

**FINAL ORDER – THIS PRELIMINARY DETERMINATION BECAME THE FINAL ORDER  
OF THE COMMISSION ON FEBRUARY 11, 2018  
PURSUANT TO RULE 21F-10(f) OF THE EXCHANGE ACT**

Redacted

**PRELIMINARY DETERMINATION OF THE CLAIMS REVIEW STAFF**

In response to the above-referenced Notice of Covered Action, the U.S. Securities and Exchange Commission received two whistleblower award claims from <sup>Redacted</sup> (“Claimant 1”) and <sup>Redacted</sup> (“Claimant 2”).

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 claims in accordance with the criteria set forth in Rules 21F-1 through 21F-17. The Claims Review Staff has preliminarily determined to recommend that the Commission deny an award to both Claimants. The basis for this determination is as follows:

**Claimant 1**

Claimant 1 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 Claimant’s 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 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.<sup>1</sup>

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<sup>1</sup>In support of this conclusion, we note that the record demonstrates that the information that Claimant 1 identified and attached to Form WB-APP as the information that provided in connection with this Covered Action was never provided to the staff responsible for the Covered Action. The information was reviewed by other staff in the Office of Market Intelligence and, based on that review, it was marked for a disposition of “No Further Action,” meaning that no further action would occur with respect to that submission unless subsequent information led the staff to reevaluate that assessment. Moreover, the Covered Action staff never reviewed or used any of Claimant 1’s information in pursuing the Covered Action or undertaking the underlying investigation.

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**Claimant 2**

We preliminary recommend that the Commission deny Claimant 2’s award application. Claimant 2 failed to submit the claim for award to the Office of the Whistleblower within ninety (90) days of the posting of the above-referenced Notice of Covered Action, as required under Rule 21F-10(a) of the Exchange Act.<sup>2</sup> Claimant’s award application was three-months late.

Although Claimant 2 has requested a waiver of the filing deadline under Rule 21F-8(a) of the Exchange Act, we preliminarily recommend that the Commission decline to grant one. *First*, Claimant 2 has failed to demonstrate that the untimely application was a result of “extraordinary circumstances.”<sup>3</sup> *Second*, even if Claimant could demonstrate extraordinary circumstances, we would nonetheless recommend that the Commission decline to exercise its sole discretion to waive the filing deadline because Claimant 2’s award application lacks merit.<sup>4</sup>

By: Claims Review Staff

Date: December 13, 2017

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<sup>2</sup> See *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).

<sup>3</sup> *In the Matter of the Application of PennMont Securities et al.*, SEC Rel No. 34-61967, 2010 WL 1638720 (Apr. 23, 2010), *aff’d* 414 Fed. Appx. 465 (3d Cir. 2011); see also *Order Determining Whistleblower Award Claim*, Release No. 72178 (May 16, 2014) (no “extraordinary circumstances” where claimant’s untimeliness was due to lack of awareness about the whistleblower program).

<sup>4</sup> The record demonstrates that Claimant 2 submitted two Form TCRs, both before the whistleblower award program was established by Congress on July 21, 2010; these submissions would not qualify as “original information” and, therefore, could not be the basis for an award. See Exchange Act Rule 21F-4(b)(iv). Further, Claimant has not identified any submissions to the Commission after July 21, 2010 that the Claimant made in accordance with the requirements of Exchange Act 21F-9. Finally, the record demonstrates that any information that Claimant 2 might have provided did not “lead to” the success of the Covered Action. See Exchange Act Rule 21F-4(c)(1) & (2). The Enforcement staff responsible for the Covered Action and the underlying investigation have never received any information from Claimant 2 or communicated with Claimant 2, and had no knowledge about Claimant 2.