

## Supporting Statement

### Reporting, Recordkeeping, and Disclosure Requirements Associated with Restrictions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds

OMB Control No. 1557-NEW

#### A. Justification.

##### 1. Circumstances that make the collection necessary:

This collection of information is being established pursuant to a notice of proposed rulemaking required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which was enacted on July 21, 2010.<sup>1</sup> Section 619 of the Dodd-Frank Act contains certain prohibitions and restrictions on the ability of a banking entity<sup>2</sup> and nonbank financial company supervised by the Board of Governors of the Federal Reserve System (Board) to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund.

##### 2. Use of the information:

The notice of proposed rulemaking would (i) require banking entities to establish a comprehensive compliance program designed to ensure compliance with the statute in a manner that takes into account and reflects the unique nature of a banking entity's businesses, and (ii) require certain banking entities to calculate and report meaningful quantitative data regarding proprietary trading to assist both banking entities and their regulators in identifying activity that warrants additional scrutiny in order to distinguish prohibited proprietary from otherwise permissible activity. The rule is intended to strike an appropriate balance between accommodating prudent risk management and the continued provision of client-oriented financial services by banking entities while ensuring that such entities do not engage in proprietary trading or restricted covered fund activities or investments.

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> The term "banking entity" is defined in section 13(h)(1) of the BHC Act, as amended by section 619 of the Dodd-Frank Act. See 12 U.S.C. 1851(h)(1). The statutory definition includes any insured depository institution (other than certain limited purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing. Section 13 of the BHC Act defines the terms "hedge fund" and "private equity fund" as an issuer that would be an investment company, as defined under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or any such similar funds as the appropriate Federal banking agencies (i.e., the Board, OCC, and FDIC), the SEC, and the CFTC may, by rule, determine should be treated as a hedge fund or private equity fund. See 12 U.S.C. 1851(h)(2).

The respondent/recordkeepers<sup>3</sup> are for-profit financial institutions, including small businesses. A covered entity must retain these records for a period that is no less than 5 years in a form that allows it to promptly produce such records to the OCC upon request.

The reporting requirements are found in sections \_\_.7(a) and \_\_.12(d).

The recordkeeping requirements are found in sections \_\_.3(b)(2)(iii)(C), \_\_.5(c), \_\_.7(a), \_\_.11(b), \_\_.13(b)(3), \_\_.20(b), \_\_.20(c), and \_\_.20(d).

The disclosure requirement is found in section \_\_.11(h)(1).

The recordkeeping and disclosure burden for the following sections is accounted for in the \_\_.20(b) burden: \_\_.4(a)(2)(i), \_\_.4(b)(2)(i), \_\_.5(b)(1), \_\_.5(b)(2)(i), \_\_.5(b)(2)(v), \_\_.13(b)(2)(i), \_\_.13(b)(2)(ii)(A), \_\_.13(b)(2)(ii)(D), \_\_.15(a)(1), and \_\_.17(b)(1).

### Section-by-Section Description of Requirements

Section \_\_.3(b)(2)(iii)(C) would require a covered banking entity to establish a documented liquidity management plan in order to rely on an exclusion from the definition of “trading account” for certain positions taken for the bona fide purpose of liquidity management.

Section \_\_.5(c) would require that, with respect to any purchase, sale, or series of purchases or sales conducted by a covered banking entity pursuant to section \_\_.5 for risk-mitigating hedging purposes that is established at a level of organization that is different than the level of organization establishing the positions, contracts, or other holdings the risks of which the purchase, sale, or series of purchases or sales are designed to reduce, the covered banking entity document, at the time the purchase, sale, or series of purchases or sales are conducted:

- (1) The risk-mitigating purpose of the purchase, sale, or series of purchases or sales;
- (2) The risks of the individual or aggregated positions, contracts, or other holdings of a covered banking entity that the purchase, sale, or series of purchases or sales are designed to reduce; and
- (3) The level of organization that is establishing the hedge.

Section \_\_.7(a) would require a covered banking entity engaged in any proprietary trading activity pursuant to sections \_\_.4 through \_\_.6 to comply with the reporting and

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<sup>3</sup> The Board is taking burden for OCC-supervised institutions under a holding company. The OCC is taking burden for national banks, federal savings associations, and federal savings banks not under a holding company, and their respective subsidiaries, including registered investment advisers, commodity trading advisers, and commodity pool operators that are subsidiaries of national banks, federal savings associations, and federal savings banks not under a bank holding company.

recordkeeping requirements described in Appendix A if the covered banking entity has, together with its affiliates and subsidiaries, trading assets and liabilities the average gross sum of which (on a worldwide consolidated basis) is, as measured as of the last day of each of the four prior calendar quarters, equal to or greater than \$1 billion, as well as such other reporting and recordkeeping requirements as a relevant Agency may impose to evaluate the covered banking entity's compliance with this subpart.

Section .11(b) would require that, with respect to any covered fund that is organized and offered by a covered banking entity in connection with the provision of bona fide trust, fiduciary, investment advisory, or commodity trading advisory services and to persons that are customers of such services of the covered banking entity, the covered banking entity document how the covered banking entity intends to provide advisory or similar services to its customers through organizing and offering such fund.

Section .11(h)(1) would require that, with respect to any covered fund that is organized and offered by a covered banking entity in connection with the provision of bona fide trust, fiduciary, investment advisory, or commodity trading advisory services and to persons that are customers of such services of the covered banking entity, the covered banking entity clearly and conspicuously disclose, in writing, to any prospective and actual investor in the covered fund (such as through disclosure in the covered fund's offering documents):

- (1) That “any losses in [such covered fund] are borne solely by investors in [the covered fund] and not by [the covered banking entity and its affiliates or subsidiaries] and that any losses in [such covered fund] that will be borne by [the covered banking entity and its affiliates or subsidiaries] are limited to the ownership interest in the covered fund held by the [covered banking entity and its affiliates or subsidiaries]”;
- (2) That such investor should read the fund offering documents before investing;
- (3) That the “ownership interests in the covered fund are not insured by the FDIC, and are not deposits, obligations of, or endorsed or guaranteed in any way, by any banking entity” (unless that happens to be the case); and
- (4) The role of the covered banking entity or its affiliates, subsidiaries or employees in sponsoring or providing any services to the covered fund.

Section .12(d) would extend the time to divest an ownership interest in a covered fund. Upon receipt of an application from a covered banking entity, the Board may extend the period of time to meet the requirements under paragraphs (a)(2)(i)(A) and (B) of that section for up to 2 additional years, if the Board finds that an extension would be consistent with safety and soundness and not detrimental to the public interest. An application for extension must:

- (1) Be submitted to the Board at least 90 days prior to the expiration of the applicable time period;
- (2) Provide the reasons for application, including information that addresses the factors

in paragraph (e)(2) of that section; and

(3) Explain the covered banking entity's plan for reducing the permitted investment in a covered fund through redemption, sale, dilution or other methods as required in paragraph (a)(2)(i) of that section.

Section .13(b)(3) would require that, with respect to any acquisition or retention of an ownership interest in a covered fund by a covered banking entity pursuant to § \_\_.13(b), the covered banking entity must document, at the time the transaction is conducted:

(1) The risk-mitigating purpose of the acquisition or retention of an ownership interest in a covered fund;

(2) The risks of the individual or aggregated obligation or liability of a covered banking entity that the acquisition or retention of an ownership interest in a covered fund is designed to reduce; and

(3) The level of organization that is establishing the hedge.

Section .20(b) would require a compliance program with respect to covered fund activities and investments that shall, at a minimum, include:

(1) Internal written policies and procedures reasonably designed to document, describe, and monitor the covered trading and covered fund activities and investments of the covered banking entity to ensure that such activities and investments are compliant with section 13 of the BHC Act and this part;

(2) A system of internal controls reasonably designed to monitor and identify potential areas of noncompliance with section 13 of the BHC Act and this part in the covered banking entity's covered trading and covered fund activities and investments and to prevent the occurrence of activities or investments that are prohibited by section 13 of the BHC Act and this part;

(3) A management framework that clearly delineates responsibility and accountability for compliance with section 13 of the BHC Act and this part;

(4) Independent testing for the effectiveness of the compliance program conducted by qualified personnel of the covered banking entity or by a qualified outside party;

(5) Training for trading personnel and managers, as well as other appropriate personnel, to effectively implement and enforce the compliance program; and

(6) Maintenance of records sufficient to demonstrate compliance with section 13 of the BHC Act and this part, which a covered banking entity must promptly provide to the Agency upon request and retain for a period of no less than 5 years.

Section \_\_.20(c) would require the compliance program of a covered banking entity to also comply with the requirements and other standards contained in Appendix C if the covered banking entity:

(1) Engages in proprietary trading and has, together with its affiliates and subsidiaries, trading assets and liabilities the average gross sum of which (on a worldwide consolidated basis), as measured as of the last day of each of the four prior calendar quarters (i) is equal to or greater than \$1 billion, or (ii) equals 10 percent or more of its total assets; or

(2) Invests in, or has relationships with, a covered fund and (i) the covered banking entity has, together with its affiliates and subsidiaries, aggregate investments in one or more covered funds, the average value of which is, as measured as of the last day of each of the four prior calendar quarters, equal to or greater than \$1 billion, or (ii) sponsors or advises, together with its affiliates and subsidiaries, one or more covered funds, the average total assets of which are, as measured as of the last day of each of the four prior calendar quarters, equal to or greater than \$1 billion.

Section \_\_.20(d) would require a covered banking entity that does not engage in activities or investments prohibited or restricted in subpart B or subpart C of the proposed rule, in order to be deemed to have satisfied the requirements of § \_\_.20, to ensure that its existing compliance policies and procedures include measures that are designed to prevent the covered banking entity from becoming engaged in such activities or making such investments and which require the covered banking entity to develop and provide for establishment of the compliance program required under § \_\_.20(a) of the proposed rule prior to engaging in such activities or making such investments.

3. Consideration of the use of improved information technology:

Respondents 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.

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 on November 7, 2011. 76 FR 68846.

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:

Number of respondents: 469.

Estimated Burden per Response:

- Section \_\_.3(b)(2)(iii)(C) recordkeeping – 1 hour (Initial setup 3 hours). The Board is taking burden for all OCC institutions under this section, as they are under a holding company.
- Section \_\_.5(c) recordkeeping – 6 hours for entities with \$1 billion or more in trading assets/liabilities, 35 hours for entities with \$5 billion or more in trading assets/liabilities. The Board is taking burden for all OCC institutions under this section, as they are under a holding company.
- Section \_\_.7(a) reporting – 2 hours for entities with \$1 billion or more in trading assets/liabilities, 2 hours for entities with \$5 billion or more in trading assets/liabilities (Initial setup 6 hours for entities with \$1 billion or more in trading assets/liabilities, 6 hours for entities with \$5 billion or more in trading assets/liabilities). The Board is taking burden for all OCC institutions under this section, as they are under a holding company.
- Section \_\_.7(a) recordkeeping – 350 hours for entities with \$1 billion or more in trading assets/liabilities, 440 hours for entities with \$5 billion or more in trading assets/liabilities. The Board is taking burden for all OCC institutions under this section, as they are under a holding company.

- Section \_\_.11(b) recordkeeping – 10 hours.
- Section \_\_.11(h)(1) disclosure – 0.10 hours.
- Section \_\_.12(d) reporting – 20 hours (Initial setup 50 hours).
- Section \_\_.13(b)(3) recordkeeping – 10 hours.
- Section \_\_.20(b) recordkeeping – 265 hours (Initial setup 795 hours).
- Section \_\_.20(c) recordkeeping – 1,200 hours (Initial setup 3,600 hours).
- Section \_\_.20(d) recordkeeping – 8 hours.

Total estimated annual burden: 253,796 hours (187,643 hours for initial setup and 66,153 hours for ongoing compliance).

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:	469 respondents; 253,796 hours
Difference:	+ 469 respondents; + 253,796 hours

The increase in burden is due to the fact that this is a new collection.

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.