

FINAL ORDER - THIS PRELIMINARY DETERMINATION BECAME THE FINAL ORDER OF THE COMMISSION ON JULY 23, 2021 AS TO CLAIMANT 2 PURSUANT TO RULE 21F-10(f) OF THE SECURITIES EXCHANGE ACT OF 1934

[REDACTED]

PRELIMINARY DETERMINATIONS OF THE CLAIMS REVIEW STAFF

In response to the above-referenced Notice of Covered Action, the U.S. Securities and Exchange Commission received two whistleblower award claims. Pursuant to Section 21F of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 21F-10 promulgated thereunder, the Claims Review Staff has evaluated these claims in accordance with the criteria set forth in Rules 21F-1 through 21F-18. The Claims Review Staff sets forth its Preliminary Determinations as follows.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] **(Claimant 2)**

The Claims Review Staff has preliminarily determined to recommend that the Commission deny an award to Claimant 2 on two grounds.

First, to be eligible for an award, claimants must submit their information in the form and manner required, *see* Rule 21F-2(b), by submitting their information on Form TCR or online through the Commission’s website, and sign the required whistleblower declaration, as required under Exchange Act Rules 21F-9(a) and (b), which Claimant 2 did not do. Based on the current record, Claimant 2 is not eligible for the automatic waiver under Exchange Act Rule 21F-9(e), which waives the TCR filing requirement for otherwise meritorious whistleblowers who submit their information within 30 days of obtaining actual or constructive notice of the TCR filing requirement. This is because whistleblowers who are represented by counsel in connection with the submission of their information are deemed to be on constructive notice of the TCR filing requirement. Claimant 2 is represented by counsel in connection with Claimant 2’s award claim, but has never submitted a Form TCR to the Commission related to the information Claimant 2 provided to Commission staff in connection with this Covered Action. Further, based on the current record before us, the CRS has preliminarily determined not to recommend that the Commission exercise its discretionary exemptive authority under Section 36(a) of the Exchange Act to waive the Form TCR filing requirements.

Second, Claimant 2 failed to submit the claim for award to the Office of the Whistleblower within ninety (90) days of the date of the above-referenced Notice for the Covered Action, as required under Rule 21F-10(b) of the Exchange Act.⁴ Claimant 2’s application for whistleblower award for the Covered Action is dated more than three months past the end of the application period for the Covered Action.

Exchange Act Rule 21F-8 provides that “the Commission may, in its sole discretion, waive” these procedural requirements “based upon a showing of extraordinary circumstances.” In determining whether a claimant has demonstrated extraordinary circumstances for purposes of Rule 21F-8(a), the Commission has previously looked to its decision in *In the Matter of the*

³ [REDACTED]

⁴ *See* Order Determining Whistleblower Award Claim, Release No. 34-77368 (Mar. 14, 2016), *pet. for rev. denied sub nom. Cerny v. SEC*, 708 F. App’x 29 (2d Cir. Sept. 7, 2017), *cert. denied*, 138 S.Ct. 2005 (2018).

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*Application of PennMont Securities, et. al (“PennMont”).*⁵ There, in determining whether applicants had demonstrated extraordinary circumstances that would trigger the Commission’s discretion to waive the thirty-day filing deadline under Commission Rule of Practice 420(b), the Commission explained that “the ‘extraordinary circumstances’ exception is to be narrowly construed and applied only in limited circumstances.” An extraordinary circumstance is one “where the reason for the failure timely to file was beyond the control of the applicant” Further, “[e]ven when circumstances beyond the applicant’s control give rise to the delay, . . . an applicant must also demonstrate that he or she promptly arranged for the filing . . . as soon as reasonably practical thereafter.” In reaching this preliminary determination, we note that competing demands on Claimant 2’s time and attention and [REDACTED] lack of knowledge regarding the Commission’s whistleblower program do not demonstrate that extraordinary circumstances prevented Claimant 2 from complying with Rules 21F-9(a) and (b) or Rule 21F-10.⁶

By: Claims Review Staff

Date: May 24, 2021

⁵ *PennMont Sec.*, Release No. 34-61967 (Apr. 23, 2010), *pet. for rev. denied sub nom. PennMont Sec. v. SEC*, 414 F. App’x 465 (3rd Cir. 2011)

⁶ The Commission has declined requests to waive the ninety-day filing deadline for whistleblower award claims because of claimants’ failures to meet the *PennMont* standard. *See* Order Determining Whistleblower Award Claim, Release No. 34-77368 (Mar. 14, 2016), *pet. for rev. denied sub nom. Cerny v. SEC*, 708 F. App’x 29 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 2005 (2018), *reh’g denied*, 138 S. Ct. 2715 (2018); *see also* Order Determining Whistleblower Award Claim, Release No. 34-85273 (Mar. 8, 2019); Order Determining Whistleblower Award Claim, Release No. 34-82181 (Nov. 30, 2017); Order Determining Whistleblower Award Claim, Release No. 34-72659 (July 23, 2014); Order Determining Whistleblower Award Claim, Release No. 34-72178 (May 16, 2014).