

FINAL ORDER – THIS PRELIMINARY DETERMINATION BECAME THE FINAL ORDER OF THE COMMISSION ON MARCH 9, 2014 PURSUANT TO RULE 21F-10(f) OF THE EXCHANGE ACT

Notice of Covered Action 2011- 46
SEC v. Esposito, et al., C.A. No. 08:00494 T26 (M.D. Fla.)

PRELIMINARY DETERMINATION OF THE CLAIMS REVIEW STAFF

In response to the above-referenced Notice of Covered Action, the U.S. Securities and Exchange Commission (the “Commission”) received one whistleblower award claim from Claimant (“Claimant”). Pursuant to Section 21F of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 21F-10 promulgated thereunder, the Claims Review Staff has evaluated the claim in accordance with the criteria set forth in Rules 21F-1 through 21F-17. The Claims Review Staff sets forth its Preliminary Determination as follows.

The Claims Review Staff has preliminarily determined to recommend that the Commission deny an award to Claimant. The basis for this determination is as follows:

1. Claimant failed to submit the claim for award within ninety (90) days of the above-referenced Notice of Covered Action, as required under Rule 21F-10(a) of the Exchange Act. Furthermore, Claimant has failed to demonstrate that the Commission should waive, in its discretion, the filing deadline based on “extraordinary circumstances,” as provided under Rule 21F-8(a) of the Exchange Act, because Claimant failed to diligently pursue the claim for award upon termination of the purported “extraordinary circumstances;”¹ and
2. Claimant failed to provide “original information” to the Commission, as that term is defined under Rule 21F-4(b)(1) of the Exchange Act, because Claimant did not provide information for the first time to the Commission after July 21, 2010, the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.²

By: Claims Review Staff

Date: January 8, 2014

¹ Cf. In the Matter of the Application of PennMont Securities et al., SEC Rel. No. 61967, Release No. 34-61967, 2010 WL 1638720 (April 23, 2010), aff’d PennMont Securities et al. v. SEC, 2011 WL 658560 (3d. Cir. 2011).

² See In the Matter of the Claim for Award in connection with SEC v. Advanced Technologies Group LTD, Alexander Stelmak, and Abelis Raskas, LLC, 10-cv-4868 (S.D.N.Y. 2011), Release No. 70772 (October 30, 2013), at 8-12.