

Redacted (“Covered Action 1”).¹ Claimant submitted a timely request objecting to the denial of their award claim in Covered Action 1.

After reviewing the administrative record, we choose to depart from the CRS’s recommendation and award Claimant a *** percent (***) of the monetary sanctions collected, or to be collected, in connection with Covered Action 1. However, we concur with the CRS’s recommendation to award Claimant *** percent (***) of the monetary sanctions collected, or to be collected, in connection with Covered Actions 2, 3 and 4. Based on current collections, Claimant will receive a payment of approximately \$4,000.

I. Background

A. Covered Actions

On Redacted, the Commission filed an enforcement action in the Redacted Company”), Redacted against Redacted (“the Redacted company based in Redacted and its CEO, Redacted through the sale of Redacted to more than Redacted Redacted including members of the Redacted

Redacted The SEC’s complaint alleged that the Company and its CEO violated the Redacted provisions of the federal securities laws and additionally alleged that the CEO acted as Redacted On Redacted the Court entered a final judgment against the Company and its CEO ordering that they pay more than \$1 million.

On Redacted, the Commission filed individual enforcement actions against Redacted Redacted alleging that they violated the Redacted provisions in connection with sales of Company securities. According to the Commission’s complaints, the Company hired a Redacted Redacted to investors, including Redacted Redacted they explained to prospective investors the Company’s Redacted and that the Redacted On Redacted, the Court entered a final judgment against Redacted ordering monetary sanctions of more than \$1 million. On Redacted the Court entered a final judgment against Redacted, ordering monetary sanctions of

¹ There was second claimant for Covered Action 1, whose claim was preliminarily denied. Because that claimant did not contest the preliminary denial, it is now deemed to be the Final Order of the Commission.

more than \$1 million. And on ^{Redacted}, the Court entered a final judgment against ^{Redacted} ordering monetary sanctions of more than \$1 million.

On ^{Redacted} the Office of the Whistleblower (“OWB”) posted the Notice of Covered Action for Covered Action 1, which had a 90-day filing deadline of ^{Redacted}. ^{***} Claimant submitted their award claim for Covered Action 1 on ^{Redacted}, approximately three weeks after the filing deadline. On ^{Redacted}, OWB posted the Notice of Covered Action for Covered Action 2, which had a 90-day deadline of ^{Redacted}. Claimant submitted their award claim for Covered Action 2 on ^{Redacted}, one day after the filing deadline. On ^{Redacted}, OWB posted the Notices of Covered Actions for Covered Actions 3 and 4, which had 90-day filing deadlines of ^{Redacted}. Claimant submitted timely award claims for Covered Actions 3 and 4.

B. Preliminary Determination

The CRS preliminarily determined that Claimant voluntarily provided original information that led to the success of Covered Actions 2, 3 and 4 and should receive ^{***} percent (^{***} %) of the amounts collected, or to be collected, in these Covered Actions. In recommending an award to Claimant in Covered Action 2, the CRS recommended that the Commission exercise its general exemptive authority under Exchange Act Section 36(a) to waive the award application filing deadline based on the facts and circumstances of the claim.

The CRS preliminarily determined to deny the claim submitted by Claimant in Covered Action 1 because Claimant failed to submit the claim for award within ninety (90) days of the date of the Notice for Covered Action 1, as required under Rule 21F-10(b) of the Exchange Act. The CRS also did not believe that the record supported a waiver of the filing deadline under Exchange Act Section 36(a) or Exchange Act Rule 21F-8(a).

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response contesting the preliminary denial of their award claim in Covered Action 1 and did not contest the preliminary awards in Covered Actions 2, 3 and 4.² Claimant argues that the Commission should exercise its exemptive authority under Exchange Act Rule 21F-8(a) or Exchange Act Section 36(a) for the following principle reasons: (1) Claimant was on active military service, with limited ability to communicate or to receive communications, and relied on their counsel to submit a timely application; (2) Claimant’s

² See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

information led to the success of Covered Action 1; (3) while Claimant's counsel received timely notice of the filing deadline, counsel's staff inadvertently mis-calendared the filing deadline as one month after the deadline; (4) Claimant's counsel submitted the award application for Covered Action 1 approximately three weeks after the filing deadline, and as such, the time delay in submittal was not so great as to hinder the Commission's programmatic functions or cause unfairness among potential claimants; and (5) Claimant's counsel contacted OWB after receiving notification of the late filing and then submitted a written explanation and request for guidance on the Commission's protocol for relief for the late filing.

The CRS rejected Claimant's contentions and reaffirmed its initial recommendation that the Commission grant an award to Claimant in connection with Covered Actions 2, 3, and 4, but to deny Claimant's award claim in Covered Action 1.

II. Analysis

Claimant voluntarily provided original information that led to the success of Covered Actions 1, 2, 3 and 4 and should receive *** percent (** %) of the amounts collected, or to be collected, in these Covered Actions.

Based on the unique facts and circumstances we have determined to exercise our general exemptive authority under Section 36(a) of the Exchange Act to waive the filing deadline as to Covered Actions 1 and 2. Section 36(a) provides the Commission with broad authority to exempt any person from any provision of the Exchange Act or any rule or regulation thereunder to the extent that such exemption is "necessary or appropriate in the public interest" and "consistent with the protection of investors." We find that the unique facts and circumstances of this case merit an exemption under Section 36(a). Specifically, for Covered Action 1, we find that the following facts warrant the exercise of our Section 36(a) discretionary authority to waive the 90-day deadline for filing award applications: (1) Claimant was on active military duty during the 90-day window for filing claims; (2) the circumstances of the Claimant's military assignment limited his/her ability to effectively communicate with his/her counsel; (3) Claimant made reasonable efforts to submit an award application once he/she resumed normal communications; (4) Claimant would be otherwise meritorious; and (5) the Commission has not already issued a final order adjudicating claims in Covered Action 1.

We also believe that the exercise of our discretionary authority under Section 36(a) to waive the 90-day filing deadline with respect to Covered Action 2 is warranted under the unique

facts and circumstances. Specifically, the record supports the conclusion that Claimant’s counsel attempted to fax the award application to OWB on the filing deadline calendar date, but that the fax failed to go through because of apparent technical issues with the Commission’s ability to receive faxes beyond a certain size. We further note that Claimant’s counsel promptly contacted the OWB regarding the failed attempt to fax the application and succeeded in filing the application the next calendar day.³

While we exercise our Section 36(a) exemptive authority to excuse Claimant’s late WB-APP in Covered Actions 1 and 2 under these unique facts and circumstances, we do not expect to routinely exercise such exemptive authority to waive the requirements under Rules 21F-10(a) and (b) to timely file an award application. The filing deadline serves important programmatic interests and will be typically enforced absent the unique facts and circumstances presented here.

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Claimant alerted the Commission to the

³ Cf. 17 CFR 232.13(b) (provision of Regulation S-T permitting the adjustment of a filing date “if an electronic filer in good faith attempts to file a document with the Commission in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer’s control” and it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors).

misconduct which prompted the opening of the investigation and then provided ongoing assistance.

III. Conclusion

Accordingly, it is ORDERED that Claimant receive an award of *** percent (***) of the monetary sanctions collected, or to be collected, in Covered Actions 1, 2, 3 and 4.

By the Commission.

Vanessa A. Countryman
Secretary