



DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Reporting, Recordkeeping, and Disclosure Requirements Associated with Proprietary Trading and Certain Interests in and Relationships with Covered Funds

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, “Reporting, Recordkeeping, and Disclosure Requirements Associated with Proprietary Trading and Certain Interests in and Relationships with Covered Funds.”

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Commenters are encouraged to submit comments by e-mail, if possible.

You may submit comments by any of the following methods:

- *E-mail:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0309, 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.
- *Fax:* (571) 293-4835.

Instructions: You must include “OCC” as the agency name and “1557-0309” in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice’s 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the “Information Collection Review” tab and click on “Information Collection Review” from the drop-down menu. From the “Currently under Review” drop-down menu, select “Department of the Treasury” and then click “submit.” This information collection can be located by searching OMB control number “1557-0309” or “Reporting, Recordkeeping, and Disclosure Requirements Associated with Proprietary Trading and Certain Interests in and Relationships with Covered Funds.” Upon finding the appropriate information collection, click on the related “ICR Reference Number.” On the next screen, select “View Supporting

Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating *www.reginfo.gov*, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649-5490, Chief Counsel’s Office, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements, imposed on ten or more persons, that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 generally requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of this collection.

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

OMB Control No.: 1557-0309.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: This submission covers an existing regulation and involves no change to

the regulation or to the information collection requirements. The OCC requests only that OMB renew its approval of the collection.

Section 13 of the Bank Holding Company (BHC) Act 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 (covered fund), subject to certain exemptions. The exemptions allow certain types of permissible trading and covered fund activities. The initial regulations implementing section 13 became effective on April 1, 2014. Section 44.20(d) and Appendix A of the implementing regulations require certain of the largest banking entities to report to the appropriate agency certain quantitative measurements.

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 added section 13 of the BHC Act (codified at 12 U.S.C. 1851). 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.

Section-by-Section Analysis

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.

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).

Section 44.4(b)(3)(i)(A), regarding permitted market making activities, provides that a trading desk or other organizational unit of another banking entity is not a client, customer, or counterparty of a trading desk relying on the market-making exemption if that other entity has trading assets and liabilities of \$50 billion or more unless the trading desk documents how and why a particular trading desk or other organizational unit of the other 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 44.10(c)(18)(ii)(C)(1) requires a banking entity relying on the 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)(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. This provision also applies to banking entities relying on exclusions for credit funds, venture capital funds, family wealth

management vehicles, or customer facilitation vehicles. *See* § 44.10(c)(15)(iii)(A), (c)(16)(ii)(A), (c)(17)(ii)(C), and (c)(18)(ii)(C)(3).

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 including, among other things, records sufficient to demonstrate compliance with section 13 of the BHC Act and 12 CFR part 44. A banking entity must promptly provide these records to the OCC upon request and retain them for a period of no less than 5 years or such longer period as required by the OCC.

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 relating to certain exclusions or exceptions.

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 should 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.

Estimated Burden

Estimated Frequency of Response: On occasion.

Estimated Number of Respondents: 39.

Estimated Total Annual Responses: 2242.

Estimated Total Annual Burden: 20,410 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;
- (b) The accuracy of the OCC's estimate of the burden of the collection of information;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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