be \$1,317,600 in total with an annual update cost of \$998,400. For broker-dealers, the Commission estimates that they will incur an initial cost of \$106,060 per dealer for infrastructure enhancements for a total of \$31,818,000. The Commission also estimates that broker-dealers would also incur a total of \$16,200,000 in reporting costs. Finally, broker-dealers in total would incur an initial cost of \$3,982,800 and an ongoing cost of \$1,215,000 associated with policies and procedures for the safe harbor provision of the rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission determined that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to title II of the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On April 23, 2010, the Commission published a proposed rule. 75 Fed. Reg. 21,456. The Commission received 87 comment letters from investment advisers, broker-dealers, institutional and individual investors, industry trade groups, and other market participants. The Commission addressed the comments in the final rule, including making certain modifications to the rule to address concerns expressed by some comments.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Commission determined that this final rule contains an information collection requirement under the Act entitled “Information Required Regarding Large Traders Pursuant to Section 13(h) of the Securities Exchange Act of 1934 and Rules Thereunder,” which was submitted to the Office of Management and Budget for review. The Commission estimates that the information collection requirement will apply to approximately 400 large traders and 300 registered broker-dealers with a total burden of 214,000 hours in the first year and 64,500 hours for each subsequent year.

Statutory authorization for the rule

The Commission is promulgating this final rule under the Securities Exchange Act of 1934, particularly authority of sections 13(h) and 23(a) of that Act. 15 U.S.C. §§ 78m(h), 78w(a).

Securities Act of 1933 and Securities Exchange Act of 1934, 15 U.S.C. sections 77b(b), 78c(f), 78w(a)

The Commission analyzed the final rule to determine if it will promote efficiency, competition, and capital formation, and that any burden imposed by this rule on competition is necessary or appropriate. The Commission determined that the impact of this final rule will not negatively affect the competitiveness of U.S. markets and that it will promote efficiency and capital formation.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the review requirements of the order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the review requirements of the order.