

**SUPPORTING STATEMENT**

**FOR THE PAPERWORK REDUCTION ACT SUBMISSION FOR**

**THE COLLECTION OF INFORMATION ON FORM TCR AND FORM WB-APP**

**A. JUSTIFICATION**

**1. NECESSITY OF INFORMATION COLLECTION**

In Release No. 34-64545,<sup>1</sup> the Commission adopted rules (“Rules”) and forms to implement Section 21F of the Securities Exchange Act of 1934 entitled “Securities Whistleblower Incentives and Protection,” which was created by Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>2</sup> The Rules describe the whistleblower program that the Commission has established pursuant to the Dodd-Frank Act, which enables the Commission to pay an award, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or of a related action.

In order for the whistleblower program to effectively operate, the Rules contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 and implement forms, Form TCR and Form WB-APP, to collect this information. A submitter’s decision to seek whistleblower status and file a claim for a whistleblower award under the Rules using Form TCR and Form WB-APP is entirely voluntary.

**2. INFORMATION COLLECTION PURPOSE AND USE**

Form TCR may be used by anyone wishing to provide information to the Commission and its staff regarding potential violations of the securities laws. Form TCR is one of the permitted methods of submitting information for those who desire to be considered a whistleblower under the Rules.<sup>3</sup> The information submitted in Form TCR provides the SEC the

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<sup>1</sup> Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, Release No. 34-64545; File No. S7-33-10 (adopted May 25, 2011).

<sup>2</sup> Pub. L. No. 111-203, § 922(a), 124 Stat 1841 (2010).

<sup>3</sup> Potential whistleblowers are able to submit information to the Commission electronically through the Electronic Data Collection System (“TCR Database”), the Commission’s interactive, web-based database for submission of tips, complaints and referrals. Both the online database and Form TCR are designed to elicit substantially similar information concerning the individual submitting the information and the violation alleged. On November 9, 2010, a request to the Office of Management and Budget (“OMB”) for Paperwork Reduction Act approval of the TCR Database was separately submitted and on December 21, 2010, OMB Control Number 3235-0672 was granted. On

ability to review and respond promptly and appropriately to information provided by the general public. The information collected is primarily used (i) to determine individuals and entities to investigate or examine for potential securities laws violations, (ii) for analysis to identify trends in tips and complaints to highlight areas of risk, and (iii) to identify patterns in behavior of securities laws violators to discover other potential violators.

Form WB-APP is a form that is submitted by whistleblowers filing a claim for a whistleblower award. Form WB-APP is the required method for application for an award under the Rules. The information submitted in Form WB-APP allows the SEC to assess the applicant's eligibility for an award based on the reasons provided as to why an award is warranted, as well as based on the applicant's declarations to questions that bear on his or her administrative eligibility and compliance with the requirements posed by the Rules.

### **3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY**

Each of the collections of information discussed above are submitted to the Commission in paper format.<sup>4</sup>

### **4. DUPLICATION**

As the Rules require Form TCR<sup>5</sup> and Form WB-APP as the only acceptable methods for submission of information under the Rules, there are no other collection instruments available to collect the information necessary to meet the purposes of the Rules.

### **5. REDUCING THE BURDEN ON SMALL BUSINESS**

Form TCR and Form WB-APP do not impact small entities. Small entity is defined in 5 U.S.C. 601(6) to mean "small business," "small organization," and "small governmental jurisdiction" as defined in 5 U.S.C. 601(3) – (5). The definition of "small entity" does not include individuals. The Rules apply only to an individual, or individuals acting jointly, who provide information to the Commission relating to the violation of the securities laws. Companies and other entities are not eligible to participate in the program as whistleblowers. Consequently, the persons subject to the Rules and to utilization of Form TCR and Form WB-APP are not "small entities."

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June 23, 2014, a request for extension of OMB's approval of the TCR Database was sent to OMB. Accordingly, for purposes of this Supporting Statement, we are only discussing Forms TCR and WB-APP.

<sup>4</sup> See FN3.

<sup>5</sup> As explained above in footnote 3, individuals may also submit information of potential securities law violations electronically through the Commission's on-line TCR portal.

## **6. CONSEQUENCES OF LESS FREQUENT COLLECTION**

The objectives of the Whistleblower Program under the Exchange Act could not be met with less frequent collection of this information.

## **7. SPECIAL CIRCUMSTANCES/INCONSISTENCIES WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

In certain Commission cases and related actions a whistleblower's Form TCR will need to be retained for more than three years. Rule 21F-9(c) requires a special process when a whistleblower provides information to the Commission anonymously and is seeking an award. In that situation, the Form TCR must be submitted to the Commission by an attorney for the whistleblower, the whistleblower must provide the attorney with a completed Form TCR signed under penalty of perjury, and the attorney must certify that he or she consents to be legally obligated to provide the whistleblower's original signed Form TCR if the Commission requests it. Rule 21F-10(c) requires that an anonymous whistleblower disclose his identity on Form WB-APP, which can only be submitted after the Commission has published a "Notice of Covered Action" signifying the entry of a final judgment or order in a covered action. In some cases, it will be longer than three years after the filing of the Form TCR before there is a final judgment or order that leads to the filing of the Form WB-APP and the resolution of the whistleblower's claim for an award. Accordingly, if these cases involve a Form TCR filed by an anonymous whistleblower, the attorney for the anonymous whistleblower will be required to retain the original Form TCR, signed by his client, for more than three years.

For the circumstance described above, the retention of Form TCR for more than three years is necessary to satisfy the requirements of Section 922 of Dodd-Frank and the Commission's programmatic needs to allow whistleblowers to submit information anonymously but still be able to verify the whistleblower's identity prior to the payment of any award.

## **8. CONSULTATIONS OUTSIDE THE AGENCY**

Federal Register Notices have been published as required. The Commission did not receive any public comments.

## **9. PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

## **10. CONFIDENTIALITY**

The information in the collections of information discussed above will not be made publicly available, except as provided by the Privacy Act of 1974 (5 U.S.C. 552a) and/or Section 21F(h)(2) of the Exchange Act. Section 21F(h)(2) provides that, except as expressly provided:

[T]he Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission [or certain specific entities listed in subparagraph (C) of Section 21F(h)(2)].

Section 21F(h)(2) also allows the Commission to share whistleblower identifying information with certain domestic and foreign regulatory and law enforcement agencies. However, the statute requires the domestic entities to maintain such information as confidential, and requires foreign entities to maintain such information in accordance with such assurances of confidentiality as the Commission deems appropriate.

## **11. SENSITIVE QUESTIONS**

The information collection includes Personally Identifiable Information (“PII”).<sup>6</sup> Form TCR requests the name and contact information of the submitter, the submitter’s attorney (if applicable), and the individual against whom the complaint is being made (if applicable). Form WB-APP requests the name and contact information of the submitter and the submitter’s attorney (if applicable), as well as the SSN of the submitter. This information is solicited under the authority of Section 21F of the Securities Exchange Act of 1934, entitled “Securities Whistleblower Incentives and Protection,” which was created by Section 922 of the Dodd-Frank Act.

The collection of the information on Form TCR provides the Commission with the ability to contact the submitter to discuss and verify the subject matter of the submitter’s complaint or tip. Without such information, the Commission could not as effectively and efficiently carry out its mission of protecting investors and maintaining fair, orderly, and efficient markets.

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<sup>6</sup> The term “Personally Identifiable Information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc. *See* OMB Memorandum M-07-16 (Safeguarding Against and Responding to the Breach of Personally Identifiable Information), May 22, 2007.

The collection of the information on WB-APP is used to assess the applicant's eligibility for an award under the Rules, as well as verify the identity of the applicant for purposes of properly making an award payment directly to him or her. Given the potentially large sums of whistleblower awards under the Rules, the Commission makes whistleblower award payments only to the individual whistleblower, and cannot pay a proxy. It is critical that the Commission verify the eligibility and identity of whistleblower award recipients, and the SSN is an important tool for such verification. The Commission does not treat a whistleblower's refusal to disclose his or her SSN on Form WB-APP as the basis to deny the application for a whistleblower award; the Rules require only that a whistleblower's identity be verified in a form and manner that is acceptable to the Office of the Whistleblower. Because Form WB-APP is voluntary and is only requested to be filed after the Commission has posted a Notice of Covered Action, the form results in a relatively low volume of SSNs being collected.

Privacy Act Statements are attached to and included with both Form TCR and Form WB-APP. The respective Privacy Act Statements expressly state that the information requested on the Forms is voluntary. The collection of PII in the Forms is also covered by [SORN SEC-42](#) "Enforcement Files". It is believed that the treatment of confidential information collected using Forms TCR and WB-APP is consistent with the Federal Information Security Management Act of 2002 and the Privacy Act of 1974.

## **12. BURDEN OF INFORMATION COLLECTION**

The paperwork burden estimates associated with the Rule include the burdens attributable to preparing, reviewing and reporting information to the Commission and retaining records. The total burden of Form TCR and Form WB-APP is estimated to be 1,160 hours annually:

- Form TCR: Though the completion time will depend largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of the allegations, the Commission estimates that it takes a whistleblower, on average, one and one-half hours to complete Form TCR. Based on the receipt of an average of approximately 700 annual Form TCR submissions for the past three fiscal years, the Commission estimates that the annual reporting burden of Form TCR is 1,050 hours.
- Form WB-APP: The Commission estimates that it takes a whistleblower, on average, one hour to complete Form WB-APP, though the completion time depends largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of his or her application for an award. Based on the receipt of an average of approximately 110 annual Form

WB-APP submissions for the past six fiscal years,<sup>7</sup> the Commission estimates that the annual reporting burden of Form WB-APP is 110 hours.

### **13. COST BURDEN TO RESPONDENTS/RECORDKEEPERS**

Under the Rules, an anonymous whistleblower who is seeking an award is required, and a whistleblower whose identity is known may elect, to retain counsel to represent the whistleblower in the Whistleblower Program. The Commission expects that in most of those instances the whistleblower's counsel complete, or assist in the completion, of some or all of the required forms on behalf of the whistleblower. However, the Commission also expects that in the vast majority of cases in which a whistleblower is represented by counsel, the whistleblower enters into a contingency fee arrangement with counsel, providing that counsel be paid for the representation through a fixed percentage of any recovery by the whistleblower under the Program. Thus, most whistleblowers do not incur any direct, quantifiable expenses for attorneys' fees for the completion of the required forms.

The Commission expects that a very small number of whistleblowers (no more than 5%) enter into hourly fee arrangements with counsel.<sup>8</sup> In those cases, a whistleblower incurs direct expenses for attorneys' fees for the completion of the required forms. To estimate those expenses, the Commission makes the following assumptions:

- (i) The Commission will continue to receive on average approximately 700 Forms TCR and 110 Forms WB-APP annually;<sup>9</sup>
- (ii) Whistleblowers will pay hourly fees to counsel for the submission of approximately 35 Forms TCR, and 6 Forms WB-APP annually;<sup>10</sup>
- (iii) Counsel retained by whistleblowers pursuant to an hourly fee arrangement will charge on average \$400 per hour;<sup>11</sup> and

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<sup>7</sup> This figure does not include Form WB-APP submissions which were facially deficient, subsequently withdrawn, or submitted by individuals who have been barred by the Commission from participation in the whistleblower program.

<sup>8</sup> This estimate is based, in part, on the Commission's belief that most whistleblowers likely will not retain counsel on an hourly basis to assist them in preparing the forms.

<sup>9</sup> The bases for these assumed amounts are explained in Section 12 above.

<sup>10</sup> These amounts are based on the assumption, as noted above, that no more than 5% of all whistleblowers will be represented by counsel pursuant to an hourly fee arrangement.

<sup>11</sup> The Commission uses this hourly rate for estimating the billing rates of securities lawyers for purposes of other rules and believes that this billing rate estimate is appropriate, recognizing that some attorneys representing whistleblowers may not be securities lawyers and may charge different average hourly rates.

- (iv) Counsel will bill on average: (i) 3 hours to complete a Form TCR, and (ii) 2 hours to complete a Form WB-APP.<sup>12</sup>

Based on those assumptions, the Commission estimates that each year whistleblowers will incur the following total amounts of attorneys' fees for completion of the Whistleblower Program forms: (i) \$42,000 for the reporting burden of Form TCR; and (ii) \$4,800 for the reporting burden of Form WB-APP, totaling \$46,800 annually. Previously, we estimated an annual cost burden to the public of \$46,000.<sup>13</sup> In consideration of more recent data, we have slightly increased the estimated annual cost burden to the public by \$800.

#### **14. COST TO FEDERAL GOVERNMENT**

Apart from estimated office operation costs, the breakdown of this amount reflects an analysis of internal staff costs towards processing of these forms, with office staff (\$69/hour) accounting for 80% of the processing time and professionals (\$255/hour) accounting for the remaining 20%, for a total of \$123,192.<sup>14</sup>

#### **15. CHANGE IN BURDEN**

The changes in estimated burden are due to an adjustment to reflect the difference between the number of actual submissions of Form TCR and Form WB-APP and the time we estimate that it will take the public to complete the forms as described in Section 12 above. The estimated annual burden has been reduced by 3,626 hours and the estimated annual cost has increased slightly by \$800.

#### **16. INFORMATION COLLECTIONS PLANNED FOR STATISTICAL PURPOSES**

Not applicable. The information collected is not used for tabulation, statistical analysis or publication.

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<sup>12</sup> The Commission expects that counsel will likely charge a whistleblower for additional time required to gather from the whistleblower or other sources relevant information needed to complete Forms TCR and WB-APP. Accordingly, the Commission estimates that on average counsel will bill a whistleblower 2.5 hours for the completion of Form TCR and 2 hours for completion of Form WB-APP (even though the Commission estimates that a whistleblower will be able to complete the entire Form TCR in 1.5 hours and Form WB-APP in 1 hour).

<sup>13</sup> See 2014 Supporting Statement for the Paperwork Reduction Act Submission for the Collection of Information on Form TCR and Form WB-APP.

<sup>14</sup> The \$255 and \$69 per hour estimates for SEC staff are CPI inflation adjustments from 2009 estimates. The 2009 estimate for SEC office workers (\$60) was the midpoint of the Washington, DC annual salary for a Grade SK-5 employee, divided by the OMB standard of 2087 hours and multiplied by 2.93 to account for benefit and overhead costs. The 2009 estimate for SEC professionals (\$235) was the average of the midpoints of the Washington, DC annual salaries for SK-11 and SK-12 employees, divided by the OMB standard of 2087 hours and multiplied by 5.35 to account for benefit and overhead costs.

**17. APPROVAL TO OMIT OMB EXPIRATION DATE**

The Commission is not seeking approval to omit the expiration date.

**18. EXCEPTIONS TO CERTIFICATION**

Not applicable.

**B. INFORMATION COLLECTION EMPLOYING STATISTICAL METHODS**

Not applicable. This collection of information does not involve statistical methods.