

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90580 / December 7, 2020

WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-13

In the Matter of the Claims for an Award

in connection with

Redacted

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 of approximately \$500,000, which is equal to Redacted percent (*** %) of collected monetary sanctions, and that Redacted Redacted (“Claimant 2”) receive a whistleblower award of approximately \$250,000, which is equal to *** percent (*** %) of the collected monetary sanctions, in connection with the above-referenced Covered Action (“Covered Action”). In recommending that Claimant 1 be found eligible for an award, the CRS recommended that the Commission exercise its general exemptive authority to waive the TCR filing requirements under Exchange Act Rules 21F-9(a) and (b). Claimant 1 and Claimant 2 provided written notice of their decisions not to contest the Preliminary Determinations.

The recommendations of the CRS are adopted. The record demonstrates that Claimant 1 and Claimant 2 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.¹

Moreover, we have determined that it would be in the public interest and consistent with the protection of investors for the Commission to exercise our discretionary authority under Section 36(a) of the Exchange Act to waive the TCR filing requirements of Rules 21F-9(a) and (b)² as to Claimant 1 in light of the specific facts and circumstances present here. Specifically:

¹ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

² Rule 21F-9(a) provides that “[t]o be considered a whistleblower . . . you must submit your information . . . online, through the Commission’s website . . . or by mailing or faxing a

(1) Claimant 1 provided information in writing directly to staff in the Division of Enforcement (“Enforcement”) per the Enforcement attorney’s request; (2) Claimant 1’s initial written tip unambiguously indicated that Claimant 1 intended to submit the information pursuant to the SEC’s whistleblower program; (3) Claimant 1’s information was credible and of high quality and caused Enforcement staff to open an investigation that ultimately resulted in the successful Covered Action; (4) Enforcement staff viewed Claimant 1 as a whistleblower throughout the investigation; (5) Claimant 1’s counsel may have misunderstood communications from Commission staff regarding whether Claimant 1 had properly met all the procedural requirements for participating in the whistleblower program; (6) Claimant 1’s ^{Redacted} ^{Redacted} after refusing to participate in the misconduct; (7) the record clearly and convincingly supports that Claimant 1 would otherwise be entitled to an award; and (8) denial of an award here would result in undue hardship, unfairness, or inequity.³

Further, applying the award criteria in Rule 21F-6 of the Securities Exchange Act of 1934 to the specific facts and circumstances here, we find the proposed award amounts are appropriate.⁴ In reaching that determination, we positively assessed the following facts: (1) Claimant 1’s tip was the initial source of the underlying investigation and led to the majority of the allegations in the Covered Action; (2) Claimant 1 submitted information and documents,

Form TCR.” 17 C.F.R. § 240.21F-9(a). Rule 21F-9(b) provides that “to be eligible for an award, you must declare under penalty of perjury at the time you submit your information . . . that your information is true and correct to the best of your knowledge and belief.” § 240.21F-9(b). Claimant 1, through counsel, filed a Form TCR two and a half years after first providing information to the Commission, when the investigation was nearly complete. Section 36(a) of the Exchange Act 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 (i) “necessary or appropriate in the public interest” and (ii) “is consistent with the protection of investors.”

^{3.} On September 23, 2020, the Commission adopted amendments to the whistleblower rules, which will become effective 30 days after publication in the Federal Register. Among other things, the amendments will allow an otherwise meritorious whistleblower to receive an award despite failing to comply with the Form TCR filing requirements if he/she submits the Form TCR within 30 days of learning of the requirements. While claimants who have counsel are deemed to have constructive notice of the TCR filing requirements, and as such, are not entitled to the automatic waiver allowed by new Rule 21F-9(e), we noted that we will continue to review and assess the appropriateness of using our discretionary Section 36(a) exemptive authority where a claimant is represented by counsel but fails to meet the Form TCR filing requirements. For the reasons discussed herein, we find that the present facts and circumstances warrant the exercise of our Section 36(a) exemptive authority so as to find Claimant 1 eligible for an award.

^{4.} In assessing the appropriate award amounts, 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.

participated in two interviews with Enforcement staff, helped staff identify all of the key participants in the scheme and several additional witnesses, and explained complex issues that saved the staff time and resources in conducting its investigation; (3) Claimant 1 ^{Redacted}

after objecting to participating in the alleged misconduct; (4) Claimant 2 submitted new information, albeit when the investigation was nearly complete, that resulted in the inclusion of additional allegations in the Covered Action; (5) Claimant 2 provided information and documents, participated in two interviews, and provided explanation and clarity to the staff regarding the issues that Claimant 2 brought to the staff's attention; (6) Claimant 2 internally reported concerns ^{Redacted} ; and (7) while Claimant 2 was a helpful whistleblower, Claimant 1 was the main source of information.

Accordingly, it is hereby ORDERED that Claimant 1 shall receive an award of approximately \$500,000, ^{Redacted} percent (***) of the monetary sanctions collected in the Covered Action, and Claimant 2 shall receive an award of approximately \$250,000, ^{***} percent (***) of the monetary sanctions collected in the Covered Action.

By the Commission.

Vanessa A. Countryman
Secretary