

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 81227 / July 27, 2017

WHISTLEBLOWER AWARD PROCEEDING

File No. 2017-13

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In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

On April 21, 2017, the Claims Review Staff (“CRS”) issued a Preliminary Determination related to Notice of Covered Action Redacted 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 above-referenced 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).<sup>1</sup> Although Claimant did not comply with Exchange Act Rule 21F-9(d) – an omission which might normally require an award denial – the CRS recommended that the Commission waive that rule here given certain unusual circumstances (which are discussed in footnote 4, below).<sup>2</sup>

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<sup>1</sup> Of particular note, Claimant, a company insider, reported an ongoing securities law violation to the Commission that would have otherwise been difficult to detect. Thereafter, Claimant provided critical information that helped end the multi-year fraud and, as a result, millions of dollars were returned to harmed investors.

<sup>2</sup> Rule 21F-9(d) requires that an individual must have provided original information “in writing” to the Commission in order for that information to be a basis for a whistleblower award if the information was first submitted to the Commission during the interim period between the enactment of the whistleblower program – *i.e.*, July 21, 2010, when the Dodd-Frank Wall Street

Further, the CRS recommended that such award be set in the amount of <sup>Redacted</sup> <sup>Redacted</sup> of the monetary sanctions collected, or to be collected, in the Covered Action, which will equal an award of more than \$1.7 million. In determining the amount of award to recommend, the CRS considered the following factors set forth in Rule 21F-6 of the Exchange Act as they apply to Claimant: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems.<sup>3</sup> On May 31, 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) promulgated under the Exchange Act, 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 CRS is adopted.<sup>4</sup> Accordingly, for the

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Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) was signed into law – and the effective date of the Commission’s whistleblower rules (*i.e.*, August 12, 2011).

<sup>3</sup> In determining the appropriate award percentage, we have considered that Claimant alerted the Commission to a serious, multi-year fraud that would have otherwise been difficult to detect, continued to provide substantial assistance to Enforcement staff during the investigation, <sup>Redacted</sup>. Against these factors, we have also considered that Claimant became aware of certain discrepancies indicative of the fraud <sup>Redacted</sup> <sup>Redacted</sup> before Claimant reported to the Commission. In applying the unreasonable reporting delay factor, we also considered that Claimant <sup>Redacted</sup>. Additionally, we have not applied the delay factor as severely here as we otherwise might have had the delay occurred after the whistleblower program was established by the Dodd-Frank Act and after the whistleblower protections were in place. Finally, Claimant bears some, *albeit* limited, culpability.

<sup>4</sup> We concur with the CRS’s recommendation that we exercise our discretionary authority to waive the Claimant’s non-compliance with Rule 21F-9(d). *See* Section 36(a) of the Exchange Act. We find that it is appropriate in the public interest and consistent with the protection of investors to do so in this matter given a number of unusual circumstances, including the following: (1) the Commission’s staff was already actively working with the Claimant before enactment of the Dodd-Frank Act; (2) the Claimant provided the new post-Dodd-Frank Act information in the format the Enforcement staff requested <sup>Redacted</sup> <sup>Redacted</sup> and (3) the indicia of reliability and the certainty as to the time that the information was provided, which are the policy rationales underlying the Rule 21F-9(d) writing provision, is clearly satisfied in the context of this claim because it is undisputed that Claimant <sup>Redacted</sup>.

reasons set forth in the Preliminary Determination, it is hereby ORDERED that Claimant shall receive an award of <sup>Redacted</sup> 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