

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97805 / June 27, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-70

In the Matter of the Claims for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations in connection with the above-referenced Covered Action (the “Covered Action”) recommending that Redacted (“Claimant 1”) receive a whistleblower award of over \$1 million, equal to Redacted percent (***%) of the monetary sanctions collected in the Covered Action, and that joint claimants Redacted (collectively, “Claimant 2”) receive a whistleblower award of over \$1 million, equal to Redacted percent (***%) of the monetary sanctions collected in the Covered Action.¹ Claimant 1 filed a timely response contesting the Preliminary Determination’s recommended award allocation. Claimant 2 did not contest the Preliminary Determination. For the reasons discussed below, the CRS’s recommendations are adopted with respect to Claimants 1 and 2.

I. Background

A. The Covered Action

On Redacted the Commission instituted settled administrative and cease-and-desist proceedings against Redacted (the “Company”). The Commission’s Order charged the Company with Redacted

¹ The CRS also preliminarily determined to recommend a denial of the award claim of another claimant, Claimant 3. Claimant 3 did not contest the Preliminary Determination. Accordingly, the preliminary denial as to Claimant 3 became the Final Order of the Commission pursuant to Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

ordered the Company to pay

On ^{Redacted} the Office of the Whistleblower posted the Notice for the Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days.² Claimants 1 and 2 each filed a timely whistleblower award claim.

B. The Preliminary Determinations

The CRS issued Preliminary Determinations³ recommending that Claimant 1 receive a whistleblower award in the amount of ^{Redacted} percent (^{***} %) of the monetary sanctions collected and that Claimant 2 receive a whistleblower award in the amount of ^{Redacted} percent (^{***} %) of the monetary sanctions collected. In determining the award allocation between Claimants 1 and 2, the CRS considered that both Claimants 1 and 2 provided information that caused, in part, staff to open the Covered Action investigation, and both Claimants 1 and 2 provided substantial, helpful assistance.

C. Claimant 1's Response to the Preliminary Determination

Claimant 1 submitted a timely written response contesting the Preliminary Determination.⁴ In his/her reconsideration request, Claimant 1 argues that his/her award percentage should be higher than Claimant 2's award percentage given three factors: (i) the timing of Claimant 1's and Claimant 2's submissions, (ii) the relative importance of Claimant 1's and Claimant 2's contributions to the success of the Covered Action, and (iii) the source of Claimant 2's information as it relates to the importance of Claimant 2's contributions to the success of the Covered Action and suggests that Claimant 2 may have benefited from the scheme. Claimant 1 argues that his/her information had a more important part than Claimant 2's information in causing the staff to open the Covered Action investigation because his/her information both opened an investigation into another entity ("Other investigation")⁵ and caused staff to plan to open an investigation into the Company. Claimant 1 also argues that his/her contributions to the success of the Covered Action vastly outweigh any relative contributions by Claimant 2.

II. Analysis

The record demonstrates that Claimants 1 and 2 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.⁶ Accordingly,

² See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

³ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁴ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

⁵ The Other investigation resulted in a separate enforcement action ("Other action"), which is pending. There is also parallel criminal litigation ("Criminal actions").

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

Claimants 1 and 2 are eligible for a whistleblower award.

Rule 21F-5(b) provides that if all of the conditions are met for a whistleblower award, the Commission will decide the percentage amount of the award, which must be between 10% and 30% of the monetary sanctions collected.⁷ Redacted

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3(a), 17 C.F.R. § 240.21F-3(a).

⁷ 17 C.F.R. § 240.21F-5(b); *see also* Exchange Act Rule 21F-5(a) (“[t]he determination of the amount of an award is in the discretion of the Commission”) and Exchange Act Rule 21F-5(c) (“[i]f the Commission makes awards to more than one whistleblower . . . the Commission will determine an individual percentage award for each whistleblower”).

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¹² It is premature to determine whether the Other action will result in its own Notice of Covered Action or whether it arises from the “same nucleus of operative facts” as the Covered Action for purposes of payment of a whistleblower award. *See* Exchange Act Rule 21F-4(d), 17 C.F.R. § 240.2F-4(d). Similarly, it is premature to determine whether the Criminal actions are “related actions.” *See* Exchange Act Rules 21F-3(b) and 21F-11, 17 C.F.R. §§ 240.21F-3(b),

We find the award allocation is appropriate. Claimant 1's arguments in his/her reconsideration request for a higher award percentage are largely based on speculation and do not support a higher award percentage allocation to Claimant 1.

First, as to the timing of the submissions, Claimant 1 provided information before Claimant 2, but staff opened the Other investigation based on Claimant 1's tip. While staff planned to look into the culpability of the Company, staff did not open the Covered Action investigation until after it received Claimant 2's detailed information. The record is clear that staff opened the Covered Action investigation based both on information developed from the Other investigation and Claimant 2's tip, and that both Claimants 1 and 2 provided information that caused, in part, staff to open the Covered Action investigation.

Second, as to the significance of their information, Claimant 1 speculates that either Claimant 2 provided information before Claimant 1 that was not sufficient on its own to open the Covered Action investigation or that Claimant 2 provided information after Claimant 1 and stresses that Claimant 1's information was sufficient by itself to cause the staff to plan to investigate the Company. Claimant 1 also argues that Claimant 2 would have to provide information not already known to the Commission that added to the Commission's base of knowledge. As noted, Claimant 1 provided information before Claimant 2, but both Claimant 1's and Claimant 2's information caused staff to open the Covered Action investigation. In addition, the record is clear that Claimant 2 provided significant original information, including both independent knowledge and independent analysis, that differed from Claimant 1's information and that was helpful to the success of the Covered Action.

Third, as to the source of their information, Claimant 1 makes incorrect assumptions about how Claimant 2 obtained information, speculating that Claimant 2 could have financially benefited from the misconduct at issue in the Covered Action, and argues that Claimant 1's information is therefore either more significant or provided the direct causal link to the Covered Action investigation. Claimant 1's assumptions are incorrect.

Based on the foregoing, we agree with the CRS's determination that an equal award allocation is appropriate. Both Claimant 1 and Claimant 2 provided original information that contributed to the opening of the Covered Action investigation, and both Claimant 1 and Claimant 2 provided substantial, helpful assistance.

IV. Conclusion

Accordingly, it is ORDERED that Claimant 1 shall receive an award of ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the Covered Action and that Claimant 2 shall receive an award of ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the Covered Action.

By the Commission.

Vanessa A. Countryman
Secretary