

**Supporting Statement**  
**Retail Foreign Exchange Transactions**  
**OMB Control No. 3064-NEW**

Introduction

The FDIC is requesting OMB approval of a new information collection. The collection of information is comprised of reporting, recordkeeping and disclosure requirements included in a notice of proposed rulemaking on Retail Foreign Exchange Transactions issued by the FDIC as required by section 742(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)<sup>1</sup>.

A. Justification.

1. Circumstances that make the collection necessary:

Section 742(c)(2) of the Dodd-Frank Act 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>

Under the CEA, the FDIC is the “Federal regulatory agency” for entities for which it is the “appropriate Federal banking agency” under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).<sup>5</sup> (such an entity is referred to here as an “FDIC-supervised IDI.”) The FDIC’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>6</sup> The FDIC’s retail forex rules must also prescribe appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and

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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> The FDIC is currently the appropriate Federal banking agency for each State nonmember insured bank and each foreign bank having an insured branch. 12 U.S.C. § 1813(q)(3). When the powers of the Office of Thrift Supervision are transferred to the Office of Comptroller of the Currency, the FDIC, and the Board of Governors of the Federal Reserve System, pursuant to Title III of the Dodd-Frank Act, the FDIC will also become the appropriate Federal banking agency for each State savings association. See Dodd-Frank Act § 312(c) (amending 12 U.S.C. § 1813(q) to redefine “appropriate Federal banking agency”).

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

documentation requirements, and may include such other standards or requirements as it determines to be necessary.<sup>7</sup>

## 2. Use of the information

The reporting requirements in § 349.4 would require that, prior to initiating a retail forex business, an FDIC-supervised IDI provide the FDIC with prior notice, **obtain the FDIC's prior written consent and submit the documents provided for in proposed § 349.4(c)**. The FDIC-supervised IDI must also provide other information required by the FDIC, such as documentation of customer due diligence. A FDIC-supervised IDI already engaging in a retail forex business may continue to do so, provided it request the FDIC's written consent.

The rule also contains a number of disclosure requirements. Under § 349.5, regarding the application and closing out of offsetting long and short positions, would require an FDIC-supervised IDI 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 349.6 would require that an FDIC-supervised IDI 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 an FDIC-supervised IDI of its fees and other charges and its profitable accounts ratio.

Section 349.10 would require an FDIC-supervised IDI to issue monthly statements to each retail forex customer and to send confirmation statements following transactions.

Section 349.13(b) would allow disclosure by an FDIC-supervised IDI 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 FDIC. Section 349.13(c) would prohibit an FDIC-supervised IDI 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 349.13(d) would prohibit a related person of an FDIC-supervised IDI 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 349.15 would require an FDIC-supervised IDI 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 an FDIC-supervised IDI to which retail forex accounts or positions are assigned or transferred to provide the affected customers with risk

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

disclosure statements and forms of acknowledgment and receive the signed acknowledgments within 60 days.

The customer dispute resolution provisions in § 349.16 would require that within 10 business days after receipt of notice from the retail forex customer that they intend to submit a claim to arbitration, the FDIC-supervised IDI provide them with a list of persons qualified in the dispute resolution and that the customer must notify the FDIC-supervised IDI of the person selected within 45 days of receipt of such list.

Regarding recordkeeping, sections 349.7 and 349.13 would require that an FDIC-supervised IDI 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 an FDIC-supervised IDI 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 349.9 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.

The information required to be reported, maintained and disclosed requirements is deemed necessary to ensure the safety and soundness of institutions engaging in retail foreign exchange transactions and to protect customers on whose behalf the activities are conducted.

3. Consideration of the use of improved information technology:

An FDIC-supervised IDI may use any information technology that permits review by FDIC 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.

8. Efforts to consult with persons outside the agency:

The FDIC published a notice of proposed rulemaking in the *Federal Register* seeking comment for a 30-day period. Any comments received will be considered in development of the final rule.

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: 3 state nonmember banks; 1 service provider.

Total Reporting Burden: 48 hours.

Total Disclosure Burden: 5,326 hours.

Total Recordkeeping Burden: 664 hours.

Total Annual Burden: 6,038 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:

This is a new information collection. The addition of 6,038 hours to the FDIC's inventory is the result of new reporting, recordkeeping, and disclosure requirements contained in a notice of proposed rulemaking.

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.