

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-36; File No. S7-09-06]

Privacy Act of 1974: System of Records: Office of Inspector General Investigative Files (SEC-43)

AGENCY: Securities and Exchange Commission.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission proposes to alter a Privacy Act system of records: "Office of Inspector General Investigative Files (SEC-43)", originally published at 55 FR 1744, January 18, 1990. Revisions to this system were last published at 63 FR 11936, March 11, 1998.

DATES: The changes will become effective [Insert date 40 days after publication in the Federal Register] unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before [Insert date 30 days after publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-09-06 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-09-06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site

(<http://www.sec.gov/rules/other.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Barbara A. Stance, Chief Privacy Officer, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-7, Alexandria, VA 22312-2413, (202) 551-7209.

SUPPLEMENTARY INFORMATION: The Commission proposes to alter a system of records, "Office of Inspector General Investigative Files (SEC-43)." As described in the original notice, the system contains investigatory material compiled for law enforcement purposes. This notice changes the system location address and the address of the system manager; clarifies the categories of individuals covered by the system; and expands the categories of records in the system to include incoming complaints and complaint logs, preliminary inquiry files and indexes, and declarations from witnesses. This notice also eliminates or consolidates some routine uses, and adds a routine use to

disclose information to the Integrity Committee of the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency, another Federal Office of Inspector General, or other federal law enforcement office in connection with an investigation, inquiry or review conducted pursuant to Executive Order 12993, or at the request of the SEC Inspector General.

The Commission has submitted a report of the altered system of records to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Government Reform, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," as amended on February 20, 1996 (61 FR 6435).

Accordingly, the Commission is altering the system of records to read as follows:

SEC-43

SYSTEM NAME:

Office of Inspector General Investigative Files.

SYSTEM LOCATION:

Office of Inspector General, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-2376.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains records on individuals who are or have been subjects of the Office of Inspector General's investigations or inquiries relating to programs and operations of the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming complaints and complaint logs; preliminary inquiry files and indexes; all correspondence relevant to the investigation; all internal staff memoranda; copies of all subpoenas issued during the investigation; affidavits, declarations and statements from witnesses; transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; working papers of the staff and other documents and records relating to the investigation; opening reports, investigative plans, progress reports, and closing reports; and investigative peer review files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, Pub. L. 95-452, 5 U.S.C. App.

PURPOSE(S):

The purpose of this system of records is to enable the Commission's Office of Inspector General to carry out its mandate under the Inspector General Act Amendments of 1988. The system will consist of files and records compiled by the Commission's Office of Inspector General on Commission employees or other persons who have been part of an investigation for fraud and abuse with respect to the Commission's programs and operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in the system may be disclosed:

(1) Where there is an indication of a violation or a potential violation of law, whether civil, criminal or regulatory in nature, whether arising by general statute or particular

program statute, or by regulation, rule or order issued pursuant thereto, to the appropriate agency, whether federal, foreign, state, or local, or to a securities self-regulatory organization, charged with enforcing or implementing the statute, or rule, regulation or order.

(2) To federal, foreign, state, or local authorities in order to obtain information or records relevant to an Office of Inspector General investigation or inquiry.

(3) To federal, foreign, state, or local governmental authorities in response to their request in connection with the hiring or retention of an employee, disciplinary or other administrative action concerning an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

(4) To non-governmental parties where those parties may have information the Office of Inspector General seeks to obtain in connection with an investigation or inquiry.

(5) To independent auditors or other private firms or individuals with which the Office of Inspector General has contracted to carry out an independent audit, or to provide support for audits, reviews, investigations or other inquiries. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

(6) To respond to subpoenas in any litigation or other proceeding.

(7) To the Department of Justice and/or the Office of General Counsel of the Commission when the defendant in litigation is: (a) any component of the Commission or any employee of the Commission or any employee of the Commission in his or her official capacity; (b) the United States where the Commission determines that the claim, if

successful, is likely to directly affect the operations of the Commission; or (c) any Commission employee in his or her individual capacity where the Department of Justice and/or the Office of General Counsel of the Commission agree to represent such employee.

(8) To a Congressional office in response to an inquiry from the Congressional office made at the request of an individual but only from the record of that individual.

(9) To inform complainants, victims, and witnesses of the results of an investigation or inquiry.

(10) To qualified individuals or organizations in connection with the performance of a peer review or other study of the Office of Inspector General's audit or investigative functions.

(11) To a federal agency responsible for considering debarment or suspension action if the record would be relevant to such action.

(12) To the Department of Justice for the purpose of obtaining its advice on Freedom of Information Act matters.

(13) To the Office of Management and Budget for the purpose of obtaining its advice on Privacy Act matters.

(14) To a public or professional licensing organization if the record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

(15) To the Office of Government Ethics (OGE) to comply with agency reporting requirements established by OGE in 5 CFR part 2638, subpart F.

(16) To the news media and the public when there exists a legitimate public interest (e.g., to provide information on events in the criminal process, such as an indictment).

(17) To the Integrity Committee of the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency, another Federal Office of Inspector General, or other federal law enforcement office in connection with an investigation, inquiry or review conducted pursuant to Executive Order 12993, or at the request of the SEC Inspector General.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Office of Inspector General Investigative Files consists of paper records maintained in folders, binders and logbooks; various records in electronic form; and an automated data base. The folders, binders and logbooks are stored in the Office of Inspector General's file cabinets and offices. The automated data base and electronic records are maintained on a file server and backup tapes in encrypted form.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or inquiry, or by a unique control number assigned to each investigation or inquiry.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file rooms or locked offices at all other times.

RETENTION AND DISPOSAL:

The Investigative Files are kept in accordance with the Office of Inspector General's record retention schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-2736.

NOTIFICATION PROCEDURES:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-7, Alexandria, VA 22312-2413.

RECORD ACCESS AND CONTESTING PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of this record may contact the Privacy Act Officer, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-7, Alexandria, VA 22312-2413.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, corporations and other entities; records of individuals and of the Commission; records of other entities; federal, foreign, state or local bodies and law enforcement agencies; documents and correspondence relating to litigation; transcripts of testimony; and miscellaneous other sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records, to the extent it pertains to the enforcement of criminal laws, is exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2), this system of records to the extent it consists of investigatory material compiled for law enforcement purposes, is exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

These exemptions are contained in 17 CFR 200.313.

By the Commission.

Nancy M. Morris
Secretary

Date: May 24, 2006