

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 July 31, 2020. This submission is being made in connection with a notice of proposed rulemaking (NPR) being jointly issued by the Board of Governors of the Federal Reserve System (the “Board”), the Office of the Comptroller of the Currency (the “OCC”), the Federal Deposit Insurance Corporation (the “FDIC”), the Securities and Exchange Commission (the “SEC”) and the Commodities Futures Trading Commission (the “CFTC”). The NPR seeks to maintain the Volcker Rule’s prohibitions and restrictions while also: (1) providing banking entities with greater certainty about prohibited and permitted activities and investments; (2) improving supervision; and (3) minimizing the compliance burden for smaller banking entities that engage in limited trading activities. The NPR revises the information collection as described below.

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 “Volcker Rule”). 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. The agencies are proposing amendments to the Volcker Rule to provide banking entities with a greater certainty about what activities are prohibited and to improve supervision and implementation of section 13 of the BHC Act, while reducing the overall complexity and burden associated with the current rule.

To better tailor the application of the Volcker Rule, the NPR would establish three categories of banking entities based on trading activity and risk profile.

- Banking entities with **“significant”** trading assets and liabilities. These are generally those entities that (together with their affiliates and subsidiaries) have trading assets and liabilities equal to or exceeding \$10 billion. These banking entities would be required to comply with the most extensive set of requirements under the proposed rule.
- Banking entities with **“moderate”** trading assets and liabilities. These are entities

that (together with their affiliates and subsidiaries) have trading assets and liabilities less than \$10 billion but above the threshold described below for entities with “limited” trading assets and liabilities. These banking entities would be subject to reduced compliance requirements and a more tailored supervisory approach in light of their smaller and less complex trading activities.

- Banking entities with **“limited”** trading assets and liabilities. These are entities that (together with their affiliates and subsidiaries) have trading assets and liabilities of less than \$1 billion. The NPR would establish a presumption of compliance for all such banking entities with “limited” trading assets and liabilities under which these entities would have no obligation to demonstrate compliance with subpart B and C of the rule on an ongoing basis unless, upon examination or audit, the relevant supervisory agency determines that such banking entity has engaged in prohibited proprietary trading or covered fund activities. In such instance, the supervisory agency may exercise the authority to rebut the presumption of compliance and require the banking entity to be subject to the compliance requirements applicable to a banking entity with “significant” or “moderate” trading assets and liabilities. The presumption of compliance reduces compliance burden for banks that either do not engage in the types of activities subject to section 13 of the BHC Act or engage in such activities only on a limited scale.

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 Under the Existing Rule

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 Under the Existing Rule

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 Under the Existing Rule

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).

Proposed Revisions to Reporting Requirements Under the NPR

Section 352.3(c) would require that under the revised short-term prong, certain banking entities to report to the appropriate agency when a trading desk exceeds \$25 million in absolute values of the daily net realized and unrealized gain and loss over the preceding 90 day period if the banking entity chooses to perform this calculation for a trading desk in order to meet the presumption of compliance.

Section 351.3(g) would require that notice and response procedures be followed under the reservation of authority provision.

Sections 352.4(a)(8)(iii) and 351.4(b)(6)(iii) would require that banking entities report to the appropriate agency when their internal risk limits under the RENTD framework for market- making and underwriting have been exceeded. These reporting requirements would be included in the section 351.20(d) reporting requirements.

Section 351.20(d) would be modified by extending the reporting period for banking entities with \$50 billion or more in trading assets and liabilities from within 10 days of the end of each calendar month to 20 days of the end of each calendar month.

Sections 351.3(c)(2), 351.3(g)(2), 351.4(a)(8)(iv), 351.4(b)(6)(iv), and 351.20(g)(3) would set forth proposed notice and response procedures that an agency would follow when exercising its reservation of authority to modify what is in or out of the trading account. These reporting requirements would be included in the section 351.3(c) reporting requirements for section 351.3(c)(2); the section 351.3(g) reporting requirements for section 351.3(g)(2); and the section 351.20(d) reporting requirements for section 351.4(a)(8)(iv), 351.4(b)(6)(iv), and 351.20(g)(3).

Proposed Revisions to Recordkeeping Requirements Under the NPR

Section 351.5(c) would be modified by reducing the requirements for banking entities that do not have significant trading assets and liabilities and eliminating documentation requirements for certain hedging activities.

Section 351.20(b) would be modified by limiting the requirement only to banking entities with significant trading assets and liabilities.

Section 351.20(c) would be modified by limiting the CEO attestation requirement to a banking entity that has significant trading assets and liabilities or moderate trading assets and liabilities.

Section 351.20(d) would be modified by extending the time period for reporting for banking entities with \$50 billion or more in trading assets and

liabilities from within 10 days of the end of each calendar month to 20 days of the end of each calendar month.

Section 351.20(e) would be modified by limiting the requirement to banking entities with significant trading assets and liabilities.

Section 351.20(f)(2) would be modified by limiting the requirement to banking entities with moderate trading assets and liabilities.

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 investments

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.

The NPR would establish a category of entities with “limited” trading assets and liabilities that would enjoy a presumption of compliance under which these entities would have no obligation to demonstrate compliance with subpart B and C of the rule on an ongoing basis. A significant portion of entities within this category are small banks.

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 agencies published a notice of proposed rulemaking with a 60-day comment period in the Federal Register on July 17, 2018 (83 FR 33432) seeking comments on the proposed rule. Any comments received will be fully addressed in the final rule.

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 Board 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 14,518 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					
§351.3(c)	Reporting	1	1	1	1 hour
§351.3(g)	Reporting	1	2	1	2 hours
§351.12(e)	Reporting	1	50	1	50 hours
§351.20(d)(over \$50B)	Reporting	1	125	1	125 hours
§351.20(d)(\$10-\$50B)	Reporting	1	125	1	<u>125 hours</u>
<u>Total Implementation Reporting Burden</u>					303 hours
§351.3(d)(3)	Recordkeeping	1	3	1	3 hours
§351.4(b)(3)(i)(A)	Recordkeeping	1	2	1	2 hours
§351.5(c)	Recordkeeping	1	40	1	40 hours
§351.11(a)(2)	Recordkeeping	1	10	1	10 hours
§351.20(b)	Recordkeeping	1	795	1	795 hours
§351.20(c)	Recordkeeping	1	300	1	300 hours
§351.20(d)(over \$50B)	Recordkeeping	1	13	1	13 hours
§351.20(d)(\$10-\$50B)	Recordkeeping	1	10	1	10 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</u>					

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.

<u>Recordkeeping Burden</u>					1,481 hours
§351.11(a)(8)(i)	Disclosure	1	0.1	26	<u>3 hours</u>
<u>Total Implementation Disclosure Burden</u>					3 hours
Total Implementation Burden					<u>1,787 hours</u>
ONGOING					
§351.3(c)	Reporting	13	1	2	26 hours
§351.3(g)	Reporting	13	2	1	26 hours
§351.12(e)	Reporting	13	20	10	2,600 hours
§351.20(d)(over \$50B)	Reporting	1	41	12	492 hours
§351.20(d)(\$10-\$50B)	Reporting	1	55	3	<u>165 hours</u>
<u>Total Ongoing Reporting Burden</u>					3,309 hours
§351.3(d)(3)	Recordkeeping	13	1	1	13 hours
§351.4(b)(3)(i)(A)	Recordkeeping	13	2	4	104 hours
§351.5(c)	Recordkeeping	6	80	1	480 hours
§351.11(a)(2)	Recordkeeping	13	10	1	130 hours
§351.20(b)	Recordkeeping	6	265	1	1,590 hours
§351.20(c)	Recordkeeping	13	100	1	1,300 hours
§351.20(d)(over \$50B)	Recordkeeping	6	13	1	78 hours
§351.20(d)(\$10-\$50B)	Recordkeeping	1	10	1	10 hours
§351.20(e)	Recordkeeping	6	200	1	1,200 hours
§351.20(f)(1)	Recordkeeping	40	8	1	320 hours
§351.20(f)(2)	Recordkeeping	7	40	1	<u>280 hours</u>
<u>Total Ongoing Recordkeeping Burden</u>					5,505 hours
§351.11(a)(8)(i)	Disclosure	13	0.1	26	<u>34 hours</u>
<u>Total Ongoing Disclosure Burden</u>					34 hours
Total Ongoing Burden					<u>8,848 hours</u>
Total Estimated Annual Burden					10,635 hours

*Estimated Ongoing Cost to Respondents:*²

Office & Administrative Support – 30% x 10,635 x \$27.89 = \$88,983.04

Financial Managers – 45% x 10,635 x \$90.46 = \$432,918.95

Legal Counsel – 15% x 10,635 x \$132.45 = \$211,290.86

Chief Executives – 10% x 10,635 x \$160.14 = \$170,308.89

Total Estimated Ongoing Annual Cost = \$903,501.74

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

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/.

recordkeeping requirements in 12 CFR 351.20(f)(1) from 774 respondents in 2014 to 819 respondents currently. The adjustment is 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.