

## **SUPPORTING STATEMENT**

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

**OMB Control No. 3064-0184**

#### **INTRODUCTION**

The subject collection of information is currently approved by OMB under control number 3064-0184. This submission is being made in connection with a proposed rule being 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 proposed rule contains requirements subject to the PRA and the proposed changes relative to the current final rule are described below.

#### **JUSTIFICATION**

1. Circumstances that make the collection necessary:

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 revisions to the Volcker Rule 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 funds provisions.

2. Use of the Information:

The new recordkeeping requirements are found in section 351.10(c)(18)(ii)(B)(1) and the modified disclosure requirements are found in section 351.11(a)(8)(i). Section 351.10(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 351.11(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, venture capital funds, family wealth management vehicles, or customer facilitation vehicles, in reliance on the proposed exclusions for such funds.

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.

3. Consideration of the use of improved information technology:

Banks may use technology to the extent feasible, desirable or appropriate to make the required reports and to maintain the required records that permits review by FDIC 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 a significant impact on a substantial number of small entities:

Almost all FDIC-supervised small banking entities are exempt from the requirements of section 13 of the BHC Act, pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), and hence the final rule does not affect them. Only one FDIC-supervised small banking entity is not exempt from the requirements of section 13 of the BHC Act under EGRRCPA because it has trading assets and liabilities greater than five percent of total consolidated assets. This bank has trading activity at levels that would place it in the final rule's limited trading assets and liabilities compliance category, and it thus could benefit from the final rule which contains a rebuttable presumption of compliance for such banking entities. The FDIC has identified one of 2,645 small banking entities that is potentially affected by part 351 with generally modest compliance cost reductions. The FDIC believes the proposed rule will not have a significant economic impact on a substantial number of FDIC-supervised small banking 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 FDIC 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 1320.5(d)(2):

None. The information collection is conducted in accordance with OMB guidelines in 5 CFR part 1320.5(d)(2).

8. Efforts to consult with persons outside the agency:

The agencies published a notice of proposed rulemaking with a 60-day comment period in the Federal Register on February 28, 2020 (85 FR 12120) seeking comments on the proposed rule. The agencies will address any comments received when the final rule is issued.

9. Payments or gifts to respondents:

None.

10. Any assurance of confidentiality:

The information collected will be kept confidential 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. Justification for questions of a sensitive nature:

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

12. Estimate of hour burden including annualized hourly costs:

***Estimated Annual 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 implementation<sup>1</sup> and ongoing compliance for such FDIC-supervised institutions, is 3,193 hours.

The first two tables below reflect the current initial set-up and ongoing burden. The third and fourth tables reflect the estimated annual burden under the proposed rule.

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<sup>1</sup> 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.

<b>CURRENT</b>	<i>Estimated number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<b>Initial Set-up</b>				
<b>Reporting Burden</b>				
Section 351.4(c)(3)(i)	13	1	0.25	3.25
Section 351.12(e) FED ONLY	0	1	50	0
Section 351.20(d) (\$20 billion or more)	1	1	125	125
Section 351.20(i)	1	1	20	20
<i>Total Reporting Burden</i>				<u>148.25</u>
<b>Recordkeeping Burden</b>				
Section 351.3(d)(3)	13	1	3	39
Section 351.4(b)(3)(i)(A)	1	1	2	2
Section 351.4(c)(3)(i)	13	1	0.25	3.25
Section 351.5(c)	1	1	80	80
Section 351.11(a)(2)	1	1	10	10
Section 351.20(b)	1	1	795	795
Section 351.20(c)	1	1	300	300
Section 351.20(d) (\$20 billion or more)	1	1	10	10
Section 351.20(e)	1	1	200	200
Section 351.20(f)(1)	1	1	8	8
Section 351.20(f)(2)	1	1	100	100
<i>Total Recordkeeping Burden</i>				<u>1,547.25</u>
<b>Disclosure Burden</b>				
Section 351.11(a)(8)(i)	1	1	0.1	.1
<i>Total Disclosure Burden</i>				<u>0.1</u>
<i>Total Initial Set-Up</i>				<u>1,695.6</u>

<b>CURRENT</b>	<i>Estimated number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<b>Ongoing Compliance</b>				
<b>Reporting Burden</b>				
Section 351.4(c)(3)(i)	13	20	0.25	65
Section 351.12(e)	0	10	20	0
Section 351.20(d) (\$20 billion or more)	1	4	41	164
Section 351.20(i)	1	1	20	20
<i>Total Reporting Burden</i>				<u>249</u>

**Recordkeeping Burden**

Section 351.3(d)(3)	13	1	1	13
Section 351.4(b)(3)(i)(A)	13	4	2	104
Section 351.4(c)(3)(i)	13	40	0.25	130
Section 351.5(c)	1	1	80	80
Section 351.11(a)(2)	13	1	10	130
Section 351.20(b)	1	1	265	265
Section 351.20(c)	1	1	100	100
Section 351.20(d) (\$20 billion or more)	1	1	10	10
Section 351.20(e)	1	1	200	200
Section 351.20(f)(1)	13	1	8	104
Section 351.20(f)(2)	1	1	40	40
<i>Total Recordkeeping Burden</i>				<u>1,176</u>

**Disclosure Burden**

Section 351.11(a)(8)(i)	13	26	0.1	<u>33.8</u>
<i>Total Disclosure Burden</i>				33.8

*Total Ongoing Compliance* 1,458.8

***Total Estimated Annual Burden*** 3,154.4

<b>PROPOSED</b>	<i>Estimated number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<b>Initial Set-up</b>				
<b>Reporting Burden</b>				
Section 351.4(c)(3)(i)	1	1	0.25	.25
Section 351.12(e) FED ONLY	0	1	50	0
Section 351.20(d) (\$20 billion or more)	1	1	125	125
Section 351.20(i)	1	1	20	20
<i>Total Reporting Burden</i>				<u>145.25</u>
<b>Recordkeeping Burden</b>				
Section 351.3(d)(3)	1	1	3	3
Section 351.4(b)(3)(i)(A)	1	1	2	2
Section 351.4(c)(3)(i)	1	1	0.25	.25
Section 351.5(c)	1	1	80	80
Section 351.10(c)(18)(11)(B)(1)	1	1	10	10
Section 351.11(a)(2)	1	1	10	10

Section 351.20(b)	1	1	795	795
Section 351.20(c)	1	1	300	300
Section 351.20(d) (\$20 billion or more)	1	1	10	10
Section 351.20(e)	1	1	200	200
Section 351.20(f)(1)	1	1	8	8
Section 351.20(f)(2)	1	1	100	100
<i>Total Recordkeeping Burden</i>				<u>1,518.25</u>
<b>Disclosure Burden</b>				
Section 351.11(a)(8)(i)	1	1	0.5	<u>.5</u>
<i>Total Disclosure Burden</i>				0.5
<i>Total Initial Set-Up</i>				<u>1,664</u>

### Total Number of Institutions Affected

The estimate of the number of institutions affected by this IC in November 2019 was 13. According to current data, the number of FDIC-supervised institutions that are subsidiaries or affiliates of bank holding companies with at least \$10 billion in consolidated assets, or at least \$1 billion in trading assets and liabilities, is currently 10.

### Number of Affected Institutions that Qualify as “Small Entities”

None of the 10 entities affected by this information collection are small entities. The Small Business Administration considers a banking institution to be “small” if it has total affiliated assets of \$600 million or less. Since no institution with at least \$1 billion in trading assets and liabilities would meet the criteria to be considered a small entity, their subsidiaries and affiliates would also not be considered small entities.

<b>PROPOSED</b>	<i>Estimated number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<b>Ongoing Compliance Reporting Burden</b>				
Section 351.4(c)(3)(i)	10	20	0.25	50
Section 351.12(e)	0	10	20	0
Section 351.20(d) (\$20 billion or more)	1	4	41	164
Section 351.20(i)	1	1	20	<u>20</u>
<i>Total Reporting Burden</i>				234
<b>Recordkeeping Burden</b>				

Section 351.3(d)(3)	10	1	1	10
Section 351.4(b)(3)(i)(A)	10	4	2	80
Section 351.4(c)(3)(i)	10	40	0.25	100
Section 351.5(c)	1	1	80	80
Section 351.10(c)(18)(ii)(B)(1)	10	1	10	100
Section 351.11(a)(2)	10	1	10	100
Section 351.20(b)	1	1	265	265
Section 351.20(c)	1	1	100	100
Section 351.20(d) (\$20 billion or more)	1	1	10	10
Section 351.20(e)	1	1	200	200
Section 351.20(f)(1)	10	1	8	80
Section 351.20(f)(2)	1	1	40	40
<i>Total Recordkeeping Burden</i>				<u>1,165</u>
<b>Disclosure Burden</b>				
Section 351.11(a)(8)(i)	10	26	0.5	<u>130</u>
<i>Total Disclosure Burden</i>				<u>130</u>
<i>Total Ongoing Compliance</i>				1,529
<b>Total Proposed Estimated Annual Burden</b>				<u>3,193</u>

### ***Annualized Cost of Total Proposed Hourly Burden***

#### **Cost per Hour of Responding to This IC**

The estimated average hourly compliance cost for complying with this IC is \$124.68 for certain items, \$70.17 for other items, and \$151.75 for one item.<sup>2</sup> Other items have different cost estimates if it seems that complying with the IC would require multiple individuals with different skill sets.<sup>3</sup>

#### **Summary of Cost Estimates for this IC**

<sup>2</sup> Estimated total hourly compensation of Lawyers (\$124.68), Financial Managers (\$70.17), and Chief Executives (\$151.75) in the Depository Credit Intermediation sector as of September 2019. The estimate includes the May 2018 median hourly wage rate reported for these professions by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. This wage rate has been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2018 and September 2019 (2.28 percent) and grossed up by 51 percent to account for non-monetary compensation as reported by the September 2019 Employer Costs for Employee Compensation Data.

<sup>3</sup> Certain items have an hourly cost estimate of \$97.43; for those items the FDIC assumes half of the work would be completed by a Lawyer and half would be completed by a Financial Manager ( $0.5 * \$124.68 + 0.5 * \$70.17 = \$97.43$ ). Another item has an hourly cost estimate of \$113.78; for that item the FDIC assumes 80 percent of the work would be completed by a Lawyer and 20 percent would be completed by a Financial Manager ( $0.8 * \$124.68 + 0.2 * \$70.17 = \$113.78$ ).

The tables below show the estimates of the number of hours required to comply with the various items in this IC, as well as how those estimates compare to the estimates used in the previous submission. The estimated hourly burden increased by 38.6 hours, and the estimated cost of compliance increased by \$7538.55.

For purposes of estimating the burden associated with this information collection, we assume that all institutions have completed the implementation phase of this collection. As a result, the estimated number of respondents for all of the existing costs related to initial setup is one (1). One (1) is used instead of zero (0) to allow for the possibility of new institutions becoming subject to this information collection in the future.

- Changes in Burden Estimates Resulting from the Assumption that all Institutions Have Completed the Implementation Phase of This IC**

The decrease in the estimated number of respondents from 13 to 1 decreases the estimated burden hours related to initial setup for this information collection by 42 hours, as shown in Table 1 on the following page. The estimated reporting burden related to initial set up for 12 CFR Part 351.4(c)(3)(i) decreases by 3, and the estimated recordkeeping burden related to initial setup associated with 12 CFR Parts 351.3(d)(3) and 351.4(c)(3)(i) decreases by a combined 39 hours. The decrease in the estimated number of respondents from 13 to 1 for collections related to initial setup reduces the estimated cost associated with this information collection by \$2,947.14.

**Table 1**

<b>Changes Resulting from Assumption that all Institutions Have Completed the Implementation Phase of This IC</b>						
<b>Information collection</b>	<b>Burden type</b>	<b>Previous estimated burden hours</b>	<b>Revised estimated burden hours</b>	<b>Change in estimated burden hours</b>	<b>Estimated hourly cost</b>	<b>Change in estimated cost of compliance</b>
Section 351.4(c)(3)(i)	Reporting; Initial setup	3.25	0.25	-3	\$70.17	-\$210.51
Section 351.4(c)(3)(i)	Recordkeeping; Initial setup	3.25	0.25	-3	\$70.17	-\$210.51
Section 351.3(d)(3)	Recordkeeping; Initial setup	39	3	-36	\$70.17	-\$2,526.12
<b>Total Change:</b>				<b>-42</b>		<b>-\$2,947.14</b>

- Changes in Burden Estimates Resulting from Changes in Agency Estimates of the Number of Respondents, and the Estimated Average Time per Response**

The estimated number of respondents for ongoing costs decreased from 13 to 10, as a result of a change in the FDIC’s estimated number of respondents. The decrease in the estimated number of respondents reduced the estimated burden hours associated with this information collection by 133.8 hours and reduced the estimated cost of compliance with this IC by \$13,248.20, as shown in Table 2. The decrease in the estimated number of respondents reduced the ongoing reporting



burden associated with 12 CFR Part 351.4(c)(3)(i) by 15 hours, and reduced the ongoing recordkeeping burden associated with 12 CFR Parts 351.3(d)(3), 351.4(b)(3)(i)(A), 351.4(c)(3)(i), 351.11(a)(2), and 351.20(f)(1) by a combined 111 hours. Additionally, the disclosure burden associated with CFR Part 351.11(a)(8)(i) decreased by 7.8 hours as a result of the change in the estimated number of respondents from 13 to 10.

**Table 2**

Changes Resulting from Decrease in the Estimated Number of Respondents						
Information collection	Burden type	Previous estimated burden hours	Revised estimated burden hours	Change in estimated burden hours	Estimated hourly cost	Change in estimated cost of compliance
Section 351.4(c)(3)(i)	Reporting; Ongoing	65	50	-15	\$70.17	-\$1,052.55
Section 351.3(d)(3)	Recordkeeping ; Ongoing	13	10	-3	\$70.17	-\$210.51
Section 351.4(b)(3)(i) (A)	Recordkeeping ; Ongoing	104	80	-24	\$124.68	-\$2,992.32
Section 351.4(c)(3)(i)	Recordkeeping ; Ongoing	130	100	-30	\$70.17	-\$2,105.10
Section 351.11(a)(2)	Recordkeeping ; Ongoing	130	100	-30	\$97.43	-\$2,922.90
Section 351.20(f)(1)	Recordkeeping ; Ongoing	104	80	-24	\$124.68	-\$2,992.32
Section 351.11(a)(8)(i)	Disclosure; Ongoing	33.8	26	-7.8	\$124.68	-\$972.50
<b>Total Change:</b>				<b>-133.8</b>		<b>-\$13,248.20</b>

The FDIC also increased its estimate of the average hours per response for information collections related to 12 CFR Section 351.11(a)(8)(i) from 0.1 to 0.5. This change increased the estimated burden hours associated with this IC by 104.4, and increased the estimated cost of compliance by \$13,016.59, as shown in Table 3. The increase in the estimated time per response increased the estimated number of burden hours associated with initial setup by 0.4, and increased the estimated number of burden hours associated with ongoing disclosures by 104.

**Table 3**

Changes Resulting from Increase in Estimated Average Hours per Response						
Information collection	Burden type	Previous estimated burden hours	Revised estimated burden hours	Change in estimated burden hours	Estimated hourly cost	Change in estimated cost of compliance
Section 351.11(a)(8)(i)	Disclosure; Initial setup	0.1	0.5	0.4	\$124.68	\$49.87
Section 351.11(a)(8)(i)	Disclosure; Ongoing	26	130	104	\$124.68	\$12,966.72
<b>Total Change:</b>				<b>104.4</b>		<b>\$13,016.59</b>

- **Changes in Estimated Burden Resulting from Proposed Regulatory Changes**

The proposed rule adds additional information collections and revises existing information collections, leading to an estimated increase of 110 burden hours associated with this information collection and additional compliance costs of \$10,717.30 as shown in Table 4. The proposed rule would add an additional information collection related to CFR Section 351.10(c)(18)(ii)(B)(1), which would add an estimated 10 hours of recordkeeping burden related to initial setup, and an estimated 100 hours of ongoing recordkeeping burden.

**Table 4**

Changes Resulting from Proposed Additional Information Collections				
Information collection	Burden type	Estimated burden hours	Estimated hourly cost	Change in estimated cost of compliance
Section 351.10(c)(18)(ii)(B)(1)	Recordkeeping ; Initial setup	10	\$97.43	\$974.30
Section 351.10(c)(18)(ii)(B)(1)	Recordkeeping ; Ongoing	100	\$97.43	\$9,743.00
<b>Total Change:</b>		110		\$10,717.30

In total, the number of estimated burden hours associated with this information collection increased by 110 as a result of proposed new information collections, increased by another 104.4 as a result of changes in the estimated average hours per response, decreased by 133.8 hours as a result of decreasing the estimated number of respondents from 13 to 10, and decreased by another 42 hours as a result of assuming that all institutions have now completed the implementation phase of this information collection. The net change in estimated burden hours associated with this information collection is:  
 $110 + 104.4 - 133.8 - 42 = 38.6$ .

The net change in estimated compliance costs associated with this information collection is:  $\$10,717.30 + 13,016.59 - \$13,248.20 - \$2,947.14 = \$7,538.55$ .

13. Estimate of start-up costs to respondents:

None.

14. Estimate of annualized costs to the government:

None.

15. Analysis of change in burden:

See discussion in Section 12 above.

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

The results of this collection will not be published for statistical use.

17. Display of expiration date:

Not applicable.

18. Exceptions to certification:

None.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.