

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 100392 / June 21, 2024
WHISTLEBLOWER AWARD PROCEEDING
File No. 2024-27

In the Matter of the Claim for Award

in connection with

Notice of Covered Action Redacted
Redacted
Redacted
Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that Redacted (“Joint Claimants”) jointly¹ receive a whistleblower award of approximately \$200,000, equal to *** percent (*** %) of the amounts collected, or to be collected, in the above-referenced Covered Action (“Covered Action”) and in actions brought by the Redacted (“Other Agency”), Redacted (collectively, “Related Actions”).² The Joint Claimants submitted a timely request objecting to the calculation of their award amount.

¹ We have determined to treat Joint Claimants jointly as a “whistleblower” for purposes of the award determination given that their information and Forms WB-APP were submitted together via the same counsel. *See* Securities Exchange Act of 1934 (“Exchange Act”) Section 21F(a)(6) (defining a “whistleblower” to include two or more individuals acting jointly who provide information relating to a violation of the securities laws to the Commission). Unless Joint Claimants, within ten (10) calendar days of the issuance of this Order, make a joint request, in writing, for a different allocation of the award between the two of them, the Office of the Whistleblower is directed to pay each of them individually 50% of their joint award.

² The Commission may pay an award based on amounts collected in a related action that is based on the same original information that the whistleblower voluntarily provided to the Commission and that led the Commission to obtain monetary sanctions totaling more than \$1 million. Here, the Commission finds that the Related Actions constitute “related actions” within the meaning of Exchange Act Rule 21F-3(b).

Having reviewed all aspects of the record, we adopt the CRS’s recommendation.

I. Background

A. Covered Action

On ^{Redacted}
alleging that ^{Redacted}, the Commission filed a complaint in federal district court
^{Redacted} (“the Company”), and its principals, ^{Redacted}
^{Redacted},
^{Redacted}
^{Redacted}
^{Redacted}
^{Redacted}
^{Redacted}

The court entered final judgments against all defendants.

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B. Related Actions

The Other Agency brought actions against
misconduct alleged by the Commission
^{Redacted}

^{Redacted}, alleging largely the same
^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

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As such, the total amount currently collected in the Covered Action and Related Actions is ^{Redacted}

II. Preliminary Determination

The CRS preliminarily determined that the Joint Claimants voluntarily provided original information that led to the success of the Covered Action and that they should receive ^{***} percent (^{***} %) of the amounts collected, or to be collected, in the Covered Action.³ The CRS also preliminarily determined that the same original information that led to the success of the Covered Action also led to the success of the Related Actions, and that Joint Claimants should receive a ^{***} % award of amounts collected, or to be collected, in the Related Actions.

III. Joint Claimants' Response

The Joint Claimants submitted a timely written response contesting the Preliminary Determination, arguing that their award amount should be calculated based on ^{Redacted}, the total dollar amount ^{Redacted}, as noted in the Commission's Complaint, rather than the total monetary sanctions ordered and collected in the Covered and Related Actions. They argue that an award based on the monetary sanctions collected does not reflect that their internal

³ The CRS also preliminarily determined that while ^{***} was an attorney, they were not excluded from award eligibility under Exchange Act Rules 21F-4(b)(4)(i) or 21F-4(b)(ii), because they learned of the original information through their role as a ^{Redacted} at the Company and not through any communication protected by the attorney-client privilege or through the legal representation of the Company or other defendants. The CRS also preliminarily determined that while ^{Redacted} fell into the officer exclusion under Exchange Act Rule 21F-4(b)(4)(iii)(A) because they were the ^{Redacted} of the Company and learned the information, in part, because of a report, they satisfy the "substantial injury" exception under Exchange Act Rule 21F-4(b)(4)(v).

reporting may have prompted the defendants to ^{Redacted} in an effort to minimize regulatory and/or criminal liability and that the Commission should take these ^{Redacted} into account when setting the award amount. The Joint Claimants further argue that the Commission should use its discretion under Section 36(a)(1) of the Exchange Act to exempt them from the whistleblower program rules and increase the award amount above the statutory limit.

IV. Analysis

The recommendation of the CRS is adopted. The record demonstrates that Joint Claimants voluntarily provided original information to the Commission and that this original information led to the successful enforcement of the Covered Action and Related Actions.⁴

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Joint Claimants timely alerted Commission staff to the misconduct which prompted the opening of the investigation. Thereafter, Joint Claimants provided significant ongoing assistance to the

⁴ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

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Commission staff and the Other Agency’s staff, including meeting with both staffs, and providing additional important information and documents concerning their allegations.

However, we disagree with Joint Claimants’ contention that their award calculation should be based on a larger amount than the monetary sanctions that the Commission collects in connection with the Covered Action or that the Other Agency collects in the Related Actions. Congress established the statutory minimum and maximum whistleblower awards as “(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and (B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.”⁸ Exchange Act Rule 21F-5(b) further provides, in part, that the amount of an award “will be at least 10 percent and no more than 30 percent of the monetary sanctions that the Commission and the other authorities are able to collect.” Because the statutory maximum whistleblower award is based on the monetary sanctions collected in connection with the Covered and Related Actions, the Joint Claimants’ award cannot be based on a higher amount than what was collected (much less ordered).

We also deny Joint Claimant’s request that the Commission use its discretion under Section 36(a)(1) of the Exchange Act to exempt Joint Claimants from the requirements under the whistleblower program and set Joint Claimants’ award amount above the statutory limit. Section 36(a)(1) provides that “the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person...from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”⁹ We have used this discretionary authority to exempt whistleblowers from certain of the program’s rules under limited circumstances.¹⁰ However, the limitation on the amount of the award to be issued in connection with any Covered Action or related action was set by statute, and we have never used our discretion under Section 36(a)(1) of the Exchange Act to exempt a whistleblower from a statutory requirement or to approve an award amount above the statutory limit. The text of the statute reflects a clear congressional design to grant awards of no more than 30 percent of the

⁸ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁹ 15 U.S.C. § 78mm(a)(1).

¹⁰ See, e.g., *Order Determining Claim for Award*, Rel. No. 34-90580 (Dec. 7, 2020) (providing whistleblower with exemption from the TCR filing requirements under Rules 21F-9(a) and (b)); *Order Determining Claim for Award*, Rel. No. 34-86010 (June 3, 2019) (providing whistleblower with exemption from the voluntary requirement under Rule 21F-4(a)).

amounts collected. Congress established the same framework for awards to be paid to whistleblowers in cases brought by the Commodity Futures Trading Commission¹¹ and under the Anti-Money Laundering Act.¹² The Commission recently rejected a claimant’s argument that it should exercise its Section 36(a) authority and base their award calculation on a larger amount than the monetary sanctions the Commission and/or the Other Agency collected in the covered action and/or related action.¹³ Given the clarity and consistency of the statutory design for whistleblower awards, the Commission does not believe it would be appropriate to use its exemptive authority to award an amount above the statutory limit.

Accordingly, it is hereby ORDERED that Joint Claimants shall receive an award of *** percent (*** %) of the monetary sanctions collected, or to be collected, in the Covered Action and Related Actions.¹⁴

By the Commission.

Vanessa A. Countryman
Secretary

¹¹ 7 U.S.C § 26(b)(1).

¹² 31 U.S.C. § 5323(b)(1).

¹³ *Order Determining Claim for Award*, Rel. No. 34-97202 (Mar. 27, 2023).

¹⁴ The Court in the Covered Action deemed the monetary sanctions it ordered against ^{Redacted} satisfied by the ^{***} ^{Redacted} case. Thus, any monetary sanctions collected by the Other Agency up to the amount of monetary sanctions ordered in the Covered Action shall not be double counted for purposes of paying an award—that is, collections by the Other Agency in the Related Actions will not form the basis for payment of another award based on the Related Actions unless and until collections exceed the amount of monetary sanctions ordered in the Covered Action. *Cf. Order Determining Claim for Award*, Rel. No. 34-88015 (Jan. 22, 2020).