

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 85936 / May 24, 2019
WHISTLEBLOWER AWARD PROCEEDING
File No. 2019-6

In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that Claimant ^{Redacted} (“Claimant”) receive a whistleblower award in the amount of ^{Redacted} percent (^{Redacted} %) of the monetary sanctions collected, or to be collected, in ^{Redacted} (“Covered Action”) and ^{Redacted} percent (^{Redacted} %) of the monetary sanctions collected, or to be collected, in a related ^{Redacted} action, ^{Redacted} (“Related Action”). These proposed awards would yield a likely payout to the Claimant of more than \$4.5 million. Claimant subsequently provided written notice of Claimant’s decision not to contest the Preliminary Determination.

The recommendation of the CRS is adopted. The record demonstrates that Claimant ^{Redacted} voluntarily provided the same original information to the Commission and to the ^{Redacted} (“Other Agency”), and that this information led to the successful enforcement of both the Covered Action and the Related 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 Rules 21F-3(a) and (b) thereunder, 17 C.F.R. § 240.21F-3(a), (b).¹

¹ See *In the Matter of Claim for Award*, Rel. No. 34-84046 (Sept. 6, 2018) (for a whistleblower to obtain an award in connection with a potential related action, the whistleblower must “demonstrate [that he or she] directly (or through the Commission) voluntarily provided the governmental agency, regulatory authority or self-regulatory organization the same original information that led to the Commission’s successful covered action, and that this information led to the successful enforcement of the related action.”) (citing

In reaching this determination, we have relied on Exchange Act Rule 21F-4(c)(3). Rule 21F-4(c) sets forth the circumstances under which we will find that original information submitted by a whistleblower led to the successful enforcement of a judicial or administrative action. The first two prongs of this rule—Rules 21F-4(c)(1) and (c)(2)—generally provide that this test will be met where the claimant’s original information either caused the staff to open an investigation that resulted in an enforcement action based on the reported conduct, or the claimant’s submission during an ongoing investigation significantly contributed to the success of the resulting enforcement action. Rule 21F-4(c)(3) offers an alternative path to an award for whistleblowers who report internally as well. That rule provides that original information will be deemed to have led to the successful enforcement of a judicial or administrative action if:

You reported original information through an entity’s internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time you reported them to the Commission; the entity later provided your information to the Commission, or provided results of an audit or investigation initiated in whole or in part in response to information you reported to the entity; and the information the entity provided to the Commission satisfies either paragraph (c)(1) or (c)(2) of this section. Under this paragraph (c)(3), you must also submit the same information to the Commission in accordance with the procedures set forth in §240.21F-9 within 120 days of providing it to the entity.

Rule 21F-4(c)(3) was one of several provisions we adopted as part of our whistleblower rules to incentivize whistleblowers to utilize internal compliance and reporting systems where appropriate.²

Applying Rule 21F-4(c)(3) to the facts of this matter, we find as follows: Initially, Claimant reported Claimant’s concerns to ^{Redacted} of ^{Redacted} (the “Company”)—persons responsible for the Company’s compliance with the law. Within 120 days of doing so, Claimant reported the same information to both the Commission, utilizing the procedures set forth in Rule 21F-9, and to the Other

Rule 21F-11(c)). The CRS also preliminarily denied Claimant’s award claim in connection with a previous action against the same defendant, ^{Redacted} that was in some respects related to the Covered Action in this matter. Claimant filed a response contesting that preliminary denial, but following the CRS’s Preliminary Determination recommending an award to Claimant in connection with the instant Covered Action, Claimant withdrew Claimant’s request for reconsideration in connection with the previous action. As such, the CRS’s Preliminary Determination with respect to Claimant’s award claim in the previous action has become the final order of the Commission.

² See *Securities Whistleblower Incentives and Protections*, 76 FR 34300, 34301 (June 13, 2011).

Agency.³ Although the staffs never communicated with Claimant or Claimant's counsel, the Company informed the Commission and the Other Agency about the tip it had received, and subsequently provided the results of an internal investigation it initiated in response to the tip. The Company's report satisfied the requirements of Rule 21F-4(c)(1) because the Company's findings were a principal motivating factor in the decisions of our staff and the staff of the Other Agency to open their respective investigations,⁴ and the resulting Covered Action and Related Action were based in part on the conduct alleged by Claimant. Based on these facts, we find that Claimant's original information led to the successful enforcement of the Covered Action and the Related Action under the standards set forth in Rule 21F-4(c)(3).

Applying the award criteria specified in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find that the proposed award percentages for both the Covered Action and the Related Action are appropriate.⁵ In reaching that determination, we positively assessed the fact that Claimant's information was highly significant because Claimant's tip to the Company caused the Company first to alert the Commission and the Other Agency to the Company's ongoing violations, and then to perform an internal investigation, the results of which were provided to the Commission's and the Other Agency's investigative staffs. Further, the Commission's law enforcement interest was high here both because of the difficulty in discovering violations occurring outside the United States and because this matter involved a company Redacted In addition, we credit the Claimant with having participated in the Company's internal compliance procedures by first reporting the information to persons at the Company responsible for internal compliance. However, we also note that the staffs had no direct dealings with Claimant or Claimant's counsel (hence, Claimant did not render continuing assistance to the investigations), and further that the Covered Action and the Related Action involved two sets of allegations, only one of which related to Claimant's original information and that the other part of the case, concerning other misconduct, was not related or attributable to any information provided by Claimant.

Finally, we find that the contributions made by Claimant to the Covered Action are similar to Claimant's contributions to the success of the Related Action, and,

³ By virtue of making a whistleblower submission to the Commission within 120 days, Claimant is also deemed to have reported to the Commission at the same time that Claimant originally reported to the Company. See Rule 21F-4(b)(7). Claimant later provided copies of other communications between Claimant and the Company, which did not prove useful to the investigation.

⁴ See *Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, 75 FR 70488, 70497 (Nov. 17, 2010). The investigations were also opened as a result of certain other conduct reported by the Company that was unrelated to Claimant's tip.

⁵ In assessing the appropriate award amount, Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Covered Action; (3) the 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.

therefore, it is appropriate that Claimant receive the same award percentage for both actions.

Accordingly, it is hereby ORDERED that Claimant shall receive an award of ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the Covered Action, and ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the Related Action, as well as any monetary sanctions collected in either action after the date of this Order.

By the Commission.

Eduardo A. Aleman
Deputy Secretary