

**FINAL ORDER - THIS PRELIMINARY DETERMINATION BECAME THE FINAL ORDER OF THE COMMISSION ON AUGUST 5, 2015 PURSUANT TO RULE 21F-10(f) OF THE EXCHANGE ACT**

25 Notices of Covered Action (See Appendix A)

**PRELIMINARY DETERMINATION OF THE CLAIMS REVIEW STAFF**

The Securities and Exchange Commission (“Commission”) received whistleblower award claims from <sup>Claimant</sup> (“Claimant”) in response to the Notices of Covered Action set forth in Appendix A hereto. Pursuant to Section 21F of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 21F-10 promulgated thereunder, the Claims Review Staff (“CRS”) has evaluated these claims in accordance with the criteria set forth in Rules 21F-1 through 21F-17 promulgated under the Exchange Act. For the reasons discussed below, the CRS has preliminarily determined that Claimant is ineligible for an award in these matters or in any pending or future covered or related actions.

Rule 21F-8 of the Exchange Act sets forth criteria a claimant must meet to be eligible for a whistleblower award. In particular, Rule 21F-8(c)(7) states that “you are not eligible” for an award under either of two conditions:

In your whistleblower submission, your other dealings with the Commission, or your dealings with another authority in connection with a related action, you [i] knowingly and willfully make any false, fictitious, or fraudulent statement or representation, or [ii] use any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the Commission or another authority.

17 C.F.R. § 240.21F-8(c)(7). *See also* Section 21F(i) of the Exchange Act.

The CRS preliminarily finds that Claimant has knowingly and willfully made false, fictitious, or fraudulent statements and representations to the Commission over a course of several years. Specifically, we preliminarily find that each of the passages set forth in Appendix B—which are taken from Claimant’s TCRs, emails to Commission officials, and WB-APPs—are patently false or fictitious.<sup>1</sup> We also preliminarily find that Claimant’s submission of whistleblower award applications on Form WB-APP in which Claimant declares that Claimant is entitled to an award are patently false given that the WB-APPs Claimant has filed to date lack even a remote factual nexus to the covered actions for which Claimant is seeking an award.

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<sup>1</sup> We note that Rule 21F-8(c)(7) refers to “your other dealings with the Commission” as a category separate and distinct from the specific “whistleblower submission” under consideration. Accordingly, we read “other dealings with the Commission” to encompass, among other things, statements or representations in previous whistleblower submissions as well as a claimant’s correspondence with Commission officials.

Moreover, we preliminarily find that Claimant's knowing and willful state of mind in making these statements is evidenced by the following: (i) the vague, unsupported, and utterly incredible nature of Claimant's statements in Appendix B; (ii) Claimant's submission of the WB-APPs that lack any factual nexus to the covered actions; and (iii) Claimant's refusal to withdraw numerous unsupported claims in spite of repeated requests and explanations by the Office of the Whistleblower ("OWB").<sup>2</sup>

Claimant's submission of baseless claims has harmed the rights of legitimate whistleblowers and hindered the Commission's implementation of the whistleblower program by, among other things, delaying the Commission's ability to finalize meritorious awards to other claimants and consuming significant staff resources.<sup>3</sup>

For these reasons, the CRS has preliminarily determined that, pursuant to Rule 21F-8(c)(7) of the Exchange Act, Claimant is not eligible to be considered for whistleblower awards in these matters or in any pending or future covered or related actions. Accordingly, if this determination becomes the final determination of the Commission, the OWB should summarily

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<sup>2</sup> The OWB has engaged in numerous communications with Claimant to explain the rules governing the whistleblower program and its view of the deficiencies of Claimant's submissions, and to give Claimant the opportunity to correct \*\* actions. For example, on October 29, 2014, the OWB called Claimant and explained the basic premise of the Commission's whistleblower program, and the rules pursuant to which the Commission may pay an award. During that call, the OWB explained the factual nexus that must exist between the tip Claimant submits and the Notice of Covered Action for which Claimant requests an award. The OWB made it clear during that call that repeatedly filing claims for whistleblower awards that have no relation to the facts in the underlying matter will not result in an award under the whistleblower program. Similarly, on November 3, 2014, the OWB advised Claimant in writing that \*\* numerous whistleblower award claims failed to demonstrate the factual nexus required by Rule 21F-4(c). Notwithstanding the OWB's efforts, Claimant advised the OWB in a letter dated November 12, 2014, that \*\* refused to withdraw any of \*\* award claims.

<sup>3</sup> For example, Claimant unsuccessfully requested reconsideration of the Preliminary Determination denying \*\* award application in Redacted and as a result both consumed considerable staff effort with \*\* frivolous claim and caused a delay in the Commission's ability to make a final determination to the legitimate whistleblower in this matter.

reject all pending and future whistleblower award claims submitted by Claimant.<sup>4</sup>

By: Claims Review Staff  
Dated: June 5, 2015

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<sup>4</sup> We caution Claimant that we will not entertain any attempt by \*\* to withdraw \*\* WB-APPs following the issuance of this Preliminary Determination given \*\* unwillingness to withdraw these frivolous applications when \*\* had a reasonable opportunity to do so, *see supra* note 2, and that \*\* attempt now to change course would simply be a transparent effort to evade the consequences of \*\* bad faith conduct.

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**APPENDIX A**

| <b>Claim No.</b> | <b>NoCA</b> | <b>Matter Name</b>  | <b>Date Claim Submitted</b> |
|------------------|-------------|---|-----------------------------|
| 1                | 2013-69     | SEC v. Fuqi International, Inc. and Yu Kwai Chong   | 12/6/2013                   |
| 2                | 2013-70     | SEC v. Keyuan Petrochemicals, Inc. and Aichun Li  | 12/6/2013                   |
| 3                | 2013-75     | In the Matter of A.R. Schmeidler & Co., Inc.  | 12/6/2013                   |
| 4                | 2013-81     | SEC v. Scott London and Bryan Shaw  | 12/6/2013                   |
| 5                | 2013-91     | In the Matter of JGP Global Gestão de Recursos Ltda.  | 12/6/2013                   |
| 6                | 2013-95     | In the Matter of Manikay Partners LLC   | 12/6/2013                   |
| 7                | 2013-97     | Brian G. Elrod and Nova Dean Pack   | 12/6/2013                   |
| 8                | 2013-99     | In the Matter of Shadron L. Stastney  | 12/6/2013                   |
| 9                | 2013-100    | In the Matter of TD Bank, N.A.  | 12/6/2013                   |
| 10               | 2013-101    | SEC v. Edmund E. Wilson and Walter L. Ross  | 12/6/2013                   |
| 11               | 2013-102    | In the Matter of Manarin Investment Counsel, Ltd., Manarin Securities Corp., and Roland R. Manarin  | 12/6/2013                   |
| 12               | 2013-105    | SEC v. China MediaExpress Holdings, Inc., and Zheng Cheng   | 12/6/2013                   |
| 13               | 2013-108    | SEC v. Huakang Zhou (a/k/a David Zhou) and Warner Technology and Investment Corporation   | 12/6/2013                   |
| 14               | 2013-109    | SEC v. Berton M. Hochfeld and Hochfeld Capital Management, L.L.C.   | 12/6/2013                   |
| 15               | 2014-2      | In the Matter of Merrill Lynch, Pierce, Fenner & Smith Inc.   | 8/25/2014                   |
| 16               | 2014-10     | In the Matter of KPMG LLP   | 8/25/2014                   |
| 17               | 2014-21     | SEC v. Diamond Foods, Inc.  | 8/25/2014                   |
| 18               | 2014-27     | SEC v. Delsa U. Thomas; The D. Christopher Capital Management Group, LLC; and The Solomon Fund, LP  | 8/25/2014                   |
| 19               | 2014-28     | In the Matter of Apple REIT Six, Inc.; Apple REIT Seven, Inc.; Apple REIT Eight, Inc.; Apple REIT Nine, Inc.; Apple Six Advisors, Inc.; Apple Seven Advisors, Inc.; Apple Eight Advisors, Inc.; Apple Nine Advisors, Inc.; Glade M. Knight; and Bryan F. Peery, CPA | 8/25/2014                   |

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|----|---------|---|-----------|
| 20 | 2014-29 | SEC v. China Intelligent Lighting and Electronics, Inc., NIVS Intellimedia Technology Group, Inc., Tianfu Li, and Xuemei Li   | 8/25/2014 |
| 21 | 2014-30 | SEC v. Secure Capital Funding Corporation, Bertram Augustus Hill, PP&M Trade Partners, and Kiavanni Pringle   | 8/25/2014 |
| 22 | 2014-36 | In the Matter of Jefferies LLC (formerly known as Jefferies & Company, Inc.)  | 8/25/2014 |
| 23 | 2014-37 | SEC v. John S. Morgan, Marian I. Morgan, Morgan European Holdings ApS a/k/a Money Talks, Inc., ApS, Stephen E. Bowman, Bowman Marketing Group, Inc., and Thomas D. Woodcock, Jr.                    | 8/25/2014 |
| 24 | 2014-39 | SEC v. Samuel E. Wyly, Charles J. Wyly, Jr., Michael C. French, and Louis J. Schaufele III  | 8/25/2014 |
| 25 | 2014-82 | SEC v. Bernard H. Butts, Jr., Fotios Geivelis, Jr., also known as Frank Anastasio, Worldwide Funding III Limited LLC, Douglas J. Anisky, Sidney Banner, Express Commercial Capital LLC, James Baggs | 8/25/2014 |

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## **APPENDIX B**

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