

**Supporting Statement**  
**Retail Foreign Exchange Transactions**  
**OMB Control No. 1557-NEW**

A. Justification.

1. Circumstances that make the collection necessary:

Section 742(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)<sup>1</sup> amended the Commodity Exchange Act (CEA) to provide that a U.S. financial institution for which there is a Federal regulatory agency shall not enter into, or offer to enter into, a transaction described in section 2(c)(2)(B)(i)(I) of the CEA with a retail customer except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe<sup>2</sup> (retail forex rule).

Section 2(c)(2)(B)(i)(I) of the CEA<sup>3</sup> includes “an agreement, contract, or transaction in foreign currency that . . . is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934.”<sup>4</sup> The OCC’s retail forex rule must treat all such futures and options and all agreements, contracts, or transactions that are functionally or economically similar to such futures and options in a similar manner.<sup>5</sup> The OCC’s retail forex rules must prescribe appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation requirements, and may include such other standards or requirements as it determines to be necessary.<sup>6</sup>

2. Use of the information:

Reporting Requirements

The reporting requirements in § 48.4 would require that, prior to initiating a retail forex business, a national bank provide the OCC with prior notice and obtain a written supervisory no-objection letter. In order to obtain a supervisory no-objection letter, a national bank must have written policies and procedures, and risk measurement and management systems in place to ensure that retail forex transactions are conducted in a safe and sound manner. The national bank must also provide other information required by the OCC, such as documentation of customer due diligence, new product approvals, and haircuts applied to noncash margins. A

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<sup>1</sup> Pub. L. 111-203, 124 Stat. 1376. (July 21, 2010) 7 U.S.C. 2(c)(2)(E).

<sup>2</sup> 7 U.S.C. 2(c)(2)(E)(ii)(I).

<sup>3</sup> 7 U.S.C. 2(c)(2)(B)(i)(II).

<sup>4</sup> 15 U.S.C. 78f(a)

<sup>5</sup> 7 U.S.C. 2(c)(2)(E)(iii)(II).

<sup>6</sup> 7 U.S.C. 2(c)(2)(E)(iii)(I).

national bank already engaging in a retail forex business may continue to do so, provided it requests an extension of time.

### Disclosure Requirements

Under § 48.5, regarding the application and closing out of offsetting long and short positions, would require a national bank to promptly provide the customer with a statement reflecting the financial result of the transactions and the name of the introducing broker to the account. The customer would provide specific written instructions on how the offsetting transaction should be applied.

Section 48.6 would require that a national bank furnish a retail forex customer with a written disclosure before opening an account that will engage in retail forex transactions for a retail forex customer and receive an acknowledgment from the customer that it was received and understood. It also requires the disclosure by a national bank of its fees and other charges and its profitable accounts ratio.

Section 48.10 would require a national bank to issue monthly statements to each retail forex customer and to send confirmation statements following transactions.

Section 48.13(b) would allow disclosure by a national bank that an order of another person is being held by them only when necessary to the effective execution of the order or when the disclosure is requested by the OCC. Section 48.13(c) would prohibit a national bank engaging in retail forex transactions from knowingly handling the account of any related person of another retail forex counterparty unless it receives proper written authorization, promptly prepares a written record of the order, and transmits to the counterparty copies all statements and written records. Section 48.13(d) would prohibit a related person of a national bank engaging in forex transactions from having an account with another retail forex counterparty unless it receives proper written authorization and copies of all statements and written records for such accounts are transmitted to the counterparty.

Section 48.15 would require a national bank to provide a retail forex customer with 30 days' prior notice of any assignment of any position or transfer of any account of the retail forex customer. It would also require a national bank to which retail forex accounts or positions are assigned or transferred to provide the affected customers with risk disclosure statements and forms of acknowledgment and receive the signed acknowledgments within 60 days.

The customer dispute resolution provisions in § 48.16 would require certain endorsements, acknowledgments, and signature language. It also would require that within 10 days after receipt of notice from the retail forex customer that they intend to submit a claim to arbitration, the national bank provide them with a list of persons qualified in the dispute resolution and that the customer must notify the national bank of the person selected within 45 days of receipt of such list.

### Policies and Procedures; Recordkeeping

Sections 48.7 and 48.13 would require that a national bank engaging in retail forex transactions keep full, complete, and systematic records and establish and implement internal rules, procedures, and controls. Section 48.7 also would require that a national bank keep account, financial ledger, transaction and daily records, as well as memorandum orders, post-execution allocation of bunched orders, records regarding its ratio of profitable accounts, possible violations of law, records for noncash margin, and monthly statements and confirmations. Section 48.9 would require policies and procedures for haircuts for noncash margin collected under the rule's margin requirements, and annual evaluations and modifications of the haircuts.

3. Consideration of the use of improved information technology:

National banks may use any information technology that permits review by OCC examiners.

4. Efforts to identify duplication:

The information required is unique. It is not duplicated elsewhere.

5. Methods used to minimize burden if the collection has an impact on a substantial number of small entities:

Not applicable.

6. Consequences to the Federal program if the collection were conducted less frequently:

Conducting the collection less frequently would present safety and soundness risks and weaken protection of consumers engaging in retail foreign exchange transactions.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320:

None. The information collection is conducted in accordance with OMB guidelines in 5 CFR part 1320.

8. Efforts to consult with persons outside the agency:

The agencies published a notice of proposed rulemaking in the *Federal Register* for comment. 76 FR 22633 (April 22, 2011).

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

There is no assurance of confidentiality.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimate:

Estimated Number of Respondents: 42 national banks; 3 service providers.

Total Reporting Burden: 672 hours.

Total Disclosure Burden: 54,166 hours.

Total Recordkeeping Burden: 12,416 hours.

Total Annual Burden: 67,254 hours.

13. Estimate of annualized costs to respondents (excluding cost of hour burden in Item #12):

None.

14. Estimate of annualized costs to the government:

None.

15. Changes in burden:

Former: 0 respondents; 0 hours

New: 45 respondents; 67,254 hours

Difference: + 45 respondents; + 67,254 hours

16. Information regarding collections whose results are planned to be published for statistical use:

No publication for statistical use is contemplated.

17. Display of expiration date:

Not applicable.

18. Exceptions to certification statement:

Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.