

FINAL ORDER – THIS PRELIMINARY DETERMINATION BECAME THE FINAL ORDER OF THE COMMISSION ON NOVEMBER 21, 2023, PURSUANT TO RULE 21F-10(f) OF THE SECURITIES EXCHANGE ACT OF 1934

Notice of Covered Action [REDACTED]

Reference Number: 11212023

PRELIMINARY DETERMINATION OF THE CLAIMS REVIEW STAFF

On [REDACTED], the Claims Review Staff (“CRS”) issued a preliminary determination (the “[REDACTED] PD”) recommending that the award claim for the Covered Action submitted by [REDACTED] (“Claimant”) be denied. The [REDACTED] PD preliminarily determined that Claimant did not qualify as a whistleblower – and thus was ineligible for an award – because he/she did not provide the Commission with information relating to a possible securities law violation in the manner required under Exchange Act Rule 21F-9(a), namely that Claimant failed to submit his/her information relating to the Covered Action on Form TCR or through the Commission's on-line system. The [REDACTED] PD also preliminarily determined that Claimant was ineligible for an award because he/she did not sign the required whistleblower declaration, as required under Exchange Act Rule 21F-9(b). Claimant timely contested the [REDACTED] PD. On [REDACTED], the CRS issued a Proposed Final Determination (“[REDACTED] PFD”) recommending that the Commission deny Claimant’s claim for the same reasons it had articulated in the [REDACTED] PD.

Following the issuance of the [REDACTED] PFD, the CRS reevaluated Claimant’s award claim to determine whether, notwithstanding the two grounds for denial set out in the [REDACTED] PFD, Claimant’s information may have led to the successful enforcement of the Covered Action. Accordingly, the CRS has again reviewed the record and has preliminarily determined to recommend that the Commission deny the Claimant’s award claim. The bases for this new determination is as follows.

First, Claimant is not a “whistleblower” under Exchange Act Rule 21F-2(a)(1). To qualify as a whistleblower, an individual must provide the Commission with information relating to a possible securities law violation pursuant to the procedures set forth in Exchange Act Rule 21F-9(a), which Claimant did not do. Specifically, Claimant did not submit information to the Commission on Form TCR or through the Commission’s on-line system relating to the Covered Action.¹ Second, Claimant is ineligible for an award because Claimant did not sign the required

¹ The record reflects that Claimant submitted emails to Commission staff in or around [REDACTED] relating to the Covered Action, but they were not accompanied by a Form TCR or submitted through the Commission’s on-line system.

In Claimant’s contest of the [REDACTED] PD, Claimant points to what he/she perceives as disparate treatment of another of Claimant’s award claims in a matter unrelated to the Covered Action or the underlying investigation, where Claimant also failed to submit a Form TCR. However, the information Claimant provided to the Commission

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whistleblower declaration as required under Exchange Act Rule 21F-9(b). Third, the information Claimant submitted to the Commission did not lead to the successful enforcement of the Covered Action, in that it neither caused the Commission to open the underlying investigation or inquire concerning different conduct as part of a current examination or investigation, nor did it significantly contribute to the existing investigation or the success of the Covered Action.²

By: Claims Review Staff
Date: July 20, 2023

in that other award claim was submitted in 2010, before the effective date of the whistleblower rules. Exchange Act Rule 9(d), 17 C.F.R. § 240.21F-9(d), provides that “[i]f you submitted original information in writing to the Commission after July 21, 2010 (the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act) but before the effective date of these rules, your submission will be deemed to satisfy the requirements set forth in paragraphs (a) and (b) of [Rule 21F-9].” Claimant submitted his/her information about the Covered Action in [REDACTED], which is after the effective date of the whistleblower rules. Thus, unlike in Claimant’s other award claim, in order to be eligible for an award in the Covered Action, Claimant was required to comply with the requirements of Exchange Act Rules 21F-9(a) and (b), 17 C.F.R. §§ 240.21F-9(a) and (b).

² Two Division of Enforcement staff attorneys who were assigned to the Covered Action and underlying investigation provided sworn declarations which averred that: (1) the investigation was opened as a result of a referral from another regulatory entity and that the referral made no mention of, or reference to, information provided by Claimant; (2) Claimant’s information was vague, non-specific, and/or duplicative of information the staff already had received at that time in its investigation; and (3) none of the information provided by Claimant caused the opening of the investigation nor did it help advance the investigation and none of Claimant’s information was used in, or had any impact on, the charges brought by the Commission in the Covered Action. A third declaration confirmed that while the other regulatory entity referred the misconduct to Commission staff based in part on a tip it received, that tip was not provided by Claimant.