

Supporting Statement
Retail Foreign Exchange Transactions
OMB Control No. 1557-0250

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)¹ provides that a U.S. financial institution for which there is a Federal regulatory agency shall not enter into, or offer to enter into, a foreign exchange transaction with a retail customer except pursuant to a rule or regulation of a Federal regulatory agency. The OCC issued a rule allowing this type of transaction, subject to the institution reporting, disclosing, and maintaining specified data regarding this activity. The activities necessary to comply with the rule and the statute necessitate this information collection.

2. Use of the information:

The information is for various purposes: to assist the OCC in reviewing the safety and soundness of the institution's retail forex activity, to inform and protect customers regarding their transactions with the regulated institution, and to assist institutions in complying with the OCC's rule and statute allowing retail forex transactions. The specific information requested and the uses of that information are provided below:

Reporting Requirements

The reporting requirements in 12 CFR 48.4 require that, prior to initiating a retail forex business, a national bank or Federal savings association 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 or Federal savings association must have written policies, procedures, and risk measurement and management systems and controls in place to ensure that retail forex transactions are conducted in a safe and sound manner. The national bank or Federal savings association also must provide any other information required by the OCC, such as documentation of customer due diligence, new product approvals, and haircuts applied to noncash margins.

Disclosure Requirements

Under 12 CFR 48.5, regarding the application and closing out of offsetting long and short positions, a national bank or Federal savings association must promptly provide the customer with a statement reflecting the financial result of the transactions and the name of the introducing

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

broker to the account. The institution must follow the customer's specific instructions on how the offsetting transaction should be applied.

Twelve CFR 48.6 requires that a national bank or Federal savings association furnish a retail forex customer with a written disclosure before opening an account through which the customer will engage in retail forex transactions and secure an acknowledgment from the customer that it was received and understood. It also requires the disclosure by a national bank or Federal savings association of its profitable accounts ratio and fees and other charges.

Twelve CFR 48.10 requires a national bank or Federal savings association to issue monthly statements to each retail forex customer and send confirmation statements following transactions.

Twelve CFR 48.13(c) prohibits a national bank or Federal savings association 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 of all statements and written records. Twelve CFR 48.13(d) prohibits a related person of a national bank or Federal savings association 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.

12 CFR 48.15 requires a national bank or Federal savings association 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 also requires a national bank or Federal savings association 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 obtain the signed acknowledgments within 60 days.

The customer dispute resolution provisions in 12 CFR 48.16 require certain endorsements, acknowledgments, and signatures. The section also requires that a national bank or Federal savings association, within 10 days after receipt of notice from the retail forex customer that the customer intends to submit a claim to arbitration, provide the customer with a list of persons qualified in the dispute resolution.

Policies and Procedures; Recordkeeping

Twelve CFR 48.7 and 48.13 require that a national bank or Federal savings association engaging in retail forex transactions keep full, complete, and systematic records and establish and implement internal rules, procedures, and controls. Section 48.7 also requires that a national bank or Federal savings association 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. Twelve CFR 48.9 requires 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 and savings associations 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. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

There are no alternatives that would result in lowering the burden on small institutions, while still accomplishing the purpose of the rule. Any institution offering retail forex transactions, regardless of size, must provide the same level of disclosure to protect customers and allow for safety and soundness review.

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 the protections for 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:

On January 10, 2020, the OCC issued a 60-day notice soliciting comment on the information collection, 85 FR 1373. No comments were received.

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

The information will be kept confidential to the extent permitted by law.

11. Justification for questions of a sensitive nature:

Not applicable. No personally identifiable information will be collected.

12. Burden estimate:

Estimated Number of Respondents: 15.

Total Reporting Burden: 224 hours.

Total Disclosure Burden: 4,139 hours.

Total Recordkeeping Burden: 18,055 hours.

Total Annual Burden: 22,418 hours.

Cost of Hour Burden:

22,418 x \$114 = \$2,555,652

To estimate wages, we reviewed May 2018 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities excluding nondepository credit intermediaries (NAICS 5220A1). To estimate compensation costs associated with the rule, we use \$114 per hour, which is based on the average of the 90th percentile for nine occupations adjusted for inflation (2.8 percent as of Q1 2019 according to the BLS), plus an additional 33.2 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2018 for NAICS 522: credit intermediation and related activities).

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:

There is no change in burden.

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

Not applicable.

17. Display of expiration date:

Not applicable.

18. Exceptions to certification statement:

Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.