

**Office of the Comptroller of the Currency
Supporting Statement**

**Reporting, Recordkeeping, and Disclosure Requirements
Associated with Proprietary Trading and Certain
Interests in and Relationships with Covered Funds**

OMB Control No. 1557-0309

This supporting statement is being filed in connection with an NPR concerning Covered Funds issued by the OCC, Board, FDIC, SEC, and CFTC. The proposal would amend the regulations implementing section 13 of the Bank Holding Company Act (BHC Act). Section 13 contains certain restrictions on the ability of a banking entity or nonbank financial company supervised by the Board to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund. The proposed amendments are intended to continue the agencies' efforts to improve and streamline the regulations implementing section 13 of the BHC Act by modifying and clarifying requirements related to the covered fund provisions.

The new recordkeeping requirements are found in section 44.10(c)(18)(ii)(B)(1) and the modified disclosure requirements are found in section 44.11(a)(8)(i):

- Section 44.10(c)(18)(ii)(B)(1) would require a banking entity relying on the proposed exclusion from the covered fund definition for customer facilitation vehicles to maintain documentation outlining how the banking entity intends to facilitate the customer's exposure to a transaction, investment strategy, or service.
- Section 44.11(a)(8)(i), which requires banking entities that organize and offer covered funds to make certain disclosures to investors in such funds, would be expanded to also apply to banking entities sponsoring credit funds, qualifying venture capital funds, family wealth management vehicles, or customer facilitation vehicles, in reliance on the proposed exclusions for such funds.

A. Justification.

1. Circumstances that make the collection necessary:

This collection of information was established pursuant to a rule¹ required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which was enacted on July 21, 2010.² The rule implemented section 619 of the Dodd-Frank Act, which contains certain prohibitions and restrictions on the ability of a banking entity and nonbank financial

¹ 79 FR 5536 (January 31, 2014).

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

company supervised by the Board of Governors of the Federal Reserve System (FRB) to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund.

Section 619 of the Dodd-Frank Act added a new section 13 to the Bank Holding Company (BHC) Act (BHC Act) (codified at 12 U.S.C. 1851) that generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund, subject to certain exemptions. The OCC's version of the rule is codified at 12 CFR part 44. The reporting, recordkeeping, and disclosure requirements associated with the rule permit banking entities and the OCC to enforce compliance with section 13 of the BHC Act and the rule and to identify, monitor, and limit risks of activities permitted under section 13.

2. Use of the information:

The information collection requirements in the current rules are as follows:

Section 44.3(d)(3), regarding excluded liquidity management activities, includes recordkeeping requirements for security, foreign exchange forward, foreign exchange swap, or cross-currency swap transactions.

Section 44.4(b)(3)(i)(A), regarding permitted market making activities, requires a trading desk that treats another trading desk or other organizational unit of the same banking entity as a client, customer, or counterparty to document 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.

Section 44.4(c)(3)(i) requires a banking entity that relies on the market making presumption of compliance to make available to the OCC upon request records regarding (1) any limit that is exceeded and (2) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the OCC.

Section 44.5(c) includes documentation requirements for banking entities that have significant trading assets and liabilities and rely on the risk-mitigating hedging exemption.

Section 44.11(a)(2) requires a banking entity (or an affiliate thereof) that organizes and offers a covered fund in connection with the provision of *bona fide* trust, fiduciary, investment advisory, or commodity trading advisory services to persons that are customers of such services of the banking entity (or an affiliate thereof) to organize and offer the fund pursuant to a written plan or similar documentation outlining how the banking entity or such affiliate intends to provide advisory or similar services to its customers through organizing and offering such fund.

Section 44.11(a)(8)(i) requires a banking entity that organizes and offers covered funds to make certain disclosures to investors in such funds.

Section 44.12(e) outlines the requirements for requesting an extension of time to divest an ownership interest in a covered fund.

Section 44.20(b) requires a compliance program from banking entities with significant trading assets and liabilities.

Section 44.20(c) requires a CEO attestation from any banking entity that has significant trading assets and liabilities.

Section 44.20(d) requires a banking entity with significant trading assets and liabilities (or any other banking entity to which the OCC has provided written notification) to report metrics specified in Appendix A. Section 20(d) further specifies that a banking entity that is required to report these metrics must do so within 30 days of the end of each calendar quarter.

Section 44.20(e) requires a banking entity with significant trading assets and liabilities to maintain additional documentation for covered funds.

Section 44.20(f)(1) provides that a banking entity with no covered activities (other than trading activities permitted pursuant to §44.6(a) of subpart B) can satisfy the requirements of § 44.20 by establishing the required compliance program prior to becoming engaged in such activities or making such investments.

Section 44.20(f)(2) provides that a banking entity with moderate trading assets and liabilities may satisfy the requirements of § 44.20 by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act and part 44 and adjustments as appropriate given its activities, size, scope, and complexity.

Section 44.20(i) covers notice and response procedures. The OCC will notify a banking entity in writing of any determination requiring notice under part 44 and will provide an explanation of the determination. The banking entity may respond to the notice and must include any matters that the banking entity would have the OCC consider in deciding whether to make the determination. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the banking entity received the notice.

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. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden:

Banking entities with total consolidated assets of \$10 billion or less generally are not “banking entities” within the scope of section 13 of the BHCA, if their trading assets and trading liabilities do not exceed 5 percent of their total consolidated assets. In addition, certain trust-only banks are not “banking entities” within the scope of section 13 of the BHCA. Therefore, the proposed rule will not impact any OCC-supervised small entities.

6. Consequences to the Federal Program if the Collection were Conducted Less Frequently:

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 OCC expects that banking entities will review their policies and procedures to reflect any changed conditions no less frequently than annually.

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 OCC issued a proposed rule containing the information collection requirements for 60 days of comment.

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

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

11. Justification for questions of a sensitive nature:

Not applicable. No personally identifiable information is collected.

12. Burden estimate:³

| | <i>Estimated number of respondents⁴</i> | <i>Annual frequency</i> | <i>Estimated average hours per response</i> | <i>Estimated annual burden hours</i> |
|---|--|-------------------------|---|--------------------------------------|
| Initial Set-up | | | | |
| Reporting Burden | | | | |
| Section 44.4(c)(3)(i) | 19 | 1 | 0.25 | 4.75 |
| Section 44.12(e) | 1 | 1 | 50 | 50 |
| Section 44.20(d) (\$20 billion or more) | 14 | 1 | 125 | 1750 |
| Section 44.20(i) | 1 | 1 | 20 | 20 |
| <i>Total Reporting Burden</i> | | | | <u>1,824.75</u> |
| Recordkeeping Burden | | | | |
| Section 44.3(d)(3) | 19 | 1 | 3 | 57 |
| Section 44.4(b)(3)(i)(A) | 1 | 1 | 2 | 2 |
| Section 44.4(c)(3)(i) | 19 | 1 | 0.25 | 4.75 |
| Section 44.5(c) | 1 | 1 | 40 | 40 |
| Section 44.10(c)(18)(ii)(B)(1) | 19 | 1 | 10 | 190 |
| Section 44.11(a)(2) | 1 | 1 | 10 | 10 |
| Section 44.20(b) | 1 | 1 | 795 | 795 |
| Section 44.20(c) | 1 | 1 | 300 | 300 |
| Section 44.20(d) (\$20 billion or more) | 14 | 1 | 10 | 140 |
| Section 44.20(e) | 1 | 1 | 200 | 200 |
| Section 44.20(f)(1) | 1 | 1 | 8 | 8 |
| Section 44.20(f)(2) | 1 | 1 | 100 | 100 |
| <i>Total Recordkeeping Burden</i> | | | | <u>1,846.75</u> |
| Disclosure Burden | | | | |
| Section 44.11(a)(8)(i) | 19 | 1 | 0.5 | <u>9.5</u> |
| <i>Total Disclosure Burden</i> | | | | 9.5 |
| <i>Total Initial Set-Up</i> | | | | <u>3,681</u> |

³ Affiliated entities under a holding company 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 and OCC burden estimates are only for OCC-supervised institutions that are not under a holding company.

⁴ Of these respondents, none are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets), <https://www.sba.gov/document/support-table-size-standards>.

| | <i>Estimated number of respondents</i> | <i>Annual frequency</i> | <i>Estimated average hours per response</i> | <i>Estimated annual burden hours</i> |
|--|--|-------------------------|---|--------------------------------------|
| Ongoing Compliance Reporting Burden | | | | |
| Section 44.4(c)(3)(i) | 19 | 20 | 0.25 | 95 |

| | | | | |
|---|----|----|------|---------------|
| Section 44.12(e) | 19 | 10 | 20 | 3,800 |
| Section 44.20(d) (\$20 billion or more) | 14 | 4 | 41 | 2,296 |
| Section 44.20(i) | 1 | 1 | 20 | 20 |
| <i>Total Reporting Burden</i> | | | | <u>6,211</u> |
| Recordkeeping Burden | | | | |
| Section 44.3(d)(3) | 19 | 1 | 1 | 19 |
| Section 44.4(b)(3)(i)(A) | 19 | 4 | 2 | 152 |
| Section 44.4(c)(3)(i) | 19 | 40 | 0.25 | 190 |
| Section 44.5(c) | 14 | 1 | 80 | 1,120 |
| Section 44.10(c)(18)(ii)(B)(1) | 19 | 1 | 10 | 190 |
| Section 44.11(a)(2) | 19 | 1 | 10 | 190 |
| Section 44.20(b) | 14 | 1 | 265 | 3,710 |
| Section 44.20(c) | 14 | 1 | 100 | 1,400 |
| Section 44.20(d) (\$20 billion or more) | 14 | 1 | 10 | 140 |
| Section 44.20(e) | 14 | 1 | 200 | 2,800 |
| Section 44.20(f)(1) | 20 | 1 | 8 | 160 |
| Section 44.20(f)(2) | 5 | 1 | 40 | 200 |
| <i>Total Recordkeeping Burden</i> | | | | <u>10,271</u> |
| Disclosure Burden | | | | |
| Section 44.11(a)(8)(i) | 19 | 26 | 0.5 | 247 |
| <i>Total Disclosure Burden</i> | | | | <u>247</u> |
| <i>Total Ongoing Compliance</i> | | | | 16,729 |
| <i>Grand Total</i> | | | | <u>20,410</u> |

13. Estimate of annualized costs to respondents (excluding cost of hour burden in Item #12):

See, initial set-up burden under Item #12.

14. Estimate of annualized costs to the government:

None.

15. Changes in burden:

Prior Burden: 20,712 hours
Current Burden: 20,410 hours
Difference: - 302 hours

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

No publication for statistical use is contemplated.

17. Reasons for Not Displaying the expiration date:

Not applicable.

18. Exceptions to certification statement:

Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.