

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 77833 / May 13, 2016

WHISTLEBLOWER AWARD PROCEEDING

File No. 2016-9

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In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

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Claimant (“Claimant”) submitted a timely claim for award in connection with Notice of Covered Action Redacted relating to Redacted Redacted (“Covered Action”). On January 7, 2016, the Claims Review Staff (“CRS”) preliminarily determined to recommend that we deny the claim (“Preliminary Determination”). Based on the record that was available at that time, the CRS found that Claimant did not qualify for an award because the information that Claimant provided did not lead to the successful enforcement of the Covered Action. *See* Section 21F(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”); Exchange Act Rules 21F-3(a)(3) & 21F-4(c). Claimant subsequently filed a timely written response contesting the Preliminary Determination. After receiving Claimant’s written response, the CRS also received certain additional factual information from staff in the Division of Enforcement responsible for the Covered Action.

For the reasons stated below, Claimant’s claim is approved in the amount of Redacted

**I. Background**

**A. The Covered Action and the Claimant’s Tip**

The Covered Action found that Redacted

Redacted

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The Covered Action arose out of an investigation opened in Redacted in response to media reports concerning potential misconduct relating to Redacted. In Redacted Enforcement staff expanded the investigation to include Redacted.

In Redacted Claimant, through counsel, submitted a detailed whistleblower tip concerning Redacted.

Redacted Although Enforcement staff were already aware of Redacted Claimant's tip provided certain new information related to Redacted along with supporting documentation. Enforcement staff received the tip and spoke to Claimant and Claimant's counsel concerning the submission.

Because of the additional information and documents provided by Claimant about Redacted Redacted the Commission's Order included Redacted.

## **B. Preliminary Determination and Request for Reconsideration**

On January 7, 2016, the CRS preliminarily determined to recommend that we deny Claimant's claim on the grounds that the information Claimant provided did not lead to the success of the Covered Action. Specifically, based on the factual record at the time, it appeared that Claimant's information did not cause Enforcement staff to open the investigation or to inquire into different conduct, nor did the information appear to have significantly contributed to the success of the Covered Action.

On February 6, 2016, Claimant submitted a timely written request for reconsideration. Claimant argued, among other things, that Claimant's information led to the successful enforcement of the Covered Action because Claimant's information "significantly contributed" to the success of the Covered Action, and as such, satisfied Rule 21F-4(c)(2).

## **II. Analysis**

As relevant here, information leads to the success of a covered action if:

- (1) pursuant to Rule 21F-4(c)(1) of the Exchange Act, the information causes the Commission to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation; or
- (2) pursuant to Rule 21F-4(c)(2) of the Exchange Act, the information significantly contributes to the success of a Commission judicial or administrative enforcement action.

Applying those standards here, we find that Claimant’s information “significantly contributed” to the success of the Covered Action.<sup>1</sup> In reaching that determination, we place considerable weight on the additional record evidence that was provided by Enforcement staff following the issuance of the Preliminary Determination. That evidence demonstrates that Claimant’s information was meaningful and that it made a substantial and important contribution to the successful resolution of the Covered Action. Specifically, the Claimant’s information caused Enforcement staff to focus on Redacted when staff might otherwise not have done so, and this evidentiary development strengthened the Commission’s case by meaningfully increasing Enforcement staff’s leverage during the settlement negotiations. As such, Claimant’s information significantly contributed to the successful enforcement of the Covered Action within the meaning of Rule 21F-4(c)(2).

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<sup>1</sup> In Claimant’s response contesting the Preliminary Determination, Claimant argued that we should find that Claimant’s information led to the success of the Covered Action under Rule 21F-4(c)(1) because Claimant caused the staff to pursue a “new line of inquiry.” According to the Claimant, the information “led the staff to initiate new and more directed inquiries” into certain specific misconduct that the Commission already knew about, and this new information caused the staff to more closely focus on the particular misconduct, ultimately including the specific misconduct Redacted in the Commission’s final order resolving the Covered Action.

We disagree that Rule 21F-4(c)(1) is satisfied here. Although Claimant’s information caused staff to focus on certain specific misconduct that the staff was already generally aware of, and to elevate its inquiry into that misconduct, the information that Claimant provided was not substantially different from the misconduct generally under investigation— Redacted Redacted In our view, the “different conduct” standard of Rule 21F-4(c)(1) is generally limited to those circumstances where staff has an open investigation into one type of misconduct, and a whistleblower subsequently submits a tip alerting staff that the entity is engaged in substantially different misconduct. Thus, Rule 21F-4(c)(1) is not satisfied where, as here, a whistleblower submits information concerning misconduct that is already under investigation. In such circumstances, we believe that the appropriate analysis is governed by Rule 21F-4(c)(2)—*i.e.*, whether the whistleblower’s information significantly contributed to the success of the enforcement action.

In determining the appropriate award percentage, we carefully weighed the factors specified in Rule 21F-6, including the significance of the information provided by Claimant, the assistance that Claimant provided, and the law-enforcement interests at issue. We find that Claimant should receive an award of Redacted of the monetary sanctions collected in the Covered Action, which will equal payment of more than \$3,500,000. As part of our assessment of the award criteria, we have considered certain unique hardships experienced by the Claimant as a result of the Claimant's decision to report the wrongdoing to the Commission. Specifically, the record demonstrates that the Claimant has been unable to find employment since reporting the misconduct and that this is significantly due to Claimant's whistleblowing activities. The record also demonstrates that as a result of Claimant's whistleblowing the Claimant Redacted

Redacted

### **III. Conclusion**

After careful consideration of the administrative record, including Claimant's written response and the additional factual information provided by Enforcement staff, we find that Claimant's information led to successful enforcement because it significantly contributed to the success of the Covered Action.

Accordingly, upon due consideration under Rules 21F-10(g) and (h), 17 C.F.R. § 240.21F-10(g) and (h), it is hereby ORDERED that the Claimant shall receive an award of Redacted of the monetary sanctions collected and to be collected in the Covered Action.

By the Commission.

Brent J. Fields  
Secretary