

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 102746 / March 31, 2025

WHISTLEBLOWER AWARD PROCEEDING

File No. 2025-21

In the Matter of the Claims for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that Redacted (“Claimant 1”) receive a whistleblower award equal to Redacted percent (*** %) of the monetary sanctions collected or to be collected in the above-referenced Covered Action (the “Covered Action”), which based on current collections would result in no payment, and that Redacted (“Claimant 2”) receive a whistleblower award equal to *** percent (*** %) of the monetary sanctions collected or to be collected in the Covered Action, which based on current collections would result in no payment. The CRS also preliminarily determined to grant Claimant 1 a whistleblower award equal to *** % of the monetary sanctions collected or to be collected in connection with an action brought by the Redacted (“Other Agency”) in Redacted (“Related Action”)¹ which would result in a current award of more than \$1,100,000 and that Claimant 2 receive a whistleblower award equal to *** % of the monetary sanctions collected or to be collected in the Related Action, which would result in a current award of more than \$780,000. Claimant 1

¹ 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. Exchange Act Rule 21F-3(b); 17 C.F.R. § 240.21F-3(b). Here, the Commission finds that the Related Action constitutes a “related action” within the meaning of Exchange Act Rule 21F-3(b).

provided written notice of his/her decision not to contest the Preliminary Determinations. Claimant 2 filed a timely response contesting the Preliminary Determinations. For the reasons discussed below, the CRS’s recommendation is adopted with respect to Claimant 1 and Claimant 2.

I. Background

A. The Covered Action

On ^{Redacted}, the Commission filed a complaint in federal district court alleging that ^{Redacted} (“Defendant 1”) violated ^{Redacted}. The Commission’s complaint alleged that (1) Defendant 1 made material misrepresentations and omissions to investors and prospective investors in ^{Redacted} (the “Fund”), for which Defendant 1 acted as ^{Redacted}, including misrepresentations concerning ^{Redacted}; (2) Defendant 1 made misrepresentations to a ^{Redacted} concerning his/her ability to ^{Redacted} company made in the account of the Fund; (3) Defendant 1 ^{Redacted} in the Fund account; and (4) Defendant 1 used ^{Redacted} agreements (“Agreement” or “Agreements”) to cause ^{Redacted} (“Company”) to ^{Redacted} in the Fund and an associated fund. The Commission also alleged that ^{Redacted} (“Defendant 2”) aided and abetted Defendant 1’s Agreement scheme. The Commission also alleged that ^{Redacted} (collectively, “Entity Defendants”), which acted through Defendant 1, violated the ^{Redacted} relating to Defendant 1’s misrepresentations and omissions relating to the funds and Defendant 1’s ^{Redacted}.

On ^{Redacted} the Court entered a final judgment ordering Defendant 1 to pay a civil penalty in the amount of ^{Redacted} which has not been collected. On ^{Redacted} the Court entered a consent judgment in the Covered Action against Defendant 2 which did not order monetary sanctions in light of Defendant 2’s sanctions in the Other Agency matter. The Entity Defendants defaulted in the Covered Action. On ^{Redacted} the Court entered a final judgment as to the Entity Defendants ordering them to pay a total of ^{Redacted} in civil penalties. To date, these monetary sanctions have not been collected.

On [Redacted] the Office of the Whistleblower (“OWB”) posted the Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.² Claimants filed timely whistleblower claims.

B. The Related Action

On [Redacted] the Other Agency charged Defendant 1 and Defendant 2 for fraudulent schemes similar to those described above in the Covered Action. The Other Agency action also included charges relating to a scheme to defraud investors and potential investors in the Company through material misrepresentations and omissions about the [Redacted] of the Company’s [Redacted]. On [Redacted], Defendant 1 was found [Redacted] of [Redacted] relating to the schemes involving the funds. On [Redacted] Defendant 2 was found [Redacted] on one count of [Redacted] and one count of [Redacted] involving the Agreements and misrepresentations and omissions about the [Redacted] of the Company’s [Redacted].

On [Redacted], Defendant 1 was ordered to pay a fine of [Redacted], [Redacted], and a special assessment in the amount of [Redacted]. On [Redacted], Defendant 1 was ordered to forfeit [Redacted], the total amount of proceeds obtained by Defendant 1 as a result of the [Redacted] of which he/she had been [Redacted]. These amounts have been collected. On [Redacted], Defendant 2 was ordered to pay [Redacted] and to forfeit [Redacted].

C. The Preliminary Determinations

The CRS preliminarily determined to recommend to the Commission that it find that Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of the referenced Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder, and that Claimant 1 receive an award of [Redacted] % of the monetary sanctions collected or to be collected in the Covered Action.³

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

³ Claimant 1 served as an officer at the time Claimant 1 obtained the information he/she reported. As a result, the CRS considered whether Claimant 1’s information was “original information.” Under Rule 21F-4(b)(1), “[i]n order for [a] whistleblower submission to be considered original information, it must,” among other requirements, be “[d]erived from [the whistleblower’s] independent knowledge or independent analysis.” 17 C.F.R. § 240.21F-4(b)(1). Rule 21F-4(b)(4)(iii)(A) provides that the Commission will not consider information to be derived from a whistleblower’s independent knowledge or independent analysis if the whistleblower obtained the information because he/she was “[a]n officer, director, trustee, or partner of an entity and another person informed [the whistleblower] of allegations of misconduct, or [the whistleblower] learned the information in connection with the entity’s processes for identifying, reporting, and addressing possible violations of the law.” 17 C.F.R. § 240.21F-

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 Action, and that Claimant 1 should receive an award equal to *** % of the monetary sanctions collected or to be collected in the Related Action.

The CRS also preliminarily determined to recommend to the Commission that it find that Claimant 2 voluntarily provided original information to the Commission that led to the successful enforcement of the referenced Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder, and that Claimant 2 receive an award of *** % of the monetary sanctions collected or to be collected in the Covered Action. 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 Action, and that Claimant 2 should receive an award equal to *** % of the monetary sanctions collected or to be collected in the Related Action. In reaching the recommended award percentage for Claimant 2, the CRS preliminarily determined to reduce Claimant 2's award in both the Covered Action and Related Action due to the significant financial benefit Claimant 2 received in connection with an Agreement he/she entered into with the Company.

D. Claimant 2's Response to the Preliminary Determinations

Claimant 2 requested reconsideration of the Preliminary Determinations, and makes the following principal arguments: (1) Claimant 2 only received approximately *** million from the Agreement, approximately half of the *** million indicated in the Preliminary Determinations; (2) Claimant 2's award should not be reduced for the portion of the Covered Action and Related Action that did not involve the Agreements; (3) Claimant 2's award has already been reduced from *** % to *** % by virtue of the fact there is another whistleblower; (4) Claimant 2 received no windfall, as he/she could have made more money by investing in the S&P 500 instead of being fraudulently induced to invest in an Entity Defendant; (5) Claimant 2

4(b)(iii)(A). The CRS preliminarily determined that Rule 21F-4(b)(4)(iii)(A) would not exclude Claimant 1 from award eligibility because Claimant 1 did not discover the information he/she reported from another person or in connection with the company's processes for identifying violations of the law. Rather, Claimant 1 learned the information from his/her own personal observations. Additionally, Rule 21F-4(b)(4)(iii)(B) provides, that, unless an exception applies, "[t]he Commission will not consider information to be derived from [a whistleblower's] independent knowledge or independent analysis: if the whistleblower "obtained the information because" the whistleblower was "[a]n employee whose principal duties involve compliance or internal audit responsibilities..." 17 C.F.R. § 240.21F-4(b)(4)(iii)(B). The CRS preliminarily determined that Rule 21F-4(b)(4)(iii)(B) did not apply here to disqualify Claimant 1's information from treatment as original information because the record does not support that Claimant 1's principal duties involved compliance or internal audit responsibilities. Furthermore, to the extent Claimant 1 performed any compliance functions during his/her employment, the record demonstrates that Claimant 1 did not obtain the information that was the subject of his/her tip in connection with the performance of those functions.

should receive the largest award because of the significance of his/her information and assistance; (6) Claimant 1 is disqualified from award eligibility because he/she served in a compliance role at an Entity Defendant; and (7) Claimant 1 was involved in wrongdoing but his/her award was not reduced.

II. Analysis

Applying the award criteria in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find the proposed amounts as to Claimants 1 and 2 are appropriate.⁴

A. Claimant 1

The record demonstrates that Claimant 1 voluntarily provided original information to the Commission that led to the success of the Covered Action. Claimant 1 provided significant information that alerted the staff to potential violations and caused the staff to open the investigation and his/her information also bears a close nexus to certain charges brought by the Commission in the Covered Action. Claimant 1 also provided ongoing assistance throughout the investigation by participating in a voluntary interview with the staff and his/her information assisted the staff in making requests for evidence. Claimant 1 also made several attempts to internally report concerns to management. Claimant 1 also provided information that contributed to the success of the Related Action. Claimant 1 had multiple communications with the Other Agency, and Claimant 1 served as an important witness at the trials of the defendants.

B. Claimant 2

The record demonstrates that Claimant 2 voluntarily provided original information to the Commission that significantly contributed to the success of the Covered Action. Claimant 2's information provided Enforcement staff with significant information that advanced the staff's investigation and bears a close nexus to certain charges brought by the Commission in the Covered Action. Claimant 2 also provided ongoing assistance throughout the investigation by, among other things, participating in multiple voluntary interviews, supplying a sworn declaration, and providing supporting documents to the staff. Claimant 2's information also contributed to the success of the Related Action. Claimant 2 had multiple communications with the Other Agency and Claimant 2 served as an important witness at the trials of the defendants.

Under Exchange Act Rule 21F-6(b)(1), the Commission "will assess the culpability or involvement of the whistleblower in matters associated with the Commission's action or related actions." In making this assessment, the Commission may consider "[t]he whistleblower's role

⁴ In assessing the appropriate award amount, Exchange Act 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.

in the securities violations; [t]he whistleblower's education, training, experience, and position of responsibility at the time the violations occurred; [w]hether the whistleblower acted with scienter, both generally and in relation to others who participated in the violations; [w]hether the whistleblower financially benefitted from the violations; [w]hether the whistleblower is a recidivist; [t]he egregiousness of the underlying fraud committed by the whistleblower; and, [w]hether the whistleblower knowingly interfered with the Commission's investigation of the violations or related enforcement actions."⁵ Although the record supports the conclusion that Claimant 2's overall contribution to the success of the Covered Action and Related Action was equal in significance to the contributions made by Claimant 1, Claimant 2's award should be reduced due to the financial benefit Claimant 2 received in connection with Claimant 2's Agreement with the Company.

The record supports the conclusion that Claimant 2 believed the Agreement was a valid, authorized agreement and expected to provide the services contemplated by the Agreement. Nonetheless, Claimant 2 was involved in conduct charged in both the Covered Action and Related Action by virtue of the fact that he/she entered into the Agreement; Claimant 2 entered into the Agreement after having reported certain of the defendants' misstatements to the Commission; Claimant 2 provided only de minimis work under the Agreement; and Claimant 2 received a financial benefit in connection with the Agreement. Under these facts and circumstances, a reduction in award is appropriate.

Turning to the arguments made in Claimant 2's request for reconsideration, we are not persuaded that Claimant 2's award in the Covered Action and Related Action should be higher. Claimant 2's request for reconsideration principally argues that his/her award should be at least ***% because Claimant 2 received approximately *** million from the sale stock obtained pursuant to the Agreement, approximately half of the *** million referenced in the Preliminary Determinations. According to Claimant 2, the over *** million amount was based on an incorrect estimate made by Claimant 2 during his/her testimony in the Related Action with respect to the value of the Company's stock at that time. Claimant 2 argues that his/her estimate of proceeds from selling a portion of the stock prior to his/her testimony was incorrect and that his/her estimate of the value of the remaining shares was based on the Company's stock price at the time of the trial, which was not obtainable because he/she had to get a restricted legend removed before selling the stock. As a result of this incorrect estimate, Claimant 2 argues that decreasing his/her award to ***% unduly punishes Claimant 2 for financial benefits he/she did not actually receive.⁶ But even if we assume without deciding that Claimant 2's financial benefit was less

⁵ Exchange Act Rule 21F-6(b)(1); 17 C.F.R. § 240.21F-6(b)(1).

⁶ Claimant 2 also asserts that his/her award has already been reduced from ***% to ***% due to there being a second whistleblower, so an additional reduction is inequitable. That there is a second eligible whistleblower, who also provided significant information and assistance, does not negate the fact that Claimant 2 received millions of dollars

than the amount considered in the Preliminary Determinations as to his/her award, Claimant 2 nonetheless received a sizeable financial benefit from his/her involvement in violations charged in the Covered Action and Related Action. As a result, we believe a reduction is appropriate here.

Claimant 2's reconsideration request also argues that the reduction in award should not apply to monetary sanctions ordered against Defendant 1 in the Covered Action and Related Action because the actions did not focus on the violations relating to the Agreement. Claimant 2 asserts that Defendant 1's sanctions in the Covered Action and Related Action are based entirely on the schemes related to the funds, not the violations with respect to the Company's Agreements. Although Claimant 2 acknowledges that ^{Redacted} in civil penalties against Defendant 1 in the Covered Action were attributed to defrauding the Company through the Agreements, Claimant 2 argues that no monetary sanctions have been collected from Defendant 1 in connection with the Covered Action. Additionally, no monetary sanctions were imposed against Defendant 2 in the Covered Action due to the sanctions imposed in the Related Action. Thus, Claimant 2 asserts that a ***% award in the Covered Action would not lead to any benefit from misconduct relating to the violations involving the Agreements. We reject Claimant 2's argument as Rule 21F-6(b)(1) provides that the Commission may consider whether the whistleblower financially benefitted from the violations in determining the amount of the award.⁷ The rule does not specify that the Commission would only reduce a portion of the award resulting from collections attributable to the violations. In this matter, both the Covered Action and Related Action alleged violations with respect to the Agreements and sanctions were imposed with respect to those violations. As a result, it is appropriate to consider Claimant 2's financial benefit from his/her Agreement when determining Claimant 2's award.

With respect to the Related Action, Claimant 2 contends that the violations relating to the Agreement only had a significant impact on monetary sanctions against Defendant 2 as none of the monetary sanctions imposed against Defendant 1 in the Related Action involved the Agreements. Claimant 2 asserts that, if at all, the award should only be reduced from ***% to ***% for amounts collected from the sanctions based on the Agreement-related violations resulting from payment of Defendant 2's ^{Redacted} in the Related Action. Claimant 2 asserts that he/she would not currently benefit from Defendant 2's sanctions because no money has been collected from Defendant 2. Again, Rule 21F-6(b)(1) does not specify that the Commission would only reduce a portion of the award resulting from collections attributable to the violations.

in connection with conduct that was specifically charged in both the Covered and Related Actions. Claimant 2's reconsideration request further argues that his/her award should not be reduced because Claimant 1's award was not reduced for alleged wrongdoing relating to ^{Redacted} related to Claimant 1's tip. These allegations, which do not relate to Claimant 1's culpability or involvement in the securities violations charged in the Covered Action and Related Action, however, are irrelevant to Claimant 2's award analysis under Rule 21F-6(b)(1). Finally, Claimant 2's argument that Claimant 1 is not eligible for an award because he/she had compliance responsibilities is not supported by the record, as discussed above in footnote 3.

⁷ Exchange Act Rule 21F-6(b)(1).

Moreover, collection efforts in the Related Action against Defendant 2 are ongoing, and it is likely that Claimant 2 will receive payment based on the sanctions imposed against Defendant 2 for his/her violations with respect to the Agreement. As a result, we find no merit to Claimant 2's argument that the award in connection with the Related Action should not be reduced as result of his/her financial benefit.⁸

III. Conclusion

Accordingly, it is hereby ORDERED that Claimant 1 shall receive an award equal to ^{Redacted} percent (**%) of the monetary sanctions collected or to be collected in the Covered Action and Related Action and that Claimant 2 receive an award equal to *** percent (**%) of the monetary sanctions collected or to be collected in the Covered Action and Related Action.

By the Commission.

Vanessa A. Countryman
Secretary

⁸ Claimant 2 also asserts that he/she did not receive a windfall from the Agreement because his/her actual cash proceeds are similar to what Claimant 2 would have obtained had he/she not invested in the Fund. This argument as to what Claimant 2's proceeds would have been if he/she had invested differently is speculative and is irrelevant to the analysis under Rule 21F-6(b)(1).