

**SUPPORTING STATEMENT**  
**FOR THE PAPERWORK REDUCTION ACT SUBMISSION FOR**  
**THE COLLECTION OF INFORMATION ON 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 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 WB-APP is entirely voluntary.

**2. INFORMATION COLLECTION PURPOSE AND USE**

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. Some minor word changes have been made to the Form WB-APP to clarify and assist the understanding of submitters. No substantive changes were made to the Form WB-APP.

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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).

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

The collections of information discussed above are submitted to the Commission in paper format.

### **4. DUPLICATION**

As the Rules require Form WB-APP as the only acceptable method 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 WB-APP does 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 WB-APP are not “small entities.”

### **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)**

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 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.

The submission of a Form WB-APP is the start of the process of evaluating whether an individual whistleblower is an eligible award recipient or not. Because of the number of submissions for a given matter, complexity of individual investigations, and the facts and circumstances relevant to each whistleblower claim, as well as the reconsideration and appeals process afforded to each claimant under the Rules, it is necessary for the Commission to retain the Form WB-APP until that process is complete which, in some instances, may be longer than three years.

For the circumstances described above, the retention of the Form WB-APP 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**

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>3</sup> Form WB-APP requests the name and contact information of the submitter and the submitter’s attorney (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.

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. 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. On December 4, 2020, the Commission approved an updated version of the WB-APP in accordance with its newly amended rules. That updated WB-APP removed the requirement for the filer to submit their Social Security Number and modified the order of the questions on the form. No substantive changes were made to the WB-APP.

Privacy Act Statements are attached to and included with 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-17](#) “Enforcement Files”. It is believed that the treatment of confidential information collected using Form 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 WB-APP is estimated to be 378 hours annually:

- Form WB-APP: The Commission estimates that it takes a whistleblower, on average, two hours 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 189 annual Form WB-

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<sup>3</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.

APP submissions for the past three fiscal years,<sup>4</sup> the Commission estimates that the annual reporting burden of Form WB-APP is 378 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>5</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 189 Forms WB-APP annually;<sup>6</sup>
- (ii) Whistleblowers will pay hourly fees to counsel for the submission of approximately 10 Forms WB-APP annually;<sup>7</sup>
- (iii) Counsel retained by whistleblowers pursuant to an hourly fee arrangement will charge on average \$400 per hour;<sup>8</sup> and

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<sup>4</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>5</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>6</sup> The bases for these assumed amounts are explained in Section 12 above.

<sup>7</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>8</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, 4 hours to complete a Form WB-APP.<sup>9</sup>

Based on those assumptions, the Commission estimates that each year whistleblowers will incur the following total amounts of attorneys' fees of \$16,000 for the reporting burden of Form WB-APP annually. Previously, we estimated an annual cost burden to the public of \$17,600.<sup>10</sup> In consideration of more recent data, we have slightly decreased the estimated annual cost burden to the public by \$1,600.

#### **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>11</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 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 4 hours and the estimated annual cost has decreased slightly by \$1,600. The decrease in burden of 52 hours is due to a change in the average number of Form WB-APPs received annually by the Commission. Because the average number of received applications filed with the Commission decreased, correspondingly the burden hours decreased proportionately. Because the cost burden is calculated based on the number of hours the cost burden also decreased.

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

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

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<sup>9</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 Form WB-APP. Accordingly, the Commission estimates that on average counsel will bill a whistleblower 4 hours for completion of Form WB-APP (even though the Commission estimates that a whistleblower will be able to complete the entire Form WB-APP in 2 hours).

<sup>10</sup> See 2014 Supporting Statement for the Paperwork Reduction Act Submission for the Collection of Information on Form WB-APP.

<sup>11</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**

There are no exceptions to certification for this Paperwork Reduction Act submission.

**B. INFORMATION COLLECTION EMPLOYING STATISTICAL METHODS**

This collection of information does not involve statistical methods.