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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064-0006, & -0184)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collections described below.

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/notices.html>.
- [Email: comments@fdic.gov](mailto:comments@fdic.gov). Include the name and number of the collection in the subject line of the message.
- **Mail:** Jennifer Jones (202-898-6768), Counsel, MB-3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- **Hand Delivery:** Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. Title: Interagency Biographical and Financial Report.

OMB Number: 3064-0006.

Form Number: Interagency Biographical and Financial Report.

Affected Public: Insured State Nonmember Banks and State Savings Associations.

Burden Estimate:

	Type of Burden	Estimated Number of Respondents	Estimated Number of Responses	Estimated Time per Response	Frequency of Response	Total Annual Estimated Burden
Interagency Biographical and Financial Report	Reporting	574	1	4 hours	On Occasion	2,296 hours

General Description of Collection: The Report is submitted to the FDIC by: (1) each individual director, officer or individual or group of shareholders acting in concert that will own or control 10% or more, of a proposed or operating depository institution applying for FDIC deposit insurance; (2) a person proposing

to acquire control of an insured state nonmember bank or state savings association (FDIC-supervised institution); (3) each proposed new director or proposed new chief executive officer of an FDIC-supervised institution which has undergone a change in control within the preceding twelve months; and (4) each proposed new director or senior executive officer of an FDIC-supervised institution that is not in compliance with the applicable capital requirements or is otherwise in a troubled condition. The information is used by the FDIC to make an evaluation of the general character and financial condition of individuals who will be involved in the management or control of financial institutions, as required by statute. In order to lessen the burden on applicants, the FDIC cooperates with the other federal banking agencies to the maximum extent possible in processing the various applications. Notably, the Interagency Biographical and Financial Report will be amended to remove all references to the Office of Thrift Supervision as it appears on the form as well as changing the term “thrift” to “savings association.” These changes are technical and non-substantive in nature.

2. Title: Prohibitions and Restrictions on Proprietary Trading and Certain Interests In and Relationships With, Hedge Funds and Private Equity Funds.

OMB Number: 3064-0184.

Form Number: None.

Affected Public: Insured state nonmember banks not under a holding company; state savings associations and state savings banks not under a holding company; subsidiaries of state nonmember banks, state savings associations, and state

savings banks not under a holding company; and foreign banks having an insured branch and their branches and agencies.

Burden Estimate:

	<u>Type of Burden</u>	<u>Estimated Number of Respondents</u>	<u>Estimated Hours per Response</u>	<u>Frequency of Response</u>	<u>Total Annual Estimated Burden</u>
IMPLEMENTATION					
§351.12(e)	Reporting	1	50	1	50 hours
<u>Total Reporting</u>					<u>50 hours</u>
§351.3(d)(3)	Recordkeeping	1	3	1	3 hours
§351.4(b)(3)(i)(A)	Recordkeeping	1	2	4	8 hours
§351.11(a)(2)	Recordkeeping	1	10	1	10 hours
§351.20(b)	Recordkeeping	1	795	1	795 hours
§351.20(e)	Recordkeeping	1	200	1	200 hours
§351.20(f)(1)	Recordkeeping	1	8	1	8 hours
§351.20(f)(2)	Recordkeeping	1	100	1	100 hours
<u>Total Recordkeeping</u>					<u>1,124 hours</u>
§351.11(a)(8)(i)	Disclosure	1	0.1	26	3 hours
<u>Total Disclosure</u>					<u>3 hours</u>
TOTAL IMPLEMENTATION					<u>1,177 hours</u>
ONGOING					
§351.12(e)	Reporting	23	20	10	4,600 hours
<u>Total Reporting</u>					<u>4,600 hours</u>
§351.3(d)(3)	Recordkeeping	23	1	1	23 hours
§351.4(b)(3)(i)(A)	Recordkeeping	23	2	4	184 hours
§351.11(a)(2)	Recordkeeping	23	10	1	230 hours
§351.20(b)	Recordkeeping	4	265	1	1,060 hours
§351.20(e)	Recordkeeping	4	200	1	800 hours
§351.20(f)(1)	Recordkeeping	774	8	1	6,192 hours
§351.20(f)(2)	Recordkeeping	23	40	1	920 hours
<u>Total Recordkeeping</u>					<u>9,409 hours</u>
§351.11(a)(8)(i)	Disclosure	23	0.1	26	60 hours
<u>Total Disclosure</u>					<u>60 hours</u>

TOTAL ONGOING					<u>14,069 hours</u>
Total Estimated Burden					15,246 hours

General Description of Collection: Section 619 of the Dodd-Frank Act added a new section 13 to the Bank Holding Company (“BHC”) Act (to be codified at 12 U.S.C. § 1851) that 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”), subject to certain exemptions. New section 13 of 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 respondent/recordkeepers are for-profit financial institutions, including small businesses. A covered entity must retain these records for a period that is no less than 5 years in a form that allows it to promptly produce such records to the FDIC on request.

The reporting requirements are found in §§ 351.12(e) and 351.20(d); the recordkeeping requirements are found in §§ 351.3(d)(3), 351.4(b)(3)(i)(A), 351.5(c), 351.11(a)(2), and 351.20(b)-(f); and the disclosure requirements are found in § 351.11(a)(8)(i). The recordkeeping burden for §§ 351.4(a)(2)(iii), 351.4(b)(2)(iii), 351.5(b)(1), 351.5(b)(2)(i), 351.5(b)(2)(iv), 351.13(a)(2)(i), and 351.13(a)(2)(ii)(A) is accounted for in § 351.20(b); the recordkeeping burden for Appendix B is accounted for in § 351.20(c); the reporting and recordkeeping burden for Appendix A is accounted for in § 351.20(d); and the recordkeeping burden for §§ 351.10(c)(12)(i) and 351.10(c)(12)(iii) is accounted for in §

351.20(e). The information collection requirements affecting FDIC-supervised institutions are described more fully below.

Reporting Requirements

Section 351.12(e) states that, upon application by a banking entity, the Board may extend the period of time to meet the requirements on ownership limitations in this section for up to 2 additional years, if the Board finds that an extension would be consistent with safety and soundness and not detrimental to the public interest. An application for extension must (1) be submitted to the Board at least 90 days prior to expiration, (2) provide the reasons for application including information that addresses the factors in paragraph (e)(2) of § 351.12, and (3) explain the banking entity's plan for reducing the permitted investment in a covered fund through redemption, sale, dilution or other methods.

Recordkeeping Requirements

Section 351.3(d)(3) specifies that proprietary trading does not include any purchase or sale of a security by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan of the banking entity that (1) specifically contemplates and authorizes the particular securities to be used for liquidity management purposes, the amount, types, and risks of these securities that are consistent with liquidity management, and the liquidity circumstances in which the particular securities may or must be used; (2) requires that any purchase or sale of securities contemplated and authorized by the plan be principally for the purpose of managing the liquidity of the banking entity, and not for the purpose of short-term resale, benefitting from actual or

expected short-term price movements, realizing short-term arbitrage profits, or hedging a position taken for such short-term purposes; (3) requires that any securities purchased or sold for liquidity management purposes be highly liquid and limited to securities the market, credit and other risks of which the banking entity does not reasonably expect to give rise to appreciable profits or losses as a result of short-term price movements; (4) limits any securities purchased or sold for liquidity management purposes, together with any other instruments purchased or sold for such purposes, to an amount that is consistent with the banking entity's near-term funding needs, including deviations from normal operations of the banking entity or any affiliate thereof, as estimated and documented pursuant to methods specified in the plan; (5) includes written policies and procedures, internal controls, analysis and independent testing to ensure that the purchase and sale of securities that are not permitted under § 351.6(a) or (b) of this part are for the purpose of liquidity management and in accordance with the liquidity management plan described in this paragraph; and (6) is consistent with the appropriate agency's supervisory requirements, guidance and expectations regarding liquidity management.

Section 351.4(b)(3)(i)(A) provides that a trading desk or other organizational unit of another entity with more than \$50 billion in trading assets and liabilities is not a client, customer, or counterparty unless the trading desk documents 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 for purposes of § 351.4(b). This modification responds to comments

received on the proposal regarding the definition of client, customer, or counterparty for purposes of the market making exemption.

Section 351.11(a)(2) requires that covered funds generally must be organized and offered only in connection with the provision of bona fide trust, fiduciary, investment advisory, or commodity trading advisory services and only to persons that are customers of such services of the banking entity, pursuant to a written plan or similar documentation outlining how the banking entity intends to provide advisory or other similar services to its customers through organizing and offering the covered fund.

Section 351.20(b) specifies the contents of the compliance program for a banking entity with total consolidated assets of \$10 billion or more. It includes: (1) written policies and procedures reasonably designed to document, describe, monitor and limit trading activities, including setting and monitoring required limits set out in § 351.4 and § 351.5 and activities and investments with respect to a covered fund (including those permitted under §§ 351.3 through 351.6 or §§ 351.11 through 351.14) to ensure that all activities and investments conducted by the banking entity that are subject to section 13 of the BHC Act and this part comply with section 13 of the BHC Act and applicable regulations; (2) a system of internal controls reasonably designed to monitor compliance with section 13 of the BHC Act and this part and to prevent the occurrence of activities or investments that are prohibited by section 13 of the BHC Act and applicable regulations; (3) a management framework that clearly delineates responsibility and accountability for compliance with section 13 of the BHC Act and this part

and includes appropriate management review of trading limits, strategies, hedging activities, investments, incentive compensation and other matters identified in this part or by management as requiring attention; (4) independent testing and audit of the effectiveness of the compliance program conducted periodically by qualified personnel of the banking entity or by a qualified outside party; (5) training for trading personnel and managers, as well as other appropriate personnel, to effectively implement and enforce the compliance program; and (6) records sufficient to demonstrate compliance with section 13 of the BHC Act and applicable regulations, which a banking entity must promptly provide to the [Agency] upon request and retain for a period of no less than 5 years or such longer period as required by [Agency].

Section 351.20(e) specifies additional documentation required for covered funds. Any banking entity that has more than \$10 billion in total consolidated assets as reported on December 31 of the previous two calendar years shall maintain records that include: (1) documentation of the exclusions or exemptions other than sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 relied on by each fund sponsored by the banking entity (including all subsidiaries and affiliates) in determining that such fund is not a covered fund; (2) for each fund sponsored by the banking entity (including all subsidiaries and affiliates) for which the banking entity relies on one or more of the exclusions from the definition of covered fund provided by §§ 351.10(c)(1), 351.10(c)(5), 351.10(c)(8), 351.10(c)(9), or 351.10(c)(10) of subpart C, documentation supporting the banking entity's determination that the fund is not a covered fund

pursuant to one or more of those exclusions; (3) for each seeding vehicle described in §§ 351.10(c)(12)(i) or 351.10(c)(12)(iii) of subpart C that will become a registered investment company or SEC-regulated business development company, a written plan documenting the banking entity's determination that the seeding vehicle will become a registered investment company or SEC-regulated business development company; the period of time during which the vehicle will operate as a seeding vehicle; and the banking entity's plan to market the vehicle to third-party investors and convert it into a registered investment company or SEC-regulated business development company within the time period specified in § 351.12(a)(2)(i)(B) of subpart C; and (4) for any banking entity that is, or is controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or of any State, if the aggregate amount of ownership interests in foreign public funds that are described in §351.10(c)(1) of subpart C owned by such banking entity (including ownership interests owned by any affiliate that is controlled directly or indirectly by a banking entity that is located in or organized under the laws of the United States or of any State) exceeds \$50 million at the end of two or more consecutive calendar quarters, beginning with the next succeeding calendar quarter, documentation of the value of the ownership interests owned by the banking entity (and such affiliates) in each foreign public fund and each jurisdiction in which any such foreign public fund is organized, calculated as of the end of each calendar quarter, which documentation must continue until the banking entity's aggregate amount of

ownership interests in foreign public funds is below \$50 million for two consecutive calendar quarters.

Section 351.20(f)(1) applies to banking entities with no covered activities. A banking entity that does not engage in activities or investments pursuant to subpart B or subpart C (other than trading activities permitted pursuant to §351.6(a) of subpart B) may satisfy the requirements of this section by establishing the required compliance program prior to becoming engaged in such activities or making such investments (other than trading activities permitted pursuant to §351.6(a) of subpart B).

Section 351.20(f)(2) applies to banking entities with modest activities. A banking entity with total consolidated assets of \$10 billion or less as reported on December 31 of the previous two calendar years that engages in activities or investments pursuant to subpart B or subpart C of this part (other than trading activities permitted under section 351.6(a)) may satisfy the requirements of this section by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 and this part and adjustments as appropriate given the activities, size, scope and complexity of the banking entity.

Disclosure Requirements

Section 351.11(a)(8)(i) requires that a banking entity must clearly and conspicuously disclose, in writing, to any prospective and actual investor in the covered fund (such as through disclosure in the covered fund's offering documents) (1) that "any losses in [such covered fund] will be borne solely by

investors in [the covered fund] and not by [the banking entity]; therefore, [the banking entity's] losses in [such covered fund] will be limited to losses attributable to the ownership interests in the covered fund held by [the banking entity] in its capacity as investor in the [covered fund] or as beneficiary of a restricted profit interest held by [the banking entity]"; (2) that such investor should read the fund offering documents before investing in the covered fund; (3) that the "ownership interests in the covered fund are not insured by the FDIC, and are not deposits, obligations of, or endorsed or guaranteed in any way, by any banking entity" (unless that happens to be the case); and (4) the role of the banking entity and its affiliates and employees in sponsoring or providing any services to the covered fund.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 5th day of January 2017.

Federal Deposit Insurance Corporation

Valerie J. Best
Assistant Executive Secretary
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