

SUPPORTING STATEMENT

FOR THE PAPERWORK REDUCTION ACT SUBMISSION FOR THE COLLECTION OF INFORMATION

ELECTRONIC DATA COLLECTION SYSTEM AND FORM TCR

A. JUSTIFICATION

1. NECESSITY OF INFORMATION COLLECTION

Electronic Data Collection System

The Securities and Exchange Commission (“Commission”) uses an Electronic Data Collection System (the “Database”) for the receipt, collection and analysis of tips, complaints and referrals (“tips”). An individual wishing to provide the Commission with information regarding an alleged violation of the federal securities laws may elect to submit information through the Database. The public interface to the Database is available using the agency’s [Tips, Complaints and Referrals Portal](#).

Form TCR

In Release No. 34-64545,¹ 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”).² 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 Form TCR 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 is entirely voluntary.

2. INFORMATION COLLECTION PURPOSE AND USE

Electronic Data Collection System

¹ 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).

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

The information in the Database provides the ability for the SEC to review and respond promptly and appropriately to information provided by the general public. In particular, the Database: (i) provides a simple, easy-to-use and convenient medium for individuals to provide tips to the Commission; (ii) increases the likelihood that individuals will provide essential, relevant information regarding their tips; (iii) allows the Commission to collect relevant information regarding tips more effectively and efficiently (compared to information provided in hard-copy); and (iv) allows the Commission to evaluate and analyze information regarding tips more effectively and efficiently.

The information collected primarily is used 1) to determine individuals and entities to investigate or examine for potential securities laws violations; 2) for analysis to identify trends in tips and complaints to highlight areas of risk; and 3) to identify patterns in behavior of securities laws violators to discover other potential violators. The Database is also used throughout the Commission as a source of information for other Commission functions including informing policy, helping on registration requests, and evaluation of required filings among others.

Form TCR

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. As with the Database, the information collected primarily is used 1) to determine individuals and entities to investigate or examine for potential securities laws violations; 2) for analysis to identify trends in tips and complaints to highlight areas of risk; and 3) to identify patterns in behavior of securities laws violators to discover other potential violators.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

Electronic Data Collection System

The Database is an e-filed dynamic report based on current technology. Based on initial information provided by an individual submitting a tip (e.g., the nature of alleged violation or the characteristics of the persons or entities involved in the alleged violations), the Database pre-populates certain data fields and determines the appropriate additional questions to elicit relevant information regarding the tip. Pre-populating the answers to the questions reduces

burden and alleviates the need to enter a response to every question. The information collection is voluntary.

Form TCR

Form TCR is submitted to the Commission in paper format.

4. DUPLICATION

There are no other collection instruments available to collect the information necessary to meet the purposes described in item 2 above.

5. REDUCING THE BURDEN ON SMALL BUSINESS

The burden of compliance with the information collection requirements does not impact small businesses or other small entities.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION

Electronic Data Collection System

Without this database, the SEC will not have timely information to review and respond promptly to information provided by the general public. The information specified in the complaint database is needed in order for the agency to determine whether the tips and related allegations (i) are credible; (ii) indicate a potential violation of the federal securities laws, and (iii) should be investigated further as well as for additional analyses consistent with the agency's overall mission and responsibilities.

Form TCR

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)

Electronic Data Collection System

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.8(d).

Form TCR

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 the 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, including to allow whistleblowers to submit information anonymously but still be able to verify the whistleblower's identity prior to the payment of any award, as well as to allow the adjudication process to run its course for each whistleblower applicant.

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

Electronic Data Collection System and Form TCR

The extent of confidentiality of information submitted to the Database by individuals may depend upon whether the individual elects to participate in the Commission's Whistleblower Program, established pursuant to provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 11-203, H.R. 4173).

Individuals not participating in the Whistleblower Program who submit information to the Commission may request that their identities be held in confidence. Absent compelling cause, the Commission ordinarily does not disclose the identities of these persons. The Freedom of Information Act (5 U.S.C. 552(b)(7)(D)), and the Privacy Act of 1974 (5 U.S.C. 552a(k)(5)) permit agencies to withhold the identity of a confidential source. However, there may be circumstances in which disclosure will nonetheless be legally required or will be essential for the protection of the public interest. For example, in litigation a court may order disclosure, or the Commission may have to present a bounty claimant as a witness in order to assure the success of an enforcement action. Thus, while the Commission and its staff will give serious consideration to requests for confidentiality of identity, no guarantees of confidentiality are possible.

Section 21F(h)(2) also allows the Commission to share information received from whistleblowers 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

Electronic Data Collection System

The information collection collects basic Personally Identifiable Information (PII) that may include individual names; dates of birth; social security numbers; addresses; telephone numbers. The collection of such information provides the Commission the ability to contact the submitter to discuss and verify the subject matter of the submitter's complaint. 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. No questions will be asked that are of a personal or sensitive nature.

A Privacy Act Statement is applicable for the information collection and is displayed at the bottom of the electronic form. The agency has determined that the information collection constitutes a system of record for purposes of the Privacy Act and is covered under [System of Records Notice \(SORN\) SEC-29](#) ("Tips, Complaints and Referrals (TCR) Records").

Form TCR

The information collection includes PII. 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). 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. No questions will be asked that are of a personal or sensitive nature.

A Privacy Act Statement is attached to and included with Form TCR. The Privacy Act Statement expressly states that the information requested on the Forms is voluntary. The collection of PII in Form TCR is also covered by [SORN SEC-17](#) (“Enforcement Files”).

12. BURDEN OF INFORMATION COLLECTION

The Commission anticipates that the burdens imposed by the Database and Form TCR will vary greatly depending on the complexity of the alleged violations that are the subject of the tip and the amount of information possessed by the individual submitting the tip. With that in mind, the Commission estimates the total burden of the Database and Form TCR is estimated to be 14,840 hours annually:

- Electronic Data Collection System: Though the completion time will depend largely on the complexity of the alleged violation and the amount of information the complainant possesses in support of the allegations, the Commission estimates that it takes a complainant, on average, a half hour to submit a TCR through the Database. Based on the receipt of an average of approximately 28,000 annual TCR submissions for the past three fiscal years, the Commission estimates that the annual reporting burden is 14,000 hours.
- 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 560 annual Form TCR submissions for the past three fiscal years, the Commission estimates that the annual reporting burden of Form TCR is 840 hours.

13. COST BURDEN TO RESPONDENTS/RECORDKEEPERS

Electronic Data Collection System

There are no costs associated with this information collection.

Form TCR

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.³ 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 560 Forms TCR annually;⁴
- (ii) Whistleblowers will pay hourly fees to counsel for the submission of approximately 28 Forms TCR annually;⁵
- (iii) Counsel retained by whistleblowers pursuant to an hourly fee arrangement will charge on average \$400 per hour;⁶ and
- (iv) Counsel will bill on average 3 hours to complete a Form TCR.⁷

Based on those assumptions, the Commission estimates that each year whistleblowers will incur \$33,600 in attorneys' fees for completion of Form TCR.

14. COST TO FEDERAL GOVERNMENT

³ 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.

⁴ The bases for these assumed amounts are explained in Section 12 above.

⁵ 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.

⁶ 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.

⁷ 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 Form TCR. Accordingly, the Commission estimates that on average counsel will bill a whistleblower 3 hours for the completion of Form TCR even though the Commission estimates that a whistleblower will be able to complete the entire Form TCR in 1.5 hours.

Electronic Data Collection System

The estimated cost to the government that includes the system's operations and maintenance cost is \$4,605,000. This estimate is solely for purposes of the Paperwork Reduction Act. In addition, the internal staff cost is broken down by assigning professionals for 85% (\$139/Hour) of the time and office staff (\$72/hour) for the other 15% of the time, with the total cost \$1,805,300.⁸

Form TCR

Apart from estimated office operation costs, the breakdown of this amount reflects an analysis of internal staff costs towards processing of these Form TCR, with office staff (\$72/hour) accounting for 80% of the processing time and professionals (\$139/hour) accounting for the remaining 20%, for a total of \$71,736.⁹

15. CHANGE IN BURDEN

Electronic Data Collection System

The increase in burden of 6,000 hours is due to the increase in TCR submissions received during the past three years.

Form TCR

There is no change in the estimated burden.

16. INFORMATION COLLECTIONS PLANNED FOR STATISTICAL PURPOSES

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

⁸ The \$139 per hour for SEC professionals and \$72 per hour for SEC administrative staff estimates for SEC staff are based on actual SEC payroll data as of January 2022, with a 5% assumed salary increase for the year. For both figures, average annual salary was divided by the OMB standard of 2087 hours with an additional 37.18% benefit rate (according to January 2022 estimates of projected FY22 benefit rate). SK-14 average salary was used to develop the professional rate, and the average of all SK-7 through SK-12 employees was used to develop the administrative rate.

⁹ The \$139 per hour for SEC professionals and \$72 per hour for SEC administrative staff estimates for SEC staff are based on actual SEC payroll data as of January 2022, with a 5% assumed salary increase for the year. For both figures, average annual salary was divided by the OMB standard of 2087 hours with an additional 37.18% benefit rate (according to January 2022 estimates of projected FY22 benefit rate). SK-14 average salary was used to develop the professional rate, and the average of all SK-7 through SK-12 employees was used to develop the administrative rate.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

Electronic Data Collection System

We request authorization to omit the expiration date on the electronic version of the database. Including the expiration date will result in increased costs, because the need to make changes may not follow the application's scheduled version release dates. The OMB control number will be displayed.

Form TCR

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

18. EXCEPTIONS TO CERTIFICATION

Not applicable.