

SUPPORTING STATEMENT
Prohibitions/Restrictions on Proprietary Trading
OMB No. 3064-0184

INTRODUCTION

The subject collection of information is currently approved by OMB under control number 3064-0184. OMB approval is scheduled to expire on April 30, 2017. This submission is a request to renew the collection for three years without substantive revision. There is no change in the method or substance of the collection. The overall reduction in burden hours is a result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response remain the same.

JUSTIFICATION

1. Circumstances and Need

Section 619 of the Dodd-Frank Act added a new section 13 to the Bank Holding Company (“BHC”) Act (codified at 12 U.S.C. § 1851) that, subject to certain exemptions, generally prohibits any banking entity from engaging in proprietary trading or from investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund (“covered fund”). The BHC Act also provides for certain nonbank financial companies that engage in such activities or have such investments or relationships to be subject to additional capital requirements, quantitative limits, or other restrictions.

Section 619 of Dodd-Frank also required the Financial Stability Oversight Council to conduct a study and make recommendations on the implementation of section 13 of the BHC Act. The Council study was issued on January 18, 2011, and included a detailed discussion of key issues related to implementation of section 13 and recommended that the Agencies consider taking a number of specified actions in issuing regulations. The Council study also recommended that the Agencies adopt a four-part implementation and supervisory framework for identifying and preventing prohibited proprietary trading, which included: (1) a programmatic compliance regime requirement for banking entities, (2) analysis and reporting of quantitative metrics by banking entities, (3) supervisory review and oversight by the Agencies, and (4) enforcement procedures for violations. The Agencies fully considered the Council study in the development of the rule.

2. Use of the Information

The respondents are for-profit financial institutions, including small businesses. A covered entity must retain required records for a period that is no less than 5 years in a form that allows for the prompt production of such records to the FDIC on request. The information is used to identify and prevent prohibited proprietary trading.

Reporting Requirements

Section 351.12(e) states that, upon application, a banking entity may obtain an extension of the period of time to meet the requirements on ownership limitations in this section for up to 2 additional years.

Recordkeeping Requirements

Section 351.3(d)(3) requires covered entities to have a detailed written liquidity management plan that specifically contemplates and authorizes certain otherwise prohibited securities to be used for liquidity management purposes.

Section 351.4(b)(3)(i)(A) provides that a trading desk or other organizational unit of another entity with more than \$50 billion in trading assets and liabilities is not a client, customer, or counterparty unless the trading desk documents how and why a particular trading desk or other organizational unit of the entity should be treated as a client, customer, or counterparty of the trading desk for purposes of § 351.4(b).

Section 351.11(a)(2) requires that covered funds generally must be organized and offered only in connection with the provision of bona fide trust, fiduciary, investment advisory, or commodity trading advisory services and only to persons that are customers of such services of the banking entity, pursuant to a written plan or similar documentation outlining how the banking entity intends to provide advisory or other similar services to its customers through organizing and offering the covered fund.

Section 351.20(b) specifies the contents of a required compliance program for a banking entity with total consolidated assets of \$10 billion or more including a provision requiring that records sufficient to demonstrate compliance with section 13 of the BHC Act and applicable regulations be maintained and retained for a period of no less than 5 years or such longer period as required by FDIC.

Section 351.20(e) specifies that any banking entity that has more than \$10 billion in total consolidated assets as reported on December 31 of the previous two calendar years shall maintain records documenting the determination that each fund sponsored by the banking entity (including all subsidiaries and affiliates) is not a covered fund. Banking entities must also maintain a written plan documenting the treatment of certain seeding vehicles described in the regulation and, under certain circumstances, documentation of the value of the ownership interests owned by the banking entity in certain foreign public fund and each jurisdiction in which any such foreign public fund is organized..

Section 351.20(f)(1) applies to banking entities with no covered activities. A banking entity that does not engage in activities or investments pursuant to subpart B or subpart C (other than trading activities permitted pursuant to §351.6(a) of subpart B) may satisfy the requirements of this section by establishing the required compliance program prior to becoming engaged in such activities or making such investments (other than trading activities permitted pursuant to §351.6(a) of subpart B).

Section 351.20(f)(2) applies to banking entities with modest activities. A banking entity with total consolidated assets of \$10 billion or less as reported on December 31 of the previous two calendar years may satisfy the requirements of this section by including in its existing compliance policies and procedures appropriate references to the statutory and regulatory requirements and adjustments as appropriate given the activities, size, scope and complexity of the banking entity.

Disclosure Requirements

Section 351.11(a)(8)(i) requires that a banking entity make certain clear and conspicuous written disclosures to any prospective and actual investor in a covered fund (such as through disclosure in the covered fund's offering documents).

3. Use of Technology to Reduce Burden

Banks may use technology to the extent feasible, desirable or appropriate to make the required reports and to maintain the required records.

4. Efforts to Identify Duplication

The reporting, recordkeeping, and disclosure requirements are unique and are not otherwise duplicated.

5. Minimizing the Burden on Small Banks

To minimize burden on small banking entities, section 351.20(f)(1) of the rule provides that a banking entity that does not engage in covered trading activities (other than trading in U.S. government or agency obligations, obligations of specified government sponsored entities, and state and municipal obligations) or covered fund activities and investments need only establish a compliance program prior to becoming engaged in such activities or making such investments. In addition, to minimize the burden on small banking entities, a banking entity with total consolidated assets of \$10 billion or less that engages in covered trading activities and/or covered fund activities may satisfy the requirements of the rule by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 and the rule and adjustments as appropriate given the activities, size, scope and complexity of the banking entity. Only those banking entities with total assets of greater than \$10 billion are required to adopt more detailed or enhanced compliance requirements under the rule. (For

purposes of the enhanced compliance program in Appendix B of the rule, the threshold for banking entities is total consolidated assets of \$50 billion or more.)

In addition, the metrics reporting requirements under §351.20 and Appendix A of the rule apply only to banking entities with average trading assets and liabilities on a consolidated, worldwide basis for the preceding year equal to or greater than \$10 billion. Accordingly, the metrics reporting requirements under the rule do not impact small banking entities.

Finally, the definition of covered fund in the rule contains a number of exclusions for entities that may rely on exclusions from the Investment Company Act of 1940 contained in section 3(c)(1) or 3(c)(7) of that Act but that are not engaged in investment activities of the type contemplated by section 13 of the BHC Act. These include, for example, exclusions for wholly owned subsidiaries, joint ventures, acquisition vehicles, insurance company separate accounts, registered investment companies, and public welfare investment funds. This will further minimize the burden for small banking entities such as those that may use wholly owned subsidiaries for organizational convenience or make public welfare investments to achieve their financial and Community Reinvestment Act goals.

6. Consequences of Less Frequent Collection

The disclosure requirements are imposed on a per occurrence/transaction basis. Less frequent disclosures would impair the ability of investors to adequately evaluate the investment potential of each transaction. The recordkeeping requirements to develop liquidity management plans and policies and procedures to monitor compliance with regulatory requirements are one-time burdens, although the agencies expect that covered banking entities will review their policies and procedures to reflect any changed conditions no less frequently than annually. Reporting requirements for quantitative metrics on covered trading activities is to be done on a monthly basis by the largest banking entities with \$50 billion or greater in trading assets and liabilities. Less frequent collection would significantly impair the ability of regulators to effectively monitor on a timely basis prohibited activity and/or exposure of covered banking entities to high-risk assets and high-risk trading strategies.

7. Special Circumstances

None.

8. Consultation With Members of the Public

The FDIC published a 60-day notice in the Federal Register on January 11, 2017 (82 FR 3315) seeking comments on the proposed renewal of this information collection. No comments were received.

9. Payment or Gift to Respondents

No payments or gifts will be provided to respondents.

10. Confidentiality

Respondent data will be kept private to the extent permitted by law. The information may be afforded confidential treatment pursuant to sections (b)(4), (b)(6), and (b)(8) of the Freedom of Information Act (5 U.S.C. §§ 552(b)(4), (b)(6), and (b)(8)); and section 1103 of the Right to Financial Privacy Act (12 U.S.C. § 3403).

11. Information of a Sensitive Nature

None of the information required to be reported, disclosed or maintained is of a sensitive nature.

12. Estimated Burden

In determining the method for estimating the paperwork burden the Agencies made the assumption that affiliated entities under a holding company would act in concert with one another to take advantage of efficiencies that may exist. The paperwork burden for such entities has been taken by the FRB at the holding company level. Therefore, the FDIC burden estimates are only for FDIC-supervised institutions that are not under a holding company. As indicated below, the total estimated burden, for implementation¹ and ongoing compliance, is 14,762 hours.

(Section 619 of the Dodd-Frank Act) FDIC Burden

	<u>Type of Burden</u>	<u>Estimated Number of Respondents</u>	<u>Estimated Hours per Response</u>	<u>Frequency of Response</u>	<u>Total Estimated Annual Burden</u>
IMPLEMENTATION					
§351.12(e)	Reporting	1	50	1	<u>50 hours</u>
<u>Total Implementation Reporting Burden</u>					50 hours
§351.3(d)(3)	Recordkeeping	1	3	1	3 hours
§351.4(b)(3)(i)(A)	Recordkeeping	1	2	4	8 hours
§351.11(a)(2)	Recordkeeping	1	10	1	10 hours
§351.20(b)	Recordkeeping	1	795	1	795 hours
§351.20(e)	Recordkeeping	1	200	1	200 hours
§351.20(f)(1)	Recordkeeping	1	8	1	8 hours
§351.20(f)(2)	Recordkeeping	1	100	1	<u>100 hours</u>
<u>Total Implementation Recordkeeping Burden</u>					1,124 hours

¹ All respondents have now gone through the implementation phase. The estimated number of respondents for implementation burden is estimated at one (1), as a place-holder, in case a new respondent would need to go through the implementation phase.

§351.11(a)(8)(i)	Disclosure	1	0.1	26	<u>3 hours</u>
<u>Total Implementation</u>					
<u>Disclosure Burden</u>					3 hours
Total Implementation Burden					1,177 hours
ONGOING					
§351.12(e)	Reporting	18	20	10	<u>3,600 hours</u>
<u>Total Ongoing</u>					
<u>Reporting Burden</u>					3,600 hours
§351.3(d)(3)	Recordkeeping	18	1	1	18 hours
§351.4(b)(3)(i)(A)	Recordkeeping	18	2	4	144 hours
§351.11(a)(2)	Recordkeeping	18	10	1	180 hours
§351.20(b)	Recordkeeping	5	265	1	1,325 hours
§351.20(e)	Recordkeeping	5	200	1	1,000 hours
§351.20(f)(1)	Recordkeeping	819	8	1	6,552 hours
§351.20(f)(2)	Recordkeeping	18	40	1	<u>720 hours</u>
<u>Total Ongoing</u>					
<u>Recordkeeping Burden</u>					9,939 hours
§351.11(a)(8)(i)	Disclosure	18	0.1	26	<u>47 hours</u>
<u>Total Ongoing</u>					
<u>Disclosure Burden</u>					47 hours
Total Ongoing Burden					<u>13,586 hours</u>
Total Estimated Annual Burden					14,763 hours

Estimated Ongoing Cost to Respondents:²

Office & Administrative Support – 30% x 13,586 x \$26.47 = \$107,885

Financial Managers – 45% x 13,586 x \$97.85 = \$598,216

²To estimate annual cost to respondents, we used the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rate (30% Office & Administrative Support at \$26.47; 45% Financial Managers at \$97.85; 15% Lawyers at \$99.26; and 10% Chief Executives at \$135.38). The hourly rate for each occupational group is the mean hourly wage plus benefits and inflation at 34 percent of total compensation, from the Bureau of Labor Statistics (BLS), Occupational Employment and Wages, May 2015, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.

Legal Counsel – 15% x 13,586 x \$99.26 = \$202,277
Chief Executives – 10% x 13,586 x \$135.38 = \$183,926

Total Estimated Ongoing Annual Cost = \$1,092,304

13. Estimate of Cost Burden

None.

14. Estimate of Total Annual Cost to the Federal Government

None.

15. Reason for Change in Burden

There is no change in the methodology or substance of this information collection. The annual burden estimate has been reduced by 10,471 hours from 28,234 hours in 2014 to 17,763 hours currently. This is primarily due to an adjustment in the number of institutions that are subject to implementation burden. FDIC estimates that all FDIC-supervised institutions have now completed the implementation phase of the information collection and are no longer subject to that burden. FDIC is using one (1) respondent as a place-holder for implementation burden. This adjustment in the number of respondents subject to implementation burden has resulted in a **12,988** hour reduction in that burden component from 14,165 hours in 2014 to 1,177 hours currently. Another reason for the reduction in total estimated annual burden is that the number of institutions subject to most reporting, recordkeeping and disclosure requirements has decreased from 23 in 2014 to 18 currently. This reduction in the number of respondents, due to economic fluctuation, represents a reduction in this component of the burden estimate of **1,308** hours from 6,017 hours in 2014 to 4,709 hours currently.

The foregoing reductions in burden more than offset a modest increase in burden attributable to: (i) one additional institution growing in size to a degree that now makes it subject to 12 CFR 351.20(b) and (e) recordkeeping requirements accounting for a **465** hour increase in estimated burden; and (ii) an agency adjustment in its estimate of respondents affected by the recordkeeping requirements in 12 CFR 351.20(f)(1) from 774 respondents in 2014 to 819 respondents currently. The adjustment in required because of the inadvertent omission of a class of respondents in the prior estimate. This adjustment accounted for an additional **370** burden hours.

The decrease in burden attributable to implementation burden (12,988 hours), coupled with the reduction due to fewer institutions being subject to the information collection requirements (1,308 hours) results in a total decrease in burden of 14, 296 hours (12,988 + 1,308). This decrease is offset by the increase in burden attributable to one additional respondent becoming subject to the information collection requirements (465 hours) and the adjustment made to the Section 351.20(f)(1) respondents due to a prior inadvertent omission

(370 hours) for a total of 835 hours (465 + 370). The net result is a decrease in estimated total annual burden of 13,471 hours (14, 296 – 835).

The FDIC also updated the wage estimates to reflect the most recent time period. Additionally, the FDIC updated the wages estimates to include the cost of benefits and inflation which may not have been included in the initial estimate.

16. Publication

The information collected will not be published by the FDIC.

17. Display of Expiration Date

Not applicable.

18. Exceptions to Certification

None.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.