

retain voting shares of Farmers and Merchants National Bank.

2. *Austin P. Buerge, individually, as managing member of APB Investments, LLC, and as trustee of The Robin K. Buerge Spouse's 2020 Trust and The Austin P. Buerge 2020 Separate Property Trust, all of Tulsa, Oklahoma*; to become members of the Buerge Family Group, a group acting in concert, to acquire voting shares of Grand Capital Corporation, and thereby indirectly acquire voting shares of Grand Bank, both in Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, November 20, 2020.

**Michele Taylor Fennel,**

*Deputy Associate Secretary of the Board.*

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## FEDERAL TRADE COMMISSION

[File No. 201 0014]

### Stryker and Wright Medical; Analysis of Consent Orders To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement; correction.

**SUMMARY:** The Federal Trade Commission published a document in the **Federal Register** of November 9, 2020, concerning the proposed consent agreement in the Matter of Stryker and Wright Medical. That document did not contain the Statement of Commissioner Rohit Chopra regarding this matter. This document corrects the omission.

#### FOR FURTHER INFORMATION CONTACT:

Jonathan Ripa (202-326-2230), Bureau of Competition, 600 Pennsylvania Avenue NW, Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

#### Correction

In the **Federal Register** of November 9, 2020, in FR Doc. 2020-24813, on page 71343, in the first column, after the signature of April J. Tabor, Acting Secretary, add the following:

#### Statement of Commissioner Rohit Chopra

Independent monitors and watchdogs are shadow regulators that promise to impartially report to the government. These individuals are typically paid by companies engaged in alleged wrongdoing as part of a settlement. Monitors typically have relevant expertise in an industry and are often former government officials.

In this matter, the Federal Trade Commission is resolving allegations that

the merger between Stryker and Wright is unlawful by requiring divestitures and other provisions that will be overseen by an independent monitor. I write separately to detail some of my ongoing concerns regarding the lack of adequate protections against independent monitor conflicts of interest in FTC orders.

#### Monitor Independence

Over the last twenty years, there has been substantial concern about whether auditors and other third parties are truly independent, or whether they are influenced by seeking additional fees for future business.<sup>1</sup> When it comes to monitors of settlements, an independent monitor ideally believes its primary responsibilities are to the government agency that relies on their work to ensure compliance with a settlement or order.

Unfortunately, they are not always so independent, given potential incentives for their firms to seek additional business with companies subject to monitoring. For example, in the FTC's investigation of Facebook for compliance with its privacy obligations under a 2012 Commission order, the FTC alleged major violations of the order even though PriceWaterhouseCoopers (PwC) was supposedly providing an independent assessment of the company's compliance.<sup>2</sup> In fact, I am unable to identify any recent case where a monitor has identified a material order violation that led to a subsequent penalty action.

The Commission's practice is to have the party alleged to have engaged in a law violation propose a monitor, subject to Commission approval. The party is also responsible for paying the monitor's fees, which can be substantial.

In this matter, the Commission has appointed a monitor who is an

employee of a French-based global advisory business, Mazars, which provides consulting, accounting, tax, and other services.<sup>3</sup> The agency's order requires the monitor to simply self-report any potential conflicts of interest. While this is better than nothing, it is not adequate, particularly when the monitor is employed by a large firm that offers a wide array of consulting and compliance-related services to companies like the targets in this matter. For example, will the monitor need to self-report a conflict when other units of Mazars bid for business with the merged entity? Many of these questions are unclear.

#### Protecting the Public From Conflicts of Interest

The Commission should strengthen the conflict-of-interest and transparency provisions in our orders related to monitors across the FTC's mission by exploring whether to:

- Require monitors and their employers to agree to non-solicit provisions for a period of time after the completion of a monitoring engagement.<sup>4</sup>
- Publish certain work products of monitors that detail their activities to ensure order compliance.<sup>5</sup>
- Create open application processes for potential monitors to detail their qualifications, as the Commission pursued in the Herbalife matter.<sup>6</sup>
- Require monitors to attest, under penalty of perjury, that they hold no financial interests in the industry of the companies subject to monitoring.

I am skeptical that the Commission can truly remedy anticompetitive harm with complex settlements that require independent monitors. While many monitors certainly provide independent advice and analysis, it is critical that their actions are never distorted by any real or perceived conflicts of interest.

<sup>1</sup> Ken Brown & Ianthe Jeanne Dugan, *Arthur Anderson's Fall From Grace Is a Sad Tale of Greed and Miscues*, Wall St. J. (June 7, 2002), <https://www.wsj.com/articles/SB1023409436545200>; Ben Protess & Jessica Silver-Greenberg, *New York Regulator Moves to Suspend Promontory Financial*, N.Y. Times: DealBook/Business & Pol'y (Aug. 3, 2015), <https://www.nytimes.com/2015/08/04/business/dealbook/new-york-regulator-moves-to-suspend-promontory-financial.html>; Jeff Horwitz, *US to fire monitor overseeing formerly for-profit colleges*, The Seattle Times (Mar. 14, 2016), <https://www.seattletimes.com/business/trouble-remains-following-failed-for-profit-schools-revival-3/>.

<sup>2</sup> See Nitasha Tiku, *Facebook's 2017 Privacy Audit Didn't Catch Cambridge Analytica*, Wired (Apr. 19, 2018), <https://www.wired.com/story/facebook-2017-privacy-audit-didnt-catch-cambridge-analytica/>; see also Dissenting Statement of Commissioner Rohit Chopra In re Facebook, Inc., Comm'n File No. 1823109 (July 24, 2019), [https://www.ftc.gov/system/files/documents/public\\_statements/1536911/chopra\\_dissenting\\_statement\\_on\\_facebook\\_7-24-19.pdf](https://www.ftc.gov/system/files/documents/public_statements/1536911/chopra_dissenting_statement_on_facebook_7-24-19.pdf).

<sup>3</sup> Analysis of Agreement Containing Consent Orders to Aid Public Comment, In the Matter of Stryker/Wright Medical, File No. 191-0039; see also *About Us*, Mazars (last visited Nov. 2, 2020), <https://mazarsusa.com/about/>.

<sup>4</sup> See Statement of Commissioner Rohit Chopra Regarding Miniclip and the COPPA Safe Harbors, Comm'n File No. 1923129, (May 18, 2020), [https://www.ftc.gov/system/files/documents/public\\_statements/1575579/192\\_3129\\_miniclip\\_-\\_statement\\_of\\_cmr\\_chopra.pdf](https://www.ftc.gov/system/files/documents/public_statements/1575579/192_3129_miniclip_-_statement_of_cmr_chopra.pdf).

<sup>5</sup> See Statement of Commissioner Rohit Chopra In the Matter of Uber Technologies Inc., Comm'n File No. 1523054, (Oct. 26, 2018), [https://www.ftc.gov/system/files/documents/public\\_statements/1418195/152\\_3054\\_c-4662\\_uber\\_technologies\\_chopra\\_statement.pdf](https://www.ftc.gov/system/files/documents/public_statements/1418195/152_3054_c-4662_uber_technologies_chopra_statement.pdf).

<sup>6</sup> See In the Matter of Federal Trade Commission, Plaintiff, v. Herbalife International of America, Inc., Applications for Compliance Auditors, (Aug. 31, 2016), <https://www.ftc.gov/public-statements/2016/08/applications-herbalife-independent-compliance-auditor>.

Dated: November 20, 2020.

**April J. Tabor,**

*Acting Secretary.*

[FR Doc. 2020–26104 Filed 11–24–20; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0018; Docket No. 2020–0053; Sequence No. 18]

#### Information Collection; Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and an extension concerning alternatives to Government-unique standards. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through February 28, 2021. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

**DATES:** DoD, GSA, and NASA will consider all comments received by January 25, 2021.

**ADDRESSES:** DoD, GSA, and NASA invite interested persons to submit comments on this collection through <http://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment

field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

**Instructions:** All items submitted must cite OMB Control No. 9000–0018, Federal Acquisition Regulation (FAR) Part 3: Improper Business Practices and Personal Conflicts of Interest. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov>, approximately two-to-three days after submission to verify posting.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Hawes, Procurement Analyst, at telephone 202–969–7386, or [jennifer.hawes@gsa.gov](mailto:jennifer.hawes@gsa.gov).

#### SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0018, Federal Acquisition Regulation (FAR) Part 3: Improper Business Practices and Personal Conflicts of Interest.

#### B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify all burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision and extension of OMB Control No. 9000–0018 and combines it with the previously approved information collections under OMB Control No. 9000–0091, with the new title “Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest.” Upon approval of this consolidated information collection, OMB Control No. 9000–0091 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0018.

This clearance covers the information collection that offerors or contractors must submit to comply with the following requirements in FAR Part 3:

- *52.203–2, Certificate of Independent Price Determination.* This solicitation provision requires an offeror to certify that the prices in their offer have been arrived at independently, have not been or will not be knowingly disclosed, and have not been submitted for the purpose of restricting competition. This clause is used to ensure that Government contracts are not awarded to firms violating antitrust laws.

- *52.203–7, Anti-Kickback Procedures.* This contract clause requires contractors to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General possible violations of 41 U.S.C. Chapter 87, Kickbacks, and to notify the contracting officer when monies are withheld from sums owed a subcontractor under the prime contract when the contracting officer has directed the prime contractor to do so to offset the amount of a kickback. The information reported by contractors will be used by the Federal agency to investigate potential violations.

- *52.203–13, Contractor Code of Business Ethics and Conduct.* This contract clause requires contractors and subcontractors to report to the agency Office of the Inspector General, whenever it has credible evidence that a principal, employee, agent, or subcontractor of the contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C., or a violation of the Civil False Claims Act (31 U.S.C. 3729–3733). The information will be used by the Federal agency to investigate suspected violations.

- *52.203–16, Preventing Personal Conflicts of Interest.* This contract clause requires contractors and subcontractors to obtain and maintain from employees assigned to a task under a contract, a disclosure of interests that might be affected by the task to which the employee has been assigned. Contractors must report to any personal conflict of interest violation by a covered employee and the proposed actions to be taken. In exceptional circumstances, the contractor may request the head of the contracting activity approve a plan to mitigate the personal conflict of interest or waive the requirement to prevent personal conflicts of interest. This information is used by the contractor and the contracting officer to identify and mitigate personal conflicts of interest.