

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 82996 / April 5, 2018

WHISTLEBLOWER AWARD PROCEEDING

File No. 2018-8

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In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action<sup>Redacted</sup>

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that<sup>Redacted</sup> (“Claimant”) receive a whistleblower award in the amount of<sup>Redacted</sup> percent ( “ % ) of the monetary sanctions collected, or to be collected, in the Covered Action. This proposed award would yield a likely payout to the Claimant of more than \$2.2 million. Claimant subsequently provided written notice of Claimant’s decision not to contest the Preliminary Determination.

The recommendation of the CRS with respect to the Covered Action is adopted. We find that the record demonstrates that the Claimant voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-6(b)(1), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).

In reaching this determination, we have relied upon Exchange Act Rule 21F-4(b)(7). That rule provides in relevant part that:

If you provide information to ... any other authority of the federal government ..., and you, within 120 days, submit the same information to the Commission pursuant to §240.21F-9 of this chapter, as you must do in order for you to be eligible to be considered for an award, then, for purposes of evaluating your claim to an award ..., the Commission will consider that you provided [the] information as of the date of your original

disclosure, report or submission to one of these other authorities or persons.

Under Rule 21F-4(b)(7), if an individual submits his or her tip to another federal agency, then in considering an award application from that individual, the Commission will treat the information as though it had been submitted to the Commission directly from the individual at the same time that it was submitted to the other agency, *provided that the individual submitted that same information to the Commission no later than 120 days after the individual first went to the other government agency*. In this way, Rule 21F-4(b)(7) operates as a 120-day safe harbor, assuring an individual who voluntarily reports misconduct to another agency first that he or she will be deemed for award purposes to have reported directly to the Commission at the same time that the individual reported to the other federal agency.<sup>1</sup> Thus, the other agency's use of the information in a referral that causes the staff to open an investigation is credited directly to the whistleblower for purposes of making an award determination, including the "led to" standard under Exchange Act Rule 21F-4(c).

Applying Rule 21F-4(b)(7) to the facts in this matter, we find that the Claimant is deemed to have been a whistleblower who caused the opening of the investigation by providing original information to the Commission. The relevant facts here are clear: The Claimant voluntarily reported information to a federal agency covered by the rule, that federal agency in turn made a referral to the Commission based on the Claimant's information, the Enforcement staff then promptly responded to the referral by opening the investigation that resulted in the Covered Action, and the Claimant within 120 days of reporting to the other agency (*albeit* after the Commission's investigation was opened) provided the same information to the Commission in accordance with the procedures specified in Exchange Act Rule 21F-9. Based on the foregoing, we find that the Claimant satisfies the Rule 21F-4(b)(7) safe-harbor provision and, thus, in making an award to the Claimant for the Covered Action we have treated the Claimant's submission to the Commission as though it had been made on the date that the Claimant provided that same information to the other federal agency.

Turning to the award amount, we have applied the award criteria identified in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here.<sup>2</sup> In doing

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<sup>1</sup> The 120-day safe harbor balances the important programmatic goal of encouraging individuals to report potential securities law violations to the Commission promptly with the practical recognition that an individual may in certain circumstances report wrongdoing to other federal agencies (or proceed through other channels recognized in the rule) before coming to the Commission. Moreover, by requiring that individuals submit the information to the Commission within 120 days pursuant to the requirements of Rule 21F-9, the safe harbor ensures that the Commission will have a reasonably contemporaneous record that the individual was the source of the information, which in turn helps to promote administrative accuracy in connection with the processing of any eventual whistleblower award application.

<sup>2</sup> 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

so, we find that the CRS's proposed award determination is appropriate. We positively assessed the facts that the Claimant was a former company insider whose information caused the Commission to open the investigation into the misconduct and thereafter continued to provide ongoing helpful assistance to the staff during the Commission's investigation.

Accordingly, it is hereby ORDERED that Claimant shall receive an award of <sup>Redacted</sup> percent (\*\*\*%) of the monetary sanctions collected in the Covered Action, including any monetary sanctions collected after the date of this Order.<sup>3</sup>

By the Commission.

Brent J. Fields  
Secretary

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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.

<sup>3</sup> The CRS recommended an award denial for the Claimant's claim for an award in connection with <sup>Redacted</sup>

. *See generally* Exchange Act Rule 21F-11 ("Procedures for determining awards based upon a related action."). Claimant did not challenge that preliminary determination. As a result, the CRS's preliminary determination as to the related-action award claim became the final determination of the Commission pursuant to Rule 21F-11(f).