

Notice of Covered Action [REDACTED]
[REDACTED]

PRELIMINARY DETERMINATION OF THE CLAIMS REVIEW STAFF

In response to the above-referenced Notice of Covered Action [REDACTED], the U.S. Securities and Exchange Commission (the “Commission”) received a whistleblower award claim from [REDACTED] (the “Claimant”).

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 the above claims in accordance with the criteria set forth in Rules 21F-1 through 21F-17. The CRS has preliminarily determined to recommend that the Commission deny the above award claim.¹ The basis for this determination is as follows:

1. Claimant failed to submit a claim for award on Form WB-APP within ninety (90) days of the above-referenced Notice of Covered Action as required under Exchange Act Rule 21F-10(b) in order to be considered for an award. However, we recommend that the Commission, in its discretion, waive the filing deadline based on “extraordinary circumstances,” as provided under Rule 21F-8(a) of the Exchange Act²;
2. The Claimant’s request for the Office of the Whistleblower to issue a second Notice of Covered Action based upon the above-referenced covered action is moot because we are recommending that the Commission waive the 90-day time bar under Exchange Act Rule 21F-10(b); and
3. The Claimant’s information did not lead to the successful enforcement by the Commission of the above-referenced covered action, as required by Exchange Act Rules 21F-3(a)(3) and 21F-4(c). Specifically, the Claimant’s information did not significantly contribute to the success of the covered action for purposes of Exchange

¹ Because Claimant does not qualify for an award in the covered action brought by the Commission, Claimant’s request for an award in connection with certain purported related actions is denied. A related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the relevant covered action. See 15 U.S.C. § 78u-6(b); Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f); Rule 21F-11(a).

² An extraordinary circumstance causing a delay in making a filing is one where the reason for the failure timely to file was beyond the control of the applicant. See Order Determining Whistleblower Award Claim, Exchange Act Release No. 72178 (May 16, 2014); Order Determining Whistleblower Award Claim, Exchange Act Release No. 72659 (July 23, 2014). Here, we have preliminarily determined to recommend that the Commission exercise its discretion under Rule 21F-8(a) because all of the following circumstances exist: (1) the court issued an Amended Final Judgment in the Covered Action subsequent to the deadline for filing whistleblower award claims; (2) the Amended Final Judgment amended the relief that had originally been ordered; (3) the Claimant’s claim raises a non-frivolous question regarding his contribution to the determination to seek the amended relief; and (4) the Commission has not previously authorized any whistleblower awards in connection with the Covered Action.

Act Rule 21F-4(c)(2), either directly or through any reporting of [REDACTED] by operation of Rule 21F-4(c)(3), for the following reasons:

- a. *First*, the Claimant's information played no role in the investigation or the settlement resulting in the Final Judgment entered in the covered action on [REDACTED] because the Claimant's information was submitted subsequent to the date of that Final Judgment;
- b. *Second*, with regard to the period after the Claimant submitted [REDACTED] information, the amendment of the Final Judgment on [REDACTED] to add [REDACTED] to the [REDACTED] that the court had previously ordered, with no changes to the violations charged or other modifications to the relief previously obtained, did not on balance constitute a significant component of the overall success of the covered action; and
- c. *Third*, there were a number of factors unrelated to the Claimant's information that independently warranted [REDACTED] and the Commission would have done so even absent the Claimant's information.³

By: Claims Review Staff

Date: December 13, 2017

³ In light of the foregoing, we find it unnecessary to make a preliminary determination as to whether the Claimant satisfies the Exchange Act Rule 21F-4(c)(3) requirements of (1) the Claimant having reported original information through the subject entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before reporting the same to the Commission, and (2) the entity later providing to the Commission that information or the results of an audit or investigation initiated in whole or in part in response to that information. Similarly, we find it unnecessary to consider whether the Claimant has established award eligibility with respect to several eligibility requirements and exclusions, such as, by way of example, those arising under Exchange Act Rules 21F-3(a)(1) and (2), 21F-4(b)(4), and 21F-8(c).