

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 90721 / December 18, 2020

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2021-18

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In the Matter of the Claim for an Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that Redacted (“Claimant”) receive a whistleblower award of over \$500,000, which is equal to \*\*\* percent (\*\*\* %) of collected monetary sanctions in the above-referenced Covered Action (“Covered Action”).<sup>1</sup> In recommending that Claimant 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 submitted a timely request for reconsideration seeking a larger award amount.

The recommendation of the CRS is adopted. The record demonstrates that Claimant voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.<sup>2</sup>

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

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<sup>1</sup> The CRS also preliminarily determined to recommend that Claimant’s related action award claim be denied. Claimant did not contest the preliminary denial of the related action award claim, which is now deemed to be the final order of the Commission through operation of law. The CRS also preliminarily determined to deny an award claim of a second individual, who did not submit a request for reconsideration, which is deemed to be the final order of the Commission through operation of law

<sup>2</sup> 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).

(b)<sup>3</sup> in light of the specific facts and circumstances present here. Specifically: (1) beginning in early <sup>\*\*\*</sup>, Claimant provided information regarding the violations underlying the Covered Action to another individual, who was acting as Claimant’s attorney at the time (“Attorney”); (2) the Attorney subsequently used that information, without Claimant’s fully informed consent, to support a <sup>Redacted</sup> TCR submission to the Commission, with Attorney as the whistleblower; and (3) thereafter, Claimant provided substantial additional information to assist the Enforcement staff’s investigation, all the while reasonably believing that the Attorney was continuing to represent Claimant and had acted on Claimant’s behalf in submitting the TCR.<sup>4</sup>

Further, we find the proposed award amount is appropriate and we reject Claimant’s contention that a higher award amount is warranted. While Claimant provided significant, helpful information and ongoing assistance to the Enforcement staff during the investigation, Claimant unreasonably delayed reporting the misconduct for several years while investors were being harmed.<sup>5</sup> Furthermore, during the period of delay, Claimant participated in a plan to <sup>\*\*\*</sup>

<sup>Redacted</sup> In Claimant’s request for reconsideration, Claimant argues that Claimant chose this course because Claimant believed it would result in <sup>Redacted</sup> which ultimately would have resulted in the protection of all of the investors. Claimant also says <sup>\*\*\*</sup> <sup>Redacted</sup> this course allowed Claimant to preserve Claimant’s anonymity. Whatever Claimant’s actual motivation was for attempting to <sup>Redacted</sup> <sup>Redacted</sup> the record is clear that Claimant knew of the fraudulent scheme by <sup>\*\*\*</sup> at the latest, and chose to wait approximately two years before reporting the information to the Commission

<sup>3</sup> Rule 21F-9(a) provides that to be considered for a whistleblower award, “you must submit your information to the Commission . . . online, through the Commission’s website . . . or by mailing or faxing a 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 filed a Form TCR nearly two years after first providing information to the Commission. 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.”

<sup>4</sup> On September 23, 2020, the Commission adopted amendments to the whistleblower rules, which became effective on December 7, 2020. 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 eligible for an award.

<sup>5</sup> The whistleblower rule amendments create a presumption that, where an award will be \$5 million or less, the whistleblower will generally receive a maximum 30% award, if there are no negative factors. That presumption does not apply here as Claimant unreasonably delayed, for a substantial period of time, in reporting the information to the Commission.

or another agency.<sup>6</sup>

Claimant further argues that even if the Commission determines that Claimant unreasonably delayed in reporting, the reduction for delay is too harsh and not consistent with prior award determinations. We disagree. First, Claimant’s reliance on *Order Determining Whistleblower Award Claims*, Rel. No. 34-88658 (Apr. 16, 2020) is misplaced. There, we determined no reduction for delay was warranted due to the strength of the positive factors and the fact that the claimant “repeatedly and tenaciously objected to and escalated” claimant’s concerns within claimant’s organization. By contrast, Claimant did not “repeatedly and tenaciously” object by reporting internally or to a government authority; rather, Claimant attempted to Redacted Likewise, the Commission’s award determination in *Order Determining Whistleblower Award Claim*, Rel. No. 34-80115 (Feb. 28, 2017), which Claimant points to, is not factually similar. Importantly, here, the record reflects that Claimant unambiguously knew that the conduct was fraudulent by no later than \*\*\*, and yet waited approximately two years to report the information to the Commission, during which period investors were continuing to be harmed. As such, we find Claimant’s arguments that Claimant should receive a higher award amount unpersuasive.

Accordingly, it is hereby ORDERED that Claimant shall receive an award of over \$500,000,<sup>7</sup> equal to \*\*\* percent (\*\*\* %) of the monetary sanctions collected in the Covered Action.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>6</sup> In Redacted, Claimant reported the allegations to the Redacted (“Other Agency”). According to Claimant, the Other Agency did not seem interested in the fraud and could not guarantee Claimant’s anonymity. When the Other Agency contacted Claimant about a month later, Claimant did not cooperate. Claimant further contends that Claimant became physically ill as a result of the stress from reporting to the Other Agency.

<sup>7</sup> We have determined to treat as collected sanctions under Section 21F(b)(1) of the Exchange Act those amounts distributed to investors by the court-appointed receiver in the Covered Action. *See* Exchange Act Rule 21F-4(e): “*Monetary sanctions* means: (1) An order to pay money that results from a Commission or related action and which is either: (i) Expressly designated as penalty, disgorgement, or interest; or (ii) *Otherwise ordered as relief for the violations that are the subject of the covered action or related action . . .*” (emphasis added).