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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### **Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Retail Foreign Exchange Transactions**

**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 the general public and other Federal agencies to take this opportunity to 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 collection entitled “Retail Foreign Exchange Transactions.” It is also giving notice that it has sent the collection to OMB for review.

**DATES:** Comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the

Currency, Attention: 1557-0250, 400 7<sup>th</sup> Street, SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 400 7<sup>th</sup> Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to a security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557-0250, U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by email to: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649-5490, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the OMB for each collection of information 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 that members of the public submit reports, keep records, or provide information to a third party.

The OCC is proposing to extend OMB approval of the following information collection without change:

Title: Retail Foreign Exchange Transactions.

OMB Control Number: 1557-0250.

Description: Section 742(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)<sup>1</sup> amended the Commodity Exchange Act (CEA) to provide that a U.S. financial institution for which there is a Federal regulatory agency supervisor shall not enter into, or offer to enter into, a transaction described in section 2(c)(2)(B)(i)(I) of the CEA<sup>2</sup> with a retail customer except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe.<sup>3</sup>

The OCC issued a final rule at 12 CFR part 48 allowing such transactions for the institutions it regulates.<sup>4</sup> The final rule contained a number of provisions, including a number of provisions that would represent collections of information under the PRA. At the time the rule was issued, the OCC requested and obtained approval from OMB to collect this information through July 31, 2014. This request seeks an extension of the collection for three years, through July 31, 2017. A section-by-section description of the reporting, recordkeeping and disclosure requirements contained in the OCC's rules at 12 CFR part 48 follows.

### Reporting Requirements

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

<sup>2</sup> A transaction would include an agreement, contract, or transaction in foreign currency that . . . is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934. 7 U.S.C. 2(c)(2)(B)(i)(II).

<sup>3</sup> 7 U.S.C. 2(c)(2)(E)(ii)(I).

<sup>4</sup> 76 FR 41375 (July 14, 2011) (national banks); 76 FR 56094 (Sept. 12, 2011) (Federal savings associations).

The reporting requirements in § 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 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 § 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 broker to the account. The customer provides specific written instructions on how the offsetting transaction should be applied.

Section 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 fees and other charges and its profitable accounts ratio.

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

Section 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 all statements and written records. Section 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.

Section 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 § 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

Sections 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 to 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. Section 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.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

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.

The OCC originally estimated there would be approximately 72 national banks and Federal savings associations engaged in retail forex transactions. However, based on the inquiries received since the rule became effective, the OCC now estimates there are only approximately 15 national banks and Federal savings associations engaged in retail forex transactions and thus subject to this information collection.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

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 information collection;
- (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.

**Stuart E. Feldstein,**  
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**BILLING CODE: 4810-33-P**

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