

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 79604 / December 19, 2016

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2017-4

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In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action      Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

On July 13, 2015, the Claims Review Staff (“CRS”) issued a Preliminary Determination related to Notice of Covered Action Redacted and recommended that the award application submitted by Redacted (“Claimant 1”) be denied.<sup>1</sup> On May 4, 2016, the CRS issued a second Preliminary Determination (“Supplemental Preliminary Determination”) related to Notice of Covered Action Redacted in which it recommended that the untimely award application submitted by Redacted (“Claimant 2”) be denied.

For the reasons stated below, the award claims of Claimant 1 and Claimant 2 are denied.

**I. Background**

On Redacted the Commission instituted Redacted proceedings (the “Covered Action”) against Redacted (“Covered Action Respondent”). The Commission found that the Covered Action Respondent violated various provisions of the Securities Exchange Act of 1934 (“Exchange Act”). Among other sanctions, Covered Action Respondent was ordered to pay Redacted .

On Redacted the Commission’s Office of the Whistleblower (“OWB”) posted Notice of Covered Action Redacted for the Covered Action. The Notice of Covered Action expressly stated that an application for an award submitted on Form WB-APP must be completed and returned to the OWB no later than Redacted Claimant 1 filed a timely

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<sup>1</sup> The Preliminary Determination also recommended denying an award to three other claimants. Those determinations were not contested and, thus, the CRS’s recommendation to deny those award applications became final pursuant to Rule 21F-10(f) under the Securities Exchange Act of 1934.

whistleblower award claim with OWB. Claimant 2, by contrast, did not file a whistleblower award claim with OWB until nine months after the deadline announced in the Notice of Covered Action posting and more than three months after the CRS had issued the Preliminary Determination recommending the denial of Claimant 1's award application.

## **II. Preliminary Determinations and Responses**

### **A. Claimant 1**

On July 13, 2015, the CRS preliminarily determined to deny Claimant 1's award application because Claimant 1 did not provide information that led to the successful enforcement of the Covered Action. The CRS preliminarily found that Claimant 1's information did not cause the Commission to open its investigation (or inquire into different conduct as part of a current Commission investigation), nor did Claimant 1's information significantly contribute to the success of the subsequent enforcement action. *See* Section 21F(b)(1) of the Exchange Act, and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).

On July 29, 2015, Claimant 1 submitted a timely written response contesting the Preliminary Determination, which Claimant 1 then supplemented by another written response dated September 8, 2015.<sup>2</sup> In its responses, Claimant 1 reiterates the information that it had previously provided to the Commission and asserts without any factual support that this information significantly contributed to the success of the Covered Action.<sup>3</sup>

### **B. Claimant 2**

On May 4, 2016, the CRS preliminarily determined to deny Claimant 2's award application on three separate grounds:

- Claimant 2 failed to submit a claim for award on Form WB-APP within the requisite deadline set out in the Notice of Covered Action, as required under Rule 21F-10(b) of the Exchange Act, 17 C.F.R. § 240.21F-10(b);
- Claimant 2 did not provide information that led to the successful enforcement of the Covered Action in that Claimant 2's information did not cause the Commission to open its investigation (or inquire into different conduct as part of a

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<sup>2</sup> There are several procedural matters in connection with Claimant 1's reconsideration motion that we think it appropriate to address. *First*, Claimant 1 failed to enter into a confidentiality agreement with OWB regarding the non-public documents comprising the administrative record and, thus, we find that Claimant 1 forfeited any right to receive any non-public materials upon which the Preliminary Determination was based. *See* Rules 21F-8(b)(4) and 12(b) (authorizing the OWB to require a claimant to enter into a confidentiality agreement regarding non-public materials that comprise the administrative record). *Second*, Claimant 1 has requested a meeting with the Commission, which we construe as a request for oral argument. We are denying that request because we find that oral argument would not benefit the Commission's consideration of Claimant 1's award application.

<sup>3</sup> Claimant 1's responses also include various statements that appear to have no bearing on whether Claimant 1's information led to the success of the Covered Action.

current Commission investigation) nor did the information significantly contribute to the success of the subsequent enforcement action; and

- Claimant 2 failed to submit information about a possible securities law violation in the form and manner required by Exchange Act Rules 21F-8(a) and 21F-9 to be eligible for an award.

On July 5, 2016, Claimant 2 submitted a timely response contesting the Supplemental Preliminary Determination.<sup>4</sup> Claimant 2's response outlines the information Claimant 2 had sent the Commission about the Covered Action Respondent and asserts (without relevant factual support) that this information led to the opening of the investigation and significantly contributed to the success of the Covered Action. Claimant 2's response also asserts both that Claimant 2 did not submit award application after the deadline announced in the posted Notice of Covered Action and that Claimant 2's information was submitted in the form and manner required under the applicable rules.

### III. Analysis

To qualify for an award under Section 21F of the Exchange Act, an individual must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action. 15 U.S.C. § 78u-6(b)(1). As relevant here, original information "leads to" the success of a covered action if either: (i) the original information caused the staff to open an investigation, reopen an investigation, or inquire into different conduct as part of a current investigation, and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information; or (ii) the conduct was already under examination or investigation, and the original information significantly contributed to the success of the covered action. Exchange Act Rule 21F-4(c)(1)-(2), 17 C.F.R. § 240.21F-4(c)(1)-(2).

We find that neither Claimant 1 nor Claimant 2 submitted information that led to the successful enforcement of the Covered Action. *First*, the record conclusively demonstrates that the tips submitted by both Claimants were closed by the Office of Market Intelligence ("OMI"), the office within the Division of Enforcement that is responsible for conducting the initial review of tips. The tips were assigned a disposition of no further action (or "NFA")<sup>5</sup> and were not forwarded to the Enforcement staff responsible for the investigation that led to the Covered

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<sup>4</sup> Claimant 2 failed to enter into a confidentiality agreement with OWB regarding the non-public documents comprising the administrative record and, thus, we find that Claimant 2 forfeited any right to receive any non-public materials upon which the Supplemental Preliminary Determination was based. *See* Rules 21F-8(b)(4) and 12(b) (authorizing the OWB to require a claimant to enter into a confidentiality agreement regarding non-public materials that comprise the administrative record).

<sup>5</sup> When a tip is designated "NFA" by OMI, this means both that the tip was not provided to any Enforcement or other Commission staff for further action—*i.e.*, the information was deemed to be insufficient to initiate an inquiry, investigation, or examination and was deemed not to be useful to any ongoing investigation or examination. Further, when a tip is designated NFA, this signifies that no further steps will be taken in connection with the tip unless subsequent information leads to a reopening or reexamination of that tip.

Action (or to any other Enforcement staff outside of OMI). *Second*, the investigative staff confirmed that they do not know either Claimant 1 or Claimant 2, have had no communications with either of them, and did not receive any information from either Claimant 1 or Claimant 2 before or during the course of their investigation, or at any time prior to the filing of the Covered Action.

Because the record demonstrates that neither Claimant’s information led to the successful enforcement of the Covered Action and neither Claimant has shown otherwise in their respective requests for reconsideration, we deny both Claimant 1’s and Claimant 2’s applications for awards on that ground.

In addition, we deny Claimant 2’s award application on two additional, independent grounds.

*First*, Claimant 2 did not submit [redacted] information about a potential securities law violation on a Form TCR, nor did Claimant 2 submit it through the TCR online portal. As such, Claimant 2 failed to submit [redacted] information in the form and manner required by Exchange Act Rules 21F-8(a) and 21F-9, 17 C.F.R. §§ 240.21F-8(a) and (9), to be eligible for an award.<sup>6</sup> In this regard, we note that following receipt of [redacted] tip, OWB on June 3, 2013 sent Claimant 2 a letter advising [redacted] of the requirement under the whistleblower rules that [redacted] must submit a signed Form TCR in order to be considered for a future whistleblower award. Claimant 2 failed to respond to OWB’s letter by promptly filing the necessary signed Form TCR.

*Second*, as noted, Claimant 2’s award claim was submitted nine months after the deadline announced in the Notice of Covered Action posting and more than three months after the CRS issued its Preliminary Determination denying Claimant 1’s claim. Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a), requires claimants to file a claim for an award within ninety (90) days of the publication of the Notice of Covered Action on the Commission’s website, or “the claim will be barred.” Exchange Act Rule 21F-10(b), 17 C.F.R. § 240.21F-10(b), further provides that to file a claim for a whistleblower award, a claimant must file his or her award application on Form WB-APP with OWB “within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award.” The record conclusively demonstrates that Claimant 2 failed to file a timely Form WB-APP. In Claimant 2’s response contesting the Supplemental Preliminary Determination, Claimant 2 references an award application on Form WB-APP that Claimant 2 filed in October 2014, but this award application was for a different covered action involving the Covered Action Respondent. Claimant 2 appears to have mistaken two different covered actions and believes, incorrectly, that [redacted] October 2014 award claim submission was for the Covered Action when, in fact, it was for a different unrelated enforcement action [redacted] (NoCA [redacted])

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<sup>6</sup> Rule 21F-8(a) requires that, in order to be eligible for a whistleblower award, a whistleblower “must give the Commission information in the form and manner that the Commission requires,” specifically referencing the TCR submission procedures set out in Rule 21F-9.

\*\*\* . We thus find that Claimant 2 failed to timely submit \*\*\* claim for the Covered Action as required by Exchange Act Rules 21F-10(a) and (b), 17 C.F.R. § 240.21F-10(a) and (b).<sup>7</sup>

#### **IV. Conclusion**

Accordingly, it is ORDERED that the whistleblower award claims of Claimant 1 and Claimant 2 are denied.

By the Commission.

Brent J. Fields  
Secretary

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<sup>7</sup> We note that Claimant 2 has failed to show any “extraordinary circumstances” to explain either of the procedural failures. We require evidence of extraordinary circumstances that explains a procedural failure before we will consider exercising our discretion to excuse a late filing or other procedural requirement.