PRELIMINARY DETERMINATION OF THE CLAIMS REVIEW STAFF

In response to the above-referenced Notice of Covered Action, the U.S. Securities and Exchange Commission ("Commission") received whistleblower award claims from joint claimants (Claimant 2) and (Claimant 3).

Pursuant to Section 21F of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 21F-10 promulgated thereunder, the Claims Review Staff has evaluated the claims in accordance with the criteria set forth in Rules 21F-1 through 21F-17.
Claimants 2, 3, [redacted] 

The Claims Review Staff has also preliminarily determined to recommend that the Commission deny the award claims of Claimant 2, Claimant 3, [redacted]. The basis for this determination is as follows:

Claimants 2, 3, [redacted] did not provide information that led to the successful enforcement of the above-referenced Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder because their information did not:

a. cause the Commission to commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of the information under Rule 21F-4(c)(1) of the Exchange Act; or

b. significantly contribute to the success of the Covered Action under Rule 21F-4(c)(2) of the Exchange Act.

In making this preliminary determination, we note that the record reflects that joint Claimants 2 and 3 began providing [redacted] on [redacted] and within 120 days, submitted a whistleblower tip on Form TCR, to the Commission, dated [redacted]. As such, we preliminarily credit Claimants 2 and 3 with having reported to the Commission as of [redacted] any information that they provided to both the [redacted] and to

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1 Claimants 2, 3, [redacted] also applied for an award in connection with an action brought by [redacted] ("Covered Action"). We are preliminarily determining to recommend that their claims for an award in connection with the Covered Action be denied for two reasons. First, Claimants 2, 3, [redacted] are not eligible for an award in the Commission’s Covered Action. A related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable covered action in the first instance. See, e.g., Order Determining Whistleblower Award Claims, Exchange Act Release No. 86902 (Sept. 9, 2019); Order Determining Whistleblower Award Claims, Exchange Act Release No. 84506, 2018 SEC LEXIS 3031, at *8 n.5 (Oct. 30, 2018) (same); Order Determining Whistleblower Award Claim, Exchange Act Release No. 84503, 2018 SEC LEXIS 3030, at *7 n.4 (Oct. 30, 2018) (same); Order Determining Whistleblower Award Claims, Exchange Act Release No. 84596, 2017 SEC LEXIS 1318, at *11 n.10 (May 4, 2017) (same); 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (h), and Rule 21F-11(a). Second, the Covered Action was a state civil action and therefore does not qualify as a related action under the Commission’s whistleblower rules. See Exchange Act Rule 21F-3(b)(1)(iv).
the Commission. But even thus crediting Claimants 2 and 3 with reporting to the Commission as of [redacted] (as opposed to [redacted]), the record is clear that no information they provided led to the successful enforcement of the Covered Action. First, Enforcement staff had already opened the investigation that resulted in the Covered Action in [redacted] based on information provided by [redacted]. Second, prior to [redacted], Enforcement staff was aware of every issue subsequently charged by the Commission against [redacted] in the Covered Action, because of information and documentation provided by [redacted] or through their own investigative efforts. As such, Claimants 2 and 3’s information was generally duplicative of information already known by the Enforcement staff. Third, although Claimants 2 and 3 provided certain new information concerning other alleged misconduct by [redacted], staff was not able to corroborate those allegations, and they did not become part of the charges against [redacted] in the Covered Action. In short, none of the information from Claimants 2 or 3 either caused Enforcement staff to open the investigation or significantly contributed to the success of the enforcement action.

By: Claims Review Staff

Date: November 19, 2019

2 See Exchange Act Rule 21F-4(b)(7). Claimant 2 and Claimant 3 erroneously argue in their whistleblower award application that they should be deemed to have reported to the Commission in [redacted] 120 days before reporting to the [redacted]. However, Rule 21F-4(b)(7) provides a limited safe-harbor process for claimants who provide their information to the Commission pursuant to Rule 21F-9 within 120 days of internally reporting their information or reporting their information to another regulator. The safe harbor does not extend to reports made by claimants to other agencies within 120 days of an internal report.