

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 88687 / April 20, 2020

WHISTLEBLOWER AWARD PROCEEDING

File No. 2020-16

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In the Matter of the Claim for Award

in connection with

Notice of Covered Action: <sup>Redacted</sup>

<sup>Redacted</sup>

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that <sup>Redacted</sup> (“Claimant”) receive a whistleblower award in the amount of thirty percent (30%) of the monetary sanctions collected, or to be collected, in the above-referenced Covered Action.<sup>1</sup> The CRS also preliminarily determined to recommend that we waive the “in writing” requirement of Securities Exchange Act (“Exchange Act”) Rule 21F-9(d)<sup>2</sup> given the highly unusual facts and circumstances in this matter. Claimant provided written notice of Claimant’s decision not to contest the Preliminary Determination.

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<sup>1</sup> The CRS also preliminarily determined to recommend that the award application of a second claimant be denied. The second claimant did not submit a request for reconsideration and, as such, the Preliminary Determination with respect to that award claim became the Final Order of the Commission, pursuant to Rule 21F-10(f).

<sup>2</sup> Pursuant to Rule 21F-9(d), individuals who provide tips to the Commission after July 21, 2010, the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), but before August 12, 2011, the effective date of the whistleblower rules, are required to have submitted original information in writing to the Commission in order to qualify as a whistleblower who could potentially obtain an award.

The recommendation of the CRS is adopted. The record demonstrates that 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 Exchange Act<sup>3</sup> and Rule 21F-3(a) thereunder.<sup>4</sup>

In reaching this determination, we have relied upon Exchange Act provision Rule 21F-4(c)(3), which provides that original information will be deemed to have led to the successful enforcement of a judicial or administrative action if:

- (1) the whistleblower 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;
- (2) the entity later provided the information to the Commission or provided results of an audit or investigation initiated in whole or in part in response to information the whistleblower reported to the entity;
- (3) the information the entity provided to the Commission satisfied either paragraph (c)(1) or (c)(2) of [Rule 21F-4]; and
- (4) the whistleblower submitted the same information to the Commission in accordance with the procedures set forth in Rule 21F-9 within 120 days of providing it to the entity.<sup>5</sup>

Claimant reported the information internally to Redacted, who, in turn, submitted a written tip to the Commission relaying the Claimant's information. Enforcement staff opened the investigation after receiving the written tip and phone call with the Redacted, and the Commission brought the Covered Action based, in part, on the information provided by Redacted tip, in satisfaction of Rule 21F-4(c)(1). In a phone interview with Enforcement staff the next day, Claimant relayed the same information Claimant reported to Redacted.

Although Claimant did not provide the same information to the Commission in writing as required by Rule 21F-9(d), we have determined that it is appropriate in the public interest and consistent with the protection of investors that we exercise our discretionary authority under Section 36(a) of the Exchange Act to waive this requirement of Rule 21F-9(d) in light of the unique facts and circumstances of this case.<sup>6</sup> Those circumstances include the

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<sup>3</sup> 15 U.S.C. § 78u-6(b)(1).

<sup>4</sup> 17 C.F.R. § 240.21F-3(a).

<sup>5</sup> See Order Determining Whistleblower Award Claim, Release No. 85936 (May 24, 2019).

following: (1) Claimant was expeditious in alerting <sup>Redacted</sup> of Claimant's concerns that the Covered Action company was operating a fraudulent scheme; (2) Claimant provided the relevant information and documentation to <sup>Redacted</sup> <sup>Redacted</sup> officer and understood that the <sup>Redacted</sup>, in turn, provided the information and documentation to the Commission; and (3) it is undisputed that Claimant thereafter provided additional follow-up information to Enforcement staff in the form and manner they requested, *i.e.*, verbally in the form of a telephone call. Thus, the indicia of reliability and the certainty as to the time that the information was provided, which are principal policy rationales underlying the Rule 21F-9(d) writing requirement, are clearly satisfied in the context of this claim. Moreover, Claimant provided the information to the Commission before the effective date of the whistleblower rules.

Applying the award criteria specified in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find the proposed award amount is appropriate.<sup>7</sup> In reaching that determination, we positively assessed the following facts: (1) Claimant acted quickly to redress the violations by immediately internally reporting <sup>Redacted</sup> <sup>Redacted</sup>; (2) Claimant's information was significant in that it caused staff to open the investigation and there exists a close nexus between Claimant's information and the charges brought by the Commission; (3) there are strong law enforcement interests in this matter, as Claimant alerted the Commission to an ongoing fraudulent scheme; (4) Claimant provided assistance in the form of an interview with Enforcement staff early in the investigation; and (5) the lack of collections in this matter.

Accordingly, it is hereby ORDERED that Claimant shall receive an award of thirty percent (30%) of the monetary sanctions collected in the Covered Action.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>6</sup> We have waived the "in writing" requirement of Rule 21F-9(d) previously, where the unique facts and circumstances of the case warranted a waiver of this requirement. *See* Order Determining Whistleblower Award Claim, Release No. 82181 (Nov. 30, 2017); Order Determining Whistleblower Award Claim, Release No. 81227 (July 27, 2017); Order Determining Whistleblower Award Claim, Release No. 79747 (January 6, 2017).

<sup>7</sup> 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 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. 17 C.F.R. § 240.21F-6.