

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 81857 / October 12, 2017
WHISTLEBLOWER AWARD PROCEEDING
File No. 2018-1

In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action ^{Redacted}

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On April 21, 2017, the Claims Review Staff issued a Preliminary Determination related to Notice of Covered Action ^{Redacted} which was issued in connection with the Commission's successful resolution of the above-referenced enforcement action (the "Covered Action"). The Preliminary Determination recommended that ^{Redacted} ("Claimant") receive a whistleblower award because Claimant voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78u-6(b)(1), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).

Further, the Claims Review Staff recommended that Claimant's award be set in the amount of ^{Redacted} percent ^{Redacted} of the monetary sanctions collected or to be collected in the Covered Action, which will yield an award of more than \$1,000,000. In reaching this recommendation, the Claims Review Staff considered the factors set forth in Rule 21F-6, 17 C.F.R. § 240.21F-6, in relation to the facts and circumstances of Claimant's application.

On April 24, 2017, Claimant provided written notice to the Commission of Claimant's decision not to contest the Preliminary Determination within the 60-day deadline set out in Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

Upon due consideration under Rules 21F-10(f) and (h), 17 C.F.R. § 240.21F-10(f) and (h), the Preliminary Determination of the Claims Review Staff is adopted, including the award determination. The record demonstrates that Claimant has satisfied all criteria for award.¹ Claimant, a company outsider, provided the Commission with new information and substantial corroborating documentation of a securities law violation by a registered entity that impacted retail customers. Claimant's tip prompted staff to

¹ Specifically as to the facts and circumstances of Claimant's claim for an award, the Commission hereby finds that extraordinary circumstances exist to warrant a waiver of the requirement in Rule 21F-9(b), 17 C.F.R. § 240.21F-9(b), that to be eligible for an award, a claimant must have signed a declaration under penalty of perjury at the time that the initial tip was submitted to the Commission. *See* 17 C.F.R. § 240.21F-8(a). Under Rule 21F-8(a), "the Commission may, in its sole discretion, waive any of [the] procedures based upon a showing of extraordinary circumstances." In determining whether a claimant has demonstrated extraordinary circumstances for purposes of Rule 21F-8(a), we have previously looked to our decision in *In the Matter of the Application of PennMont Sec.*, Exchange Act Release No. 61967, 2010 WL 1638720 (April 23, 2010), *aff'd PennMont Sec. v. SEC*, 414 F. App'x 465 (3d. Cir. 2011). There, in determining whether extraordinary circumstances were shown to permit an untimely filing under Commission Rule of Practice 420(b), 17 C.F.R. § 201.420(b), we explained that "the 'extraordinary circumstances' exception is to be narrowly construed and applied only in limited circumstances." *PennMont*, 2010 WL 1638720 at *4. An extraordinary circumstance is one "where the reason for the failure timely to file was beyond the control of the applicant that causes the delay." *Id.*; *see also Order Determining Whistleblower Award Claim*, Exchange Act Release No. 72178 (May 16, 2014); *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 72659 (July 23, 2014); *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 77368 (Mar. 14, 2016), *aff'd sub nom. Cerny v. SEC*, No. 16-934, 2017 WL 3911581 (2d Cir. Sept. 7, 2017). Moreover, the existence of an extraordinary circumstance is assessed based on the facts as they existed at the time that the failure occurred with the critical question being whether those then-existing facts and circumstances were sufficiently beyond the control of the claimant to justify the procedural deficiency. Although Claimant did not submit a declaration at the time of the initial submission of the tip, Claimant's failure was the result of the Commission's online configuration and beyond Claimant's control. Furthermore, when staff alerted Claimant to the issue, Claimant promptly submitted a signed declaration at the staff's request. Thus, we have determined that a waiver of the requirement to submit a signed declaration at the time of the initial tip's submission is appropriate given the specific facts and circumstances of this case.

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that ultimately led to the claims that were the basis of the Commission's successful Covered Action against the entity.

Conclusion

Accordingly, it is hereby ORDERED that Claimant shall receive an award of Redacted percent^{Redacted} of the monetary sanctions collected in this Covered Action, including any monetary sanctions collected after the date of this Order.

By the Commission.

Brent J. Fields
Secretary