

## **SECURITIES AND EXCHANGE COMMISSION**

### **17 CFR Part 200**

**[Release No. PA-47 ; File No. S7-19-11]**

### **Privacy Act of 1974: Implementation and Amendment of Exemptions**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (“SEC” or “Commission”) is adopting a rule to amend its Privacy Act regulations to exempt portions of three new systems of records and to make technical amendments to its current inventory of exempted systems of records. Specifically, application of the exemptions to the three new systems of records is necessary to protect information compiled for law enforcement purposes.

**DATES:** Effective Date: October 17, 2011.

**FOR FURTHER INFORMATION CONTACT:** Cristal Perpignan, Acting Chief Privacy Officer, Office of Information Technology, 202-551-7716.

### **SUPPLEMENTARY INFORMATION:**

**Background:** On May 24, 2011, SEC published notice of three new Privacy Act systems of records entitled Tips, Complaints, and Referrals (TCR) Records (SEC-63), “SEC Security in the Workplace Incident Records (SEC-64)”, and “Investor Response Information System (IRIS) (SEC-65)”; and to revise two existing systems of records at Release No. PA-46, (May 18, 2011), 76 FR 30213 (May 24, 2011). In conjunction with publication of the systems of records notice, the SEC published, with invitation to comment, a proposed rule to exempt the new systems of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act and 17 CFR 200.303, 200.304, and 200.306; and to make technical amendments to its current

inventory of exempted systems of records at Release No. PA-45 (May 18, 2011), 76 FR 30048 (May 24, 2011). The TCR Records (SEC-63) system of records contains records related to tips, complaints, referrals of misconduct, or related information about actual or potential violations of the federal securities laws; investor harm; conduct of public companies; securities professionals; regulated entities; and associated persons. This system of records may include investigatory materials that were compiled in connection with the Commission's enforcement responsibilities under the federal securities laws. Such material may consist of unsolicited and often unverified statements concerning individuals, information received from confidential sources, as well as reports from the Commission's investigators and other law enforcement personnel. The disclosure of the existence of investigatory materials could seriously undermine effective enforcement of the federal securities laws by prematurely alerting individuals to the fact that they are under investigation, by giving them access to the evidentiary bases for a Commission enforcement action or seriously hampering the Commission's case in court or before an administrative law judge.

The SEC Security in the Workplace Incident Records (SEC-64) system of records contains records related to reports involving incidents of assault, harassment, intimidation, bullying, weapons possession, or threats at the SEC. This system of records may include investigatory materials that were compiled in connection with inquiries or investigation of potential or actual incidents of violence by and against individuals at an SEC facility. The disclosure of information as it relates to investigatory materials or the identity of sources of information may seriously undermine the safety and security of employees in the workplace. Access to such information could allow the subject of an investigation or inquiry of an actual or potential criminal or civil violation to interfere with and impede the investigation, tamper with

witnesses or evidence, and to avoid detection or apprehension.

The IRIS (SEC-65) system of records contains records related to complaints/inquiries/requests from members of the public and others. This system of records may include investigatory materials that were compiled in connection with the Commission's enforcement responsibilities under the federal securities laws. Such material may consist of unsolicited and often unverified statements concerning individuals, information received from confidential sources, as well as reports from the Commission's investigators and other law enforcement personnel. The disclosure of the existence of investigatory materials could seriously undermine effective enforcement of the federal securities laws by prematurely alerting individuals to the fact that they are under investigation, by giving them access to the evidentiary bases for a commission enforcement action or seriously hampering the Commission's case in court or before an administrative law judge.

The Commission is exempting SEC-63, SEC-64 and SEC-65 from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as they contain investigatory materials compiled for law enforcement purposes; and amending its existing inventory of exemptions by modifying the name of SEC 38 from "Office of Personnel Code of Conduct and Employee Performance Files" to "Disciplinary and Adverse Actions, Employee Conduct, and Labor Relations Files" and by deleting reference to "Personnel Security Files", which was published for deletion at Release No. PA-29 (July 28, 2000), 65 FR 49037(August10, 2000).

**Public Comments:** The Commission received only one comment on the proposal, but it did not address the specific exemptions; instead, the commenter stated generally that he thought privacy should be preserved and not taken away. We continue to believe the exemptions are

consistent with the Privacy Act because the exemptions protect information relating to enforcement investigations from disclosure.

### **Paperwork Reduction Act**

This rule does not contain a “collection of information” requirement within the meaning of the Paperwork Reduction Act of 1995, so the Paperwork Reduction Act is not applicable.

### **Cost-Benefit Analysis**

The Commission is sensitive to the costs and benefits imposed by its rules. The Privacy Act of 1974 directs each agency that proposes to establish or make a significant change in a system of records to publish in the Federal Register a notice of the existence and character of the system. Government agencies may exempt certain records from certain provisions of the Privacy Act, but to claim an exemption the agency must issue a rule justifying the exemption.

The new systems of records may include investigatory materials compiled in connection with the Commission’s enforcement of the federal securities laws, in connection with potential or actual incidents of workplace violence, or in connections with complaints, inquiries or requests from the public. The Commission and investors will benefit from the amendments, because in their absence the potential access to or disclosure of the investigatory materials in these systems of records could seriously undermine the effective enforcement of the Federal securities laws, and could jeopardize the safety and security of Commission employees in the workplace.

We recognize that the proposed amendments may impose costs on individuals who may wish to obtain access to records that contain investigatory materials in these systems of records. We have no way of estimating the potential number of individuals who might in the future desire such access. Nevertheless, the benefits of exempting those records from public access are compelling, and they clearly justify the costs of the exemption. In addition, Congress was aware

of such potential costs when they promulgated the specific exemption in 5 U.S.C. 552a(k)(2). The Commission discussed these costs and benefits in the proposing release and received no comments on them.

### **Regulatory Flexibility Act Certification**

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, SEC certified that these regulations would not significantly affect a substantial number of small entities. The rule imposes no duties or obligations on small entities. Further, in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, SEC has determined that this rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements. The Commission provided this certification in the proposing release and received no comments.

### **List of Subjects in 17 CFR Part 200**

Administrative practice and procedure; Privacy.

### **Text of Amendments**

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

## **PART 200- ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS**

### **Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission**

The authority citation for Part 200 is revised by adding authority for § 200.312 in numerical order to read as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37,

80b-11, and 7202, unless otherwise noted.

\* \* \* \* \*

Section 312 is also issued under 5 U.S.C. 552a(k).

\* \* \* \* \*

2. Remove the authority citation at the end of §200.312.
3. Amend §200.312 by:
  - a. removing “and” at the end of paragraph (a)(5);
  - b. adding paragraphs (a)(7), (a)(8) and (a)(9); and
  - c. revising paragraph (b).

The additions and revision read as follows.

**§ 200.312 Specific exemptions.**

\* \* \* \* \*

(a) \* \* \*

- (7) Tips, Complaints, and Referrals (TCR) Records;
- (8) SEC Security in the Workplace Incident Records; and
- (9) Investor Response Information System (IRIS).

(b) Pursuant to 5 U.S.C. 552a(k)(5), the system of records containing the Commission’s Disciplinary and Adverse Actions, Employee Conduct, and Labor Relations Files shall be exempt from sections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f), and 17 CFR 200.303, 200.304, and 200.306 insofar as they contain investigatory material compiled to determine an individual’s suitability, eligibility, and qualifications for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal

the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

By the Commission.

Elizabeth M. Murphy  
Secretary

Date: September 12, 2011