Wall Street LAWYER
Securities in the Electronic Age
September 2011 ■ Volume 15 ■ Issue 9

Broker-Dealers Will Shoulder Bulk of Responsibility under SEC's New "Large Trader" Reporting System

BY P. GEORGIA BULLITT, JOSHUA BLACKMAN & JOHN J. O'BRIEN

P. Georgia Bullitt is a partner and Josh Blackman and Jack O'Brien are associates in the Investment Management practice group of Morgan Lewis & Bockius, LLP. Contact: gbullitt@morganlewis.com, jblackman@morganlewis.com or jobrien@morganlewis.com.

On July 26, the Securities and Exchange Commission (SEC) adopted Rule 13h-1, the Large Trader Reporting Rule (Rule), to enhance the SEC's ability to analyze market movements and collect trade data to support investigations and prosecutions. Although the SEC currently has access to a large volume of trade data about the U.S. equity and options markets through reports broker-dealers must submit electronically under the electronic blue sheet system (EBS), the language in the adopting release for the Rule suggests that the SEC requires faster delivery of information as well as tools to assist it in quickly analyzing the data so as to identify causes of market events, such as the flash crash of May 6, 2010.[1] Although the adopting release did not explain how this shorter time frame and more detailed data would help the SEC to stabilize the market, presumably the expectation is that it would allow the SEC to more quickly identify and, thus, stop manipulative behavior and, in the face of market volatility, to implement trading rules to calm the markets.

In order to achieve these goals, the Rule requires persons exercising investment discretion over their own assets or those of others (Large Traders), who trade more than specified target levels of listed equities and options over a one-day or one-month period, to register for an identifier, provide the identifier and the accounts over which they exercise discretion to all broker-dealers through which the Large Trader executes or clears transactions, and file a Large Trader identification form (Form 13H) annually and, if changes occur, periodically.[2] If a person does not wish to track its trading levels, it may also register voluntarily to obtain the identifier. Voluntary filers also must report the identifier and accounts over which they exercise discretion to broker-dealers through which they execute or clear transactions and annually file Form 13H with the SEC.

The Rule requires broker-dealers, including those to whom identifiers have been provided by customers, to track all "transactions" effected or cleared by those Large Traders through the broker-dealer and retain the required information for SEC reporting purposes. The Rule requires transaction tracking to include not only the data currently required under EBS but also time of execution and the Large Trader identifier. As a result, broker-dealers will need to build out their systems to accommodate the additional requirements.

Notwithstanding the difficulty facing broker-dealers to accomplish this build out, the Rule also imposes a number of other requirements that are likely to require significant expenditures by broker-dealers on operations and information technology enhancements. These additions include the following: (i) a requirement that broker-dealers identify and track customers who *should* have registered as Large Traders but did not (Unidentified Large Traders) and maintain trade data regarding transactions conducted by these Unidentified Large Traders; (ii) accelerated deadlines for responding to SEC requests for transaction data of one calendar day (including weekends and holidays) instead of the 10 business days currently allowed for submission of EBS data[3] and, if requested by the SEC, production of the data on the same day as the request; and (iii) an expanded definition of what "transaction" means for tracking and reporting purposes to include: (a) options exercises and assignments, (b) journal entries to record settlement of a purchase or sale, (c) purchases and sales as part of a primary offering, (d) gifts, (e) distributions of a decedent's estate, (f) rollovers of a qualified plan or trust assets into an Individual Retirement Account (IRA), (g) option grants under employee plans, (h) repo and stock lending transactions, (i) issuer tender offers and stock buybacks, and (j) transactions to effect business combinations, tender offers, mergers, and reorganizations. Although there is some ambiguity in the Adopting Release regarding the point, the expanded definition of "transaction" relating to reporting requirements may also include exchange traded funds (ETF) creations and redemptions. Since the definition of transaction for EBS reporting purposes appears to cover only purchases, sales, and short sales,[4] the expansion of "transaction" reporting to include these additional types of activities is likely to be costly and difficult.[5] In many of these situations, *e.g.*, journals, gifts, most primary offerings, option exercises and creations and redemptions of ETFs, the transactions are not trade-reported and, as a result, may not be readily covered by transaction tracking systems. Moreover, the Rule may impose reporting requirements on broker-dealers that have not been subject to EBS reporting in the past, such as ETF distributors (assuming the SEC does intend to treat ETF creations and redemptions as reportable "transactions"), which would require substantial new operational build-outs for the affected firms.[6]

Both Large Trader registration and broker-dealer reporting requirements imposed by the Rule relate only to transactions in NMS securities. NMS securities are securities reported on the consolidated tape, *i.e.*, common stock, preferred stock, options, warrants, rights, American depository receipts, and American depository shares, which are listed on a national securities exchange or admitted to unlisted trading privileges.

The Rule was published in the *Federal Register* on August 3 and becomes effective on October 3, 2011. Large Traders will be required to register with the SEC on Form 13H by December 1, 2011, and broker-dealers will be required to implement the data collection, transaction data maintenance and expanded reporting beginning April 30, 2012. Given the need for operational build-outs for broker-dealers as well as the large number of infrastructure and compliance changes already facing broker-dealers as a result of The Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 and other rulemakings over the past year, the Rule and the relatively short shot-clock provided for compliance create significant challenges for broker-dealers.

Large Trader Registration and "Self-Identification"

Unlike the large trader reporting requirements imposed by the Commodity Trading Futures Commission (CFTC)[7] which look to size of position in an individual contract and, thus, are easier to identify both for the trader and for the executing or clearing intermediary, the Rule defines Large Trader status and requires reporting based on frequency of trading activity across a variety of names. The Rule defines "Large Trader" as a person who, directly or indirectly, through the exercise of "investment discretion,"[8] effects transactions in NMS securities that exceed, in the aggregate, (i) $20

million fair market value or 2 million shares *on any calendar day*, or (ii) $200 million fair market value or 20 million shares *over the course of any calendar month*.[9] Calculation of the trading volume is not measured on an issuer-by-issuer basis but on an aggregate basis, across all issuers of NMS securities. Single securities options are counted based on the underlying securities (whether or not the option is presently exercisable) and index options are counted solely on the basis of the options themselves and not on the basis of the index components. Purchases and sales are not netted. Large Traders include regulated and unregulated entities as well as foreign persons. Further, unlike the requirements of Schedule 13F, individuals trading for their own account or for a limited liability company (LLC) or other entity holding their own assets are subject to the registration requirements of the Rule. Broker-dealers and their affiliates trading for their own accounts, including hedging activity in connection with derivatives, must register as Large Traders. Persons having limited discretion under a power-of-attorney or standing orders would also have to register so long as the discretion involves the selection of which NMS securities to purchase or sell, and the target trading levels are hit.[10] In the case of complex organizations, a parent company may register on a consolidated basis or individual affiliates (or controlled entities) may separately register.[11]

Once a Large Trader hits the trigger level, the person or entity must register by electronically filing Form 13H with the SEC within 10 days. Traders may avoid the need to monitor their own trading levels or to aggregate trading activity across accounts they manage and across entities under common control by voluntarily registering with the SEC. Voluntary registration is allowed whether or not the trigger levels have been hit. The Rule does not impose any deregistration process in the event that a voluntarily registered Large Trader never meets the required trading levels. As a result, a trader can fairly easily ensure full compliance with the Rule. Modification by the SEC of the proposed rule to allow for voluntary registration at any time by discretionary traders significantly eased the monitoring burdens that money managers were concerned by in the proposed rule.

Large Traders must disclose their identification numbers to all SEC-registered broker-dealers that effect transactions on their behalf and identify for the broker-dealers each account to which the identifier applies. The Adopting Release suggests that a Large Trader is only required to provide a list of accounts at the particular broker-dealer to which it is disclosing information and not a comprehensive list of accounts over which it exercises investment discretion at all broker-dealers.[12] Disclosure of the identifier and of the accounts apparently is required not only to broker-dealers that carry accounts managed by the Large Trader, such as prime brokers, full service broker-dealers and clearing brokers, but also to executing brokers, such as floor brokers, and possibly, to ETF distributors. Moreover, once a Large Trader has an identifier, it must provide the identifier and a tailored account list to each broker-dealer it uses, even though it conducts only a limited business with a broker-dealer or the activity it conducts with the broker-dealer would not have counted towards registration. For example, a broker-dealer that is an authorized participant of an ETF apparently would have to provide its identifier to the ETF distributor through which it effects creations and redemptions in order for the distributor to track creations and redemptions. This appears to be required even though the authorized participant would not have counted creations and redemptions as trade activity in determining whether it was required to register as a Large Trader. Disclosure of the identifier and account list appears to be a one-time event and not something the Large Trader would need to remember to do on a trade-by-trade basis.

Large Traders are required to annually file an updated Form 13H, even if no changes have occurred, and to amend the Form 13H at each quarter's end for material changes.[13] Although Form 13H filings are not accessible to the public, they may be subject to disclosure to Congress, a Federal department or agency, or as otherwise mandated by court order. A Large Trader that has not effected transactions during the prior calendar year that meet the trigger levels may file for inactive status on Form 13H, which becomes effective upon filing. Once on inactive status, a Large Trader may request that its broker-dealers stop maintaining records of its transactions via its identification number. Broker-dealers will need to monitor customers that are inactive Large Traders to ensure that they are not Unidentified Large Traders, effecting transactions beyond the triggering levels set forth in the Rule.

Broker-Dealer Transaction Tracking, Monitoring, and Reporting

The Rule imposes transaction tracking, monitoring, recordkeeping and reporting requirements on SEC-registered broker-dealers that (i) are Large Traders themselves,[14] (ii) carry accounts for Large Traders or Unidentified Large Traders, or (iii) effect transactions on behalf of Large Traders whose accounts are carried by *nonbroker-dealers*. As a result, the requirements generally should not apply to brokers-dealers executing on a give-up or introducing basis to another broker-dealer or to electronic communication networks (ECNs) and alternative trading systems (ATSs). Executing broker-dealers are only required to conduct the recordkeeping functions for accounts carried by banks or other nonbroker-dealers. Where a transaction is cleared by or given up to another registered broker-dealer, retention of the information is the obligation of the clearing broker or prime broker and not of the executing broker.

This division of responsibility is somewhat different from that suggested by regulators in respect to EBS, where interpretive guidance has provided that reporting is a shared responsibility of an executing broker or introducing broker and the clearing broker.[15] To the extent that clearing firms and introducing brokers have agreed, under their current division of responsibilities, to have the introducing broker rather than the clearing broker handle EBS reporting, they will need to either change this division of responsibility or create a new and different reporting procedure for compliance with the Rule, since the Rule requires clearing brokers and prime brokers to carry out the required tracking and reporting rather than the introducing broker.

Under the Rule, registered broker-dealers are required to collect and retain for three years (two of which must be in a readily accessible location) detailed records regarding all transactions in NMS securities effected by or through an account over which a Large Trader has investment discretion, including a proprietary account of the broker-dealer itself. The scope of required information is the same as that currently required under the EBS system, with the addition of the Large Trader's identification number and the time of each transaction.[16]

The Rule does not require that broker-dealers affirmatively determine which customers are in fact Large Traders but it does require them to identify Unidentified Large Traders, maintain information about their trading activity, and report that information to the SEC upon request. Unidentified Large Traders are defined under the Rule as those customers that have not registered as Large Traders but that the broker-dealer "knows or has reason to know" should have registered. The broker-dealer must also retain a list of Unidentified Large Traders, including each Unidentified Large Trader's name, address, and tax identification number as well as the date on which the account was opened. Because broker-dealers often do not collect identifying information from the trader having trading authority over an account but instead collect information only regarding the beneficial owner of the account, this recordkeeping requirement may require broker-dealers to expand the fields of their recordkeeping system in order to capture additional information regarding persons having trading authority over customer accounts. Moreover, because Large Trader status is measured across affiliated entities, presumably a broker-dealer must keep track of which advisers and traders are affiliated and monitor the trading of such affiliated entities across all of the accounts over which any of them has discretion to determine whether a trigger level for registration has been hit. Policing for Unidentified Large Traders seems particularly daunting in the case of clearing firms. Not only will these firms potentially have difficulty distinguishing related accounts by reference to the associated traders and the affiliates of those traders, but they will apparently have the additional challenge of having to aggregate trader activity across all of the correspondent firms they clear for.

The Rule does provide a safe harbor for broker-dealer with respect to the requirements relating to monitoring for Unidentified Large Traders. However, as one commenter noted in respect of the same provisions contained in the proposed rule, the safe harbor is "anything but safe."[17]

To rely on the safe harbor, a broker-dealer must not have actual knowledge that a customer should register as a Large Trader, and must establish policies and procedures that are reasonably designed to (i) identify Unidentified Large Traders, (ii) comply with the recordkeeping and reporting requirements of the Rule with respect to such Unidentified Large Traders, and (iii) inform such traders of their potential obligations under the Rule. In sum, the safe harbor simply

requires a broker-dealer to comply with its pre-existing obligations with the addition of a requirement that the broker-dealer notify the Unidentified Large Trader that its trading has reached or exceeded the trigger levels for registration. The diligence level specified is relatively high. Although a broker-dealer only need to look to accounts carried by or used for execution at that broker-dealer, the Rule includes within the definition of "account" both execution and clearing accounts. Broker-dealers, thus, must have procedures in place to measure trading activity across the range of NMS securities, including all types of execution, clearing and carried accounts, based on the same trader or affiliates of that trader, to determine whether the person or group of affiliated persons meets the trigger thresholds. The broker-dealer must make this determination using "account names, tax identifiers, and other identifying information" relating to the trader.

This is one of many areas where it would be useful for the SEC to provide interpretive guidance through a Q&A or other method regarding the scope of diligence that is expected regarding Unidentified Large Traders, particularly in the case of clearing brokers. The SEC should also consider paring back those diligence requirements to, for example, allow broker-dealers to rely solely on trader representation letters regarding Unidentified Large Trader status.

Upon request from the SEC, broker-dealers that are required to collect transaction information regarding Large Traders and Unidentified Large Traders will be required to report all "transaction" activity to the SEC so long as the transaction activity equals or exceeds 100 shares.[18] Typically, these reports will be required to be delivered to the SEC at the opening of business on the business day following the request, but the SEC may require reporting on a Saturday or holiday or on the same day as the SEC's request. In light of the difficulty that broker-dealers have had, from time to time, complying with the existing deadline of 10 business days for EBS reporting, it seems unrealistic for the SEC to expect that broker-dealers will be able to comply with the accelerated deadline of one day, including weekends and holidays.[19]

Potential Liability

It is unclear from the Adopting Release what type of enforcement actions the SEC or self-regulatory authorities (SROs) will bring against either Large Traders who fail to self-identify or broker-dealers who are deemed to fall short of the regulatory standard. SROs have brought a number of enforcement actions against broker-dealers for violations relating to EBS reporting.[20] In some cases, SRO actions have sanctioned broker-dealers for supervisory failures and failure to have in place a system to verify the accuracy of EBS data being submitted.[21] Assuming that SROs and the SEC take a similar approach in respect to compliance with the Rule, both persons who are Large Traders and broker-dealers will be required to use reasonable care to comply with the Rule, to appoint supervisors to oversee implementation of the Rule and review the data prior to submission, and to adopt written policies and procedures to comply with the Rule, including policies and procedures reasonably designed to identify and track transactions effected or cleared by Unidentified Large Traders.

In addition, broker-dealers should expect to be examined regularly on their compliance with the Rule.[22] The statutory provision on which the Rule is based expressly provides the SEC with authority to inspect broker-dealers for compliance with the Rule at any time.[23]

Open Questions

The Rule leaves unanswered a number of important interpretive questions, which will hopefully be answered by the SEC Staff in the form of a Q&A or other interpretive guidance. These issues include a question about how the Rule interacts with the requirements of Rule 17a-25 under the Securities Exchange Act of 1934, which are still in effect. Given that the requirements under the EBS rule and the Rule are somewhat different, the existence of the two rules could require broker-dealers to maintain two different systems: one to track requirements under Rule 17a-25, and the other to track requirements under Rule 13h-1. Presumably the SEC did not intend this result. Accordingly, the SEC should clarify in a Q&A that compliance by a broker-dealer with the definition of "transaction" under Rule 13h-1 satisfies the broker-dealer's more limited reporting requirements under Rule 17a-25. The SEC should also clarify that broker-dealers may follow the guidance regarding division of responsibility between clearing and introducing firms contained in Rule 13h-1 in respect to compliance with Rule 17a-25 as well.

The following points would also be important for the SEC to address and clarify in respect to the Rule (i) clearing brokers are not required to look across accounts carried for different introducing brokers in monitoring Unidentified Large Traders; (ii) responsibility for monitoring Unidentified Large Traders may be delegated by a clearing broker to an introducing broker under a correspondent clearing agreement; (iii) ETF creations and redemptions are not "transactions" for purposes of the broker-dealer reporting requirements; and (iv) broker-dealers may rely on customer representations in connection with diligence on customer status as Unidentified Large Traders.

Conclusion

The Adopting Release for Rule 13h-1 as well as the cost benefit analysis contained in the Release focuses largely on Large Traders and burdens imposed on them. Although the SEC acknowledged that "many broker-dealers will face different challenges in capturing and reporting execution time information, depending on the sophistication of and resources they have previously devoted to their recordkeeping systems," it went on to conclude that the Rule would result "in minimal increased costs and burdens."[24]

As we have discussed, the burdens imposed by the Rule on broker-dealers appear to be significant and costly to implement. As the industry begins to get its arms around the Rule, the SEC should step forward and provide interpretive guidance as well as an extension of the implementation deadline for broker-dealers.[25]

NOTES

1. *See* Large Trader Reporting (Adopting Release), Exchange Act Release No. 64,976 (July 27, 2011), *available at* http://www.sec.gov/rules/final/2011/34-64976.pdf at 46982 ("At present, neither the EBS system nor any other source of data available to the Commission allows it to definitively identify traders that conduct a substantial amount of trading activity or assess the impact of their activities on the securities markets."); *see also* Large Trader Reporting System (Proposing Release), Exchange Act Release No. 61,908 (Apr. 14, 2010), *available at* http://www.sec.gov/rules/proposed/2010/34-61908.pdf at p. 6 ("...because the EBS system is designed for use in narrowly-focused enforcement investigations that generally involve trading in particular securities, it has proven to be insufficient for large-scale market reconstructions and analyses involving numerous stocks during peak trading volume periods. Further, it does not address the Commission's need to identify important market participants and their trading activity.")
2. The Large Trader must report to each broker-dealer "each account to which [the identifier] applies." Although the language in the Rule is ambiguous regarding whether the Large Trader is only required to identify only those accounts over which it exercises discretion that are *carried by* or *executed through* the particular broker-dealer to which they are providing an identifier, or all accounts, wherever held, to which the identifier applies, the commentary in the Adopting Release regarding Form 13H suggests that Large Traders are not required to provide a comprehensive list of accounts across all broker-dealers to each broker-dealer. In the Adopting Release, the SEC acknowledged the difficulty for a Large Trader to prepare a comprehensive list and, in respect to required disclosure in Form 13H, changed the proposed rule when adopting the Rule to omit the requirement. This is an open question that might be efficiently addressed by the SEC through a Question and Answer Interpretive Release (Q&A), as we have recommended elsewhere in this article to address other open questions presented by the Rule, or exemptive relief.
3. Rule 17a-25 under the Securities Exchange Act does not specify a definitive deadline by which EBS trade information must be provided. However, the SEC has generally required broker-dealers to meet a 10 business-day time period. As the SEC notes in the Proposing Release, broker-dealers frequently miss the deadline. Proposing Release at p. 11.
4. *See* Rule 17a-25(a)(1)(v) under the Securities Exchange Act of 1934.
5. It is interesting that the SEC added this activity as "required" transactions in response to a comment by a commentator requesting that broker-dealers be *allowed* to include this activity if its systems did not have the ability to exclude the excepted transactions. See Adopting Release at 46967 and reference to the Financial Information Forum comment letter to the proposed rule. It is not the experience of the authors that this type of activity can be easily tracked by broker-dealers for reporting purposes.
6. Given the potential expense and time involved for a build-out of tracking and reporting of creations and redemptions by ETF distributors, it would be important to the SEC to clarify, in a Q&A, exemptive relief or otherwise, how it intends for the Rule to operate in this regard.

7. *See* Parts 15 through 21 of the CFTC's regulations under the Commodity Exchange Act, which require Large Trader reports from clearing members, futures commission merchants, and foreign brokers and traders and are designed to provide the CFTC with information to effectively conduct its market surveillance program, which includes the detection and prevention of price manipulation and enforcement of speculative position limits. 69 Fed. Reg. 26,368 (May 12, 2004).
8. The Rule defines "investment discretion" by referencing the definition set forth in § 3(a)(35) of the Exchange Act, namely, if a person, either directly or indirectly, "(A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account, …or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the [SEC], by rule, determines… should be subject to the operation of the provisions of [the Exchange Act] and the rule and regulations thereunder," then such person is deemed to exercise investment discretion.
9. Solely for purposes of determining whether the trigger levels are hit, companies may exclude (i) ETF creations and redemptions; (ii) employer option grants; (iii) corporate mergers, acquisitions, self-tenders, buybacks, and certain internal corporate actions (such as journals between accounts of the same entity); (iv) stock lending and equity repurchase agreements; (v) options exercises and assignments; (vi) any transaction that constitutes a gift; (vii) transactions by an executor, administrator, or fiduciary pursuant to distribution of a decedent's estate; (viii) a transaction effected pursuant to a court order; (ix) a transaction pursuant to a rollover of a qualified plan or trust assets; and (x) 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 so long as the transaction is not effected through an national exchange. The SEC emphasized that these transactions may **not** be excluded by broker-dealers for tracking and reporting purposes.
10. The Rule references § 3(a)(35) of the Exchange Act for the definition of investment discretion. That definition would not appear to include time and price discretion but would include any authority to decide which securities are purchased or sold by or for an account. As a result, the definition would include a standing order given to a broker-dealer to purchase an ETF on a given index where selection of the particular CUSIP was left to the broker-dealer.
11. For purposes of the Rule, affiliate status is determined based on ownership of 25% or more of a class of voting securities.
12. *See* also Proposing Release at p. 15 "A large trader would be required to disclose to each of its registered broker-dealers its LTID [Large Trader Identifier] and identify all of the accounts ***held by that broker-dealer*** through which the large trader trades." (emphasis added)
13. In contrast to Form 13H, we note that certain other SEC disclosure forms, such as Form ADV, only require updating if information becomes "materially inaccurate." Currently, Form ADV does not require registered investment advisers or exempt reporting advisers to disclose their status as Large Traders.
14. Although the Rule is not entirely clear, presumably the reporting and recordkeeping requirements apply only in the case that a broker-dealer that is registered as a Large Trader is self-clearing or self-executing. Since this will likely always be the case, this ambiguity does not raise any practical issue.
15. *See* NASD Notice to Members 94-10, 1994 WL 1687189 ("Although a clearing firm may submit blue-sheet data for an introducing firm, there is a shared responsibility for the complete and accurate submission of trading data that lies with both the introducing firm and the clearing firm.") ("Notwithstanding the fact that an introducing firm is not always notified of a blue-sheet request to its clearing firm for the trading records of the introducing firm, the introducing firm has the ultimate responsibility for the timely, accurate, and complete submission of the response. Accordingly, the NASD will notify the introducing firm of any problems it has in receiving data from the clearing firm and expects that the introducing firm will take the necessary steps to ensure that the data are submitted in the proper manner.")
16. The required elements for recordkeeping are: (i) the transaction date and price; (ii) account number; (iii) identifying symbol of the security (*e.g.*, CUSIP); (iv) number of shares or options contracts traded; whether the transaction was a purchase, sale, or short sale; if it is an option contract, whether the transaction was a call or put, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment; (v) clearing house identifier or alpha symbols of the broker-dealer submitting the information, and the clearing house identifier or alpha symbols of the entities on the opposite side of the transaction; (vi) whether the transaction was proprietary or agency; (vii) name of

exchange or market center where transaction was effected; (viii) execution time; (ix) Large Trader identification numbers associated with the account; (x) if part or all of the transaction has been transferred or forwarded to accounts of another registered broker-dealer (*e.g.*, a prime broker or clearing broker) or received in by the broker-dealer from another registered broker-dealer (*e.g.*, from an executing broker-dealer or an introducing broker), an identifier regarding the type of transfer; and (xi) identifier assigned by depository institution, if the transaction was processed by a depository. As a result of the recordkeeping requirements of the EBS Rule, Rule 17a-25 under the Securities Exchange Act of 1934, the broker-dealer must also retain average price account identifiers. This requirement was not repeated in the Rule.

17. *See* SIFMA Comment Letter cited in Adopting Release at p. 46978 n. 196.
18. The Rule allows broker-dealers to voluntarily report activity that falls short of the threshold.
19. *See, e.g.,* NYSE Hearing Panel, Southwest Securities, Inc., Decision 05-157 (Jan. 3, 2006).
20. *See, e.g.*, In the Matter of the Application Schon-Ex, LLC, Admin. Proc. File No. 3-12693, 2008 WL 5491017 (May 23, 2008); Credit Suisse First Boston, LLC, NYSE HPD 06-14 (Jan. 24, 2006); Southwest Secs. Inc., HPD 05-157 (Jan. 3, 2006).
21. *See* In the Matter of the Application Schon-Ex, LLC; Credit Suisse First Boston, LLC; Southwest Secs., Inc.
22. *See* NASD NTM 05-58 (stating that procedures for validating blue sheet data are subject to inspection by the SEC and SROs).
23. *See* § 13(h)(4) of the Securities Exchange Act of 1934.
24. Adopting Release at p. 46982. See also p. 46983 "The Commission believes that this additional time should allow registered broker-dealers to plan, design, implement, and test the small number of enhancements to their existing transaction reporting systems required by the Rule."
25. Note that § 13(h) and Rule 13h-1(g) authorizes the SEC to exempt any person or class of persons or transactions from the provisions of the Rule to the extent that the exemption is "consistent with the purposes of the Securities Exchange Act."