

# Large Trader Reporting Rule For Pension Plans and their Sponsors

American Benefits Council Webinar Presentation

Michael S. Caccese  
Partner, K&L Gates LLP  
michael.caccese@klgates.com  
(617) 261-3133

November 22, 2011  
[www.klgates.com](http://www.klgates.com)

# INTRODUCTION

## What Do You Have to Do Between Now and December 1st?

1. Determine whether you are a Large Trader
  - Do you trade U.S. exchange-listed stocks and options?
  - Does any entity that you control trade U.S. exchange-listed stocks and options?
  - Do you trade more than:
    - 2 million shares or \$20 million in a day?
    - 20 million shares or \$200 million in a calendar month?
  - If so, as of what date?

## What Do You Have to Do Between Now and December 1st? (Continued)

2. If you are a Large Trader, what do you do?
  - Get a Central Index Key (CIK) number
    - Complete, notarize, and submit a Form ID (available on [www.sec.gov](http://www.sec.gov))
    - Receive a CIK via email
    - Log on to EDGAR and establish pass codes
  - File Form 13H electronically

## What Do You Have To Do After December 1st?

- Receive your Large Trade Identification Number (LTID) from the SEC
- Submit your LTID to each broker through whom you trade U.S. exchange-listed stocks and options within 10 days after receipt
- File Form 13H annually within 45 days after the end of each calendar year
- Amend Form 13H within 10 days after the end of a calendar quarter in which any information becomes inaccurate

## **PURPOSE OF THE RULE**

## Purpose of the Rule

The Large Trader Reporting Rule is designed to identify significant market participants and collect uniform data on their activities

The SEC believes this information will "influence" its ability to:

- analyze market movements and investigate the causes of market events in an expeditious manner
- efficiently conduct investigations of regulated entities
- bring and prosecute enforcement actions

Although the rule was proposed before the May 6, 2010 "Flash Crash," the SEC cites the "Flash Crash" as an example of its need to efficiently gather data on the most active market participants

# WHO IS A LARGE TRADER?



## Who is a Large Trader?

- A “Large Trader” is any person or entity that exercises investment discretion concerning the buying or selling of U.S. exchange-listed equities or options, and who trades, in the aggregate, more than:
  - *2 million shares or shares with a fair market value of \$20 million during a calendar day; or*
  - *20 million shares or shares with a fair market value of \$200 million during a calendar month.*
- The definition:
  - Includes stocks and options listed on U.S. exchanges
  - Does not include mutual funds, collective trust funds, hedge funds, or private equity funds

## Why should I care?

- Plan sponsors, their in-house asset managers, and plan trustees may be Large Traders if they make investment decisions
  - Directed trustees – No
  - Hire subadvisers – No
  - Retain the right to make investment decisions – Yes
  - Make investment decisions – Yes
- But...

## Who is a Large Trader? – Parents and Subsidiaries

- To determine if your organization is a Large Trader, count all trades in U.S. exchange-listed stocks and options by the parent, and all subsidiaries and affiliates under the control of the parent
- “Control” indicated by 25% ownership or power to direct management and policies of an entity
- Even if no single controlled entity is deemed a Large Trader, if the entire organization effects transactions (in the aggregate) that cross the reporting thresholds, then the parent company is deemed a Large Trader

## Who is a Large Trader? – Investment Discretion

- An entity has “investment discretion” under the rule if, directly or indirectly it:
  - exercises discretion over the account, or
  - effected the transaction
- Typically does not include accounts managed by subadvisers.
- But may include such accounts if:
  - the manager retains discretionary authority to effect transactions (e.g., by requiring a subadviser to seek approval for trades),
  - the subadviser is controlled by the manager, or
  - the manager and the subadviser coordinate or jointly effect transactions (e.g., subadviser trades through the adviser’s trading desk)

## Who is a Large Trader? – Non-U.S. Entities

- Non-U.S. pension plans may be Large Traders;
- The rule applies to non-U.S. entities that trade in U.S. equities or options through SEC-registered broker-dealers;
- Non-U.S. pension plans may need to report their parents' LTID if their parent is a Large Trader

## Who is a Large Trader? – Expansive Scope

- Example #1: U.S. corporation owns a 50% stake in an investment adviser with significant trading activity in U.S. listed securities. The corporation is ultimately owned by a non-U.S. company.
  - Since the non-U.S. company ultimately “controls” the investment adviser, it is a Large Trader
- Example #2: U.S. drug manufacturer has an in-house pension management team
  - If the in-house team retains investment discretion over trading in excess of the rule’s thresholds, the drug manufacturer is a Large Trader

# LARGE TRADER OBLIGATIONS

## Large Trader Obligations – Form 13H

- Each Large Trader must file Form 13H with the SEC
- Each Large Trader must:
  - File Form 13H within 10 days after trades exceed the identifying activity level
    - If you are currently a Large Trader, you must file no later than December 1st
  - Amend Form 13H no later than 10 days after the end of any calendar quarter in which information becomes inaccurate
  - Amend Form 13H no later than 45 days after the end of each calendar year



## Obligations – Form 13H – Disclosures

A Large Trader must submit the following information on Form 13H:

- Identify affiliates that exercise investment discretion over U.S. exchange-listed stocks and options securities (Securities Affiliates) and describe the business each of those entities;
- Provide an organizational chart depicting the Large Trader, its parent company, and its Securities Affiliates
- Identify any financial business activities of itself and its Securities Affiliates (e.g., broker or dealer, bank or non- bank holding company, investment adviser, insurance company, etc.);
- Provide a brief narrative description of its operations and trading strategies, and those of its Securities Affiliates (e.g. “Registered investment adviser to mutual funds and other institutional accounts, focused on quantitative investment strategies.”)

## Obligations – Form 13H – Disclosures (Continued)

A Large Trader must:

- Disclose all other forms it or its Securities Affiliates file with the SEC, as well as CIK numbers;
- Identify its form of its business (e.g., corporation, LLC);
- Disclose whether it or any of its affiliates are regulated by the CFTC or a foreign regulator, and disclose its CFTC registration number or primary regulator, as applicable;
- Identify all broker-dealers at which it or its affiliates have an account and disclose the type of services such broker-dealer provides

*Note: There is no obligation to identify which Securities Affiliates have accounts at which broker-dealers; just list all SEC-registered broker-dealers*

## Obligations – Form 13H – Who Files?

- If your parent files Form 13H, you have no obligation to file it yourself
- If a sister entity is a Large Trader, you have no obligation to file Form 13H
- If you are a Large Trader, you may file Form 13H, or you may rely on your parent's filing
- If your subsidiary is a Large Trader, your parent may file, you may file, or your subsidiary may file

## Obligations – Reporting

- Each Large Trader must disclose its LTID to each broker-dealer through which it or its affiliates trade U.S. exchange-listed stocks and options
- Disclose LTID only to SEC-registered broker-dealers

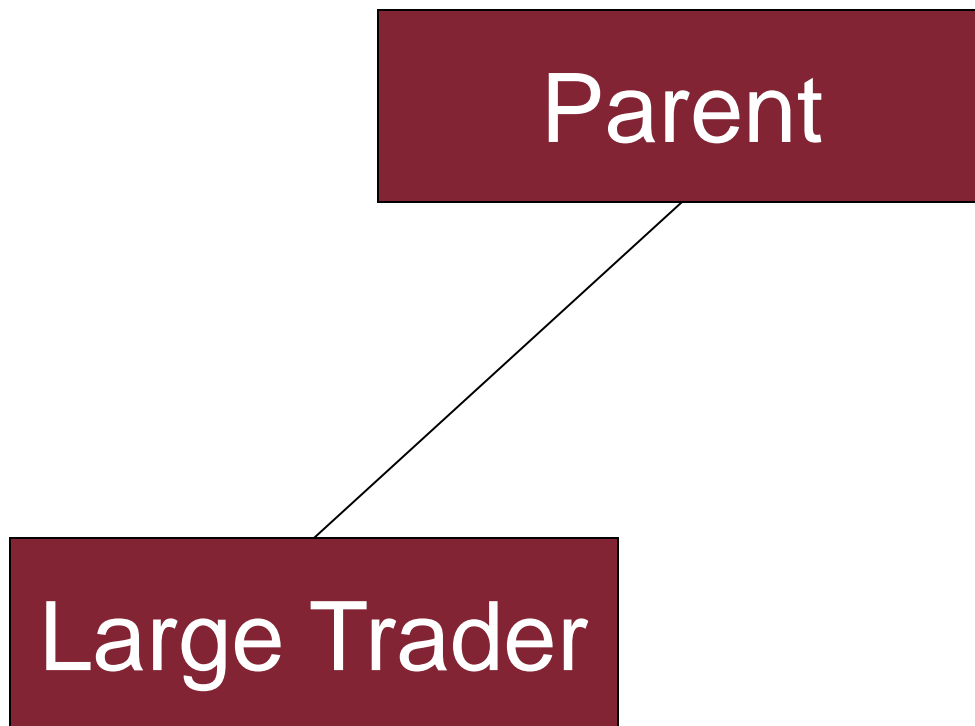
# COMPLIANCE TIMELINE

## Compliance Timeline

- **Initial Filing:** Starting yesterday, you must determine whether you are a Large Trader
  - **If you were a Large Trader as of yesterday, you must file by December 1, 2011**
  - If not, you must continue to check your Large Trader status (until you become a Large Trader)
  - The SEC will issue an LTID number to each Large Trader based on its initial filing
- **Reporting Deadline:** Large Traders must disclose their LTIDs to broker-dealers within 10 days after receipt from the SEC

# LARGE TRADER REGISTRATION EXAMPLES

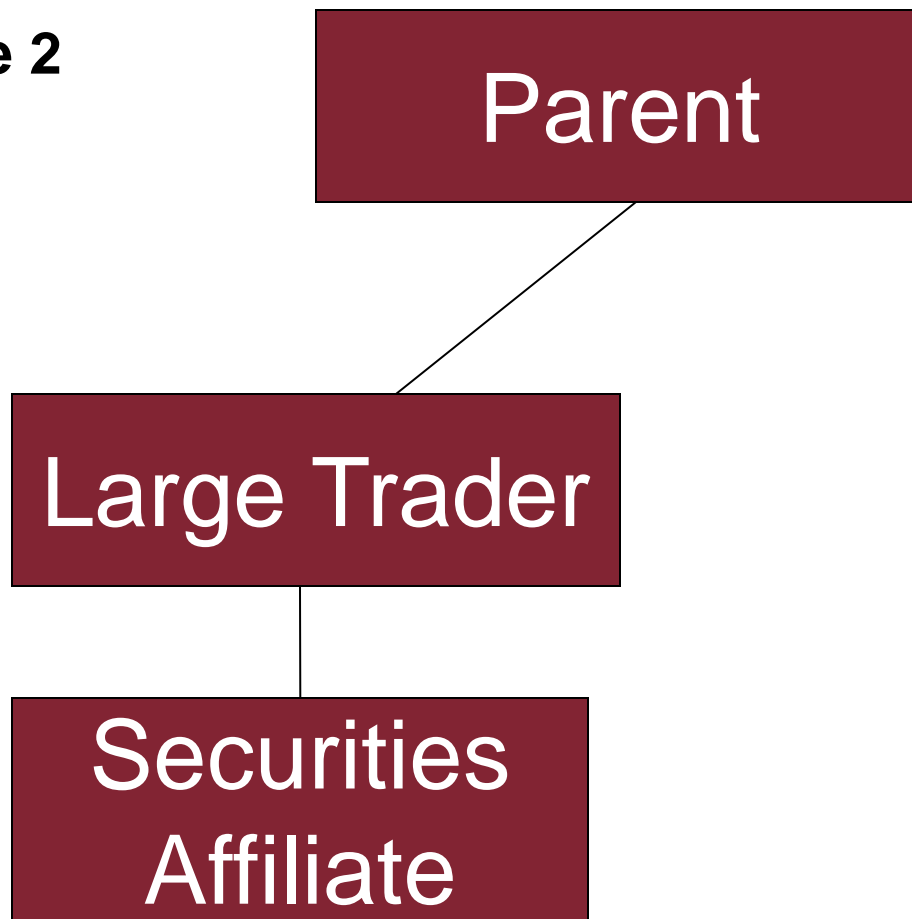
## Example 1



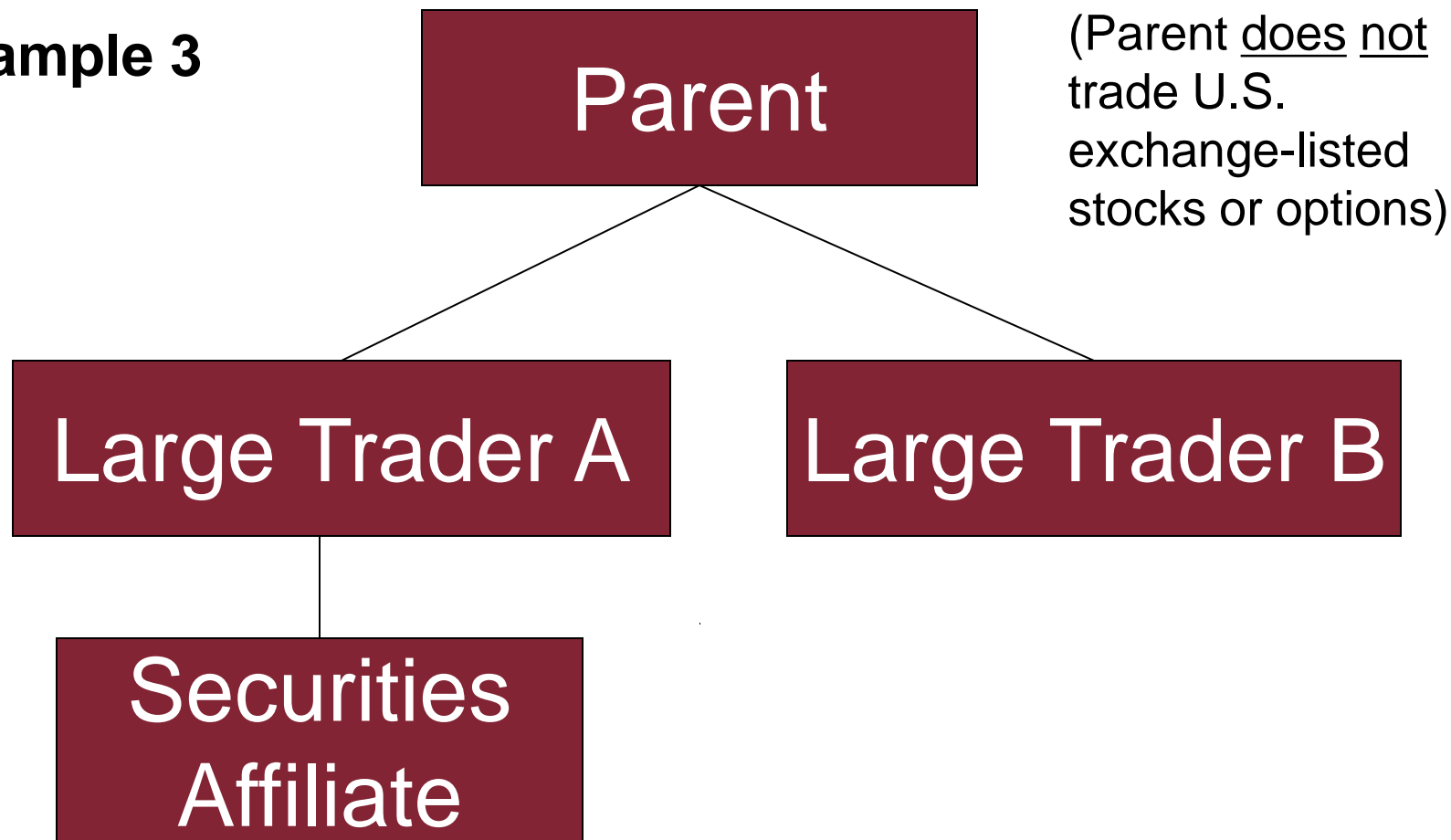
Outcome: Large Trader or Parent may register



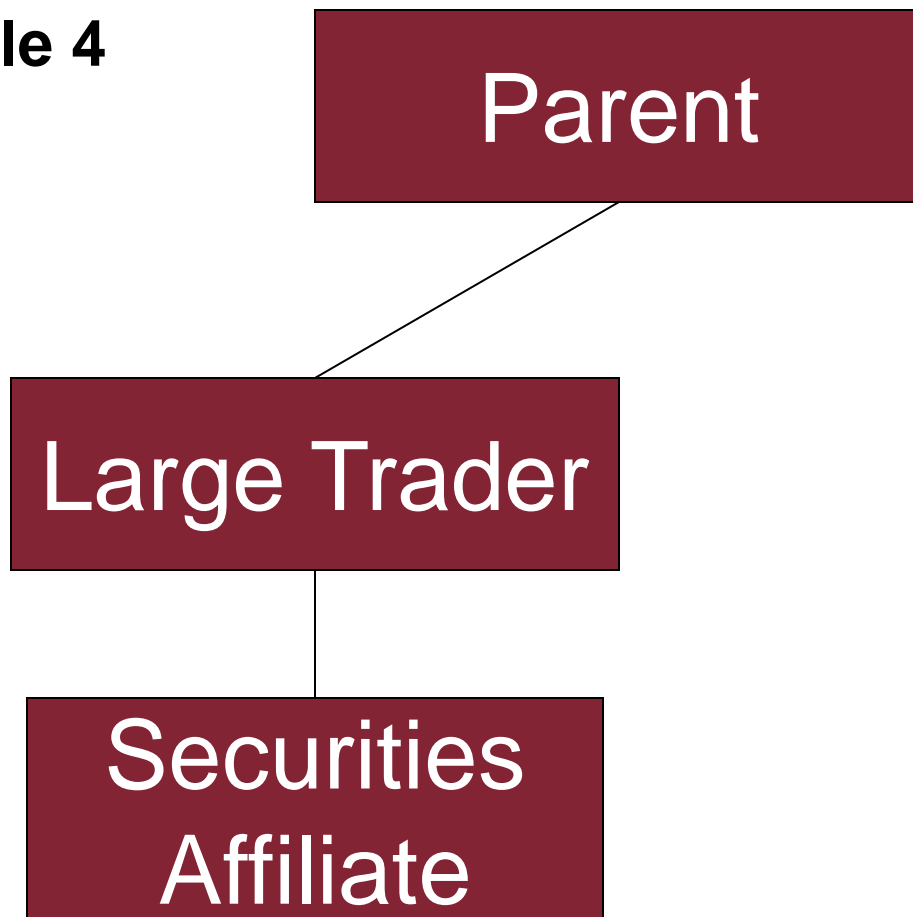
**Example 2**



Outcome: Large Trader or Parent may register

**Example 3**

Outcome: Parent may register, or both Large Trader A and Large Trader B may register

**Example 4**

(Parent does trade U.S. exchange-listed stocks or options)

Outcome: Parent must register

# QUESTIONS