

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 100543 / July 17, 2024

WHISTLEBLOWER AWARD PROCEEDING

File No. 2024-30

In the Matter of the Claim for an

Award in connection with

Redacted

Redacted

Notice of Covered Action <sup>Redacted</sup>

**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that <sup>Redacted</sup> (“Claimant”) receive a whistleblower award of more than \$37,000,000 which represents <sup>Redacted</sup> percent ( <sup>\*\*\*</sup> %) of the monetary sanctions collected in the above-referenced Covered Action (the “Covered Action”). Claimant filed a timely response contesting the Preliminary Determination. For the reasons discussed below, the CRS’s recommendation is adopted.

**I. Background**

**A. The Covered Action**

The Commission filed the settled Covered Action on <sup>Redacted</sup> <sup>Redacted</sup>. The Commission’s Order found that

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. The Commission’s Order

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The Commission's Order imposed monetary sanctions of more than \$1 million. On Redacted, the Office of the Whistleblower posted the Notice of Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days. Claimant filed a timely whistleblower award claim.

## **B. The Preliminary Determination**

The CRS preliminarily determined to recommend to the Commission that it find that Claimant voluntarily provided original information to the Commission that led to the successful enforcement of the referenced Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder, and that Claimant receive an award of Redacted percent ( % ) of the monetary sanctions collected in the Covered Action. In determining the amount of award to recommend for Claimant, the CRS considered the following factors set forth in Rule 21F-6 of the Exchange Act as they apply to the facts and circumstances of Claimant's application: (i) the significance of information provided to the Commission; (ii) the assistance provided in the Covered Action; (iii) the law enforcement interest in deterring violations by granting awards; (iv) participation in internal compliance systems; (v) culpability; (vi) unreasonable reporting delay; and (vii) interference with internal compliance and reporting systems.<sup>1</sup> In making this preliminary recommendation, the CRS considered that: (i) while Claimant significantly contributed to the success of the action by providing new helpful information such as identifying witnesses and documents that helped save staff time and resources, the conduct was uncovered due to the work of staff in the Division of Examinations ("EXAMS"), (ii) Claimant met once in person with investigative staff, and after the meeting Claimant provided additional useful information, responded to staff's questions, and furnished documents, and (iii) there are high law enforcement interests here, as tens of millions of dollars were returned to harmed investors in the underlying Covered Action.

## **C. Claimant's Response to the Preliminary Determination**

Claimant requested reconsideration of the Preliminary Determination asserting that his/her contributions merit consideration of a greater percentage for the following reasons: (1) Claimant's information appears to be the proximate cause in Enforcement converting the Matter Under Inquiry ("MUI") to an investigation, qualifying Claimant under 21F-4(c)(1); (2) Claimant's information was crucial both to Enforcement's decision to open an investigation and the SEC's ability to achieve such a large settlement because he/she provided evidence of

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<sup>1</sup> Rule 21F-6; 17 C.F.R. § 240.21F-6.

scienter of high-level executives; (3) the Preliminary Determination does not appear to give specific credit for Claimant's \*\*\* internal report; (4) the Preliminary Determination does not mention or specifically credit Claimant's \*\*\* TCR, which provided an early, comprehensive uncovering of the conduct; (5) the \*\*\* TCR's close nexus with the Order should receive further credit and be specifically acknowledged; and (6) Claimant has no negative factors but his/her proposed award is below the "top third" historically given to whistleblowers with no negative factors under Rule 21F-6(b).

## II. Analysis

The record demonstrates that Claimant voluntarily provided original information to the Commission that significantly contributed to the success of the Covered Action. Claimant internally reported concerns in Redacted, and then submitted a TCR to the Commission in Redacted. In Redacted, staff in EXAMS opened exams related to the Respondents based on a Redacted and not because of Claimant's \*\*\* TCR. While EXAMS staff reviewed the \*\*\* TCR, it had no effect on the opening of the exams, the selection of the entities to be examined, or the scope of the exams. EXAMS made a referral to the Enforcement staff, which prompted the opening of the MUI in Redacted. After opening the MUI, Enforcement staff inquired as to whether EXAMS was aware of any potential witnesses, and EXAMS provided Enforcement staff the Claimant's \*\*\* TCR as well as another TCR. Enforcement staff reached out to Claimant's counsel and met with Claimant one time. Claimant provided important new information that significantly contributed to the success of the Covered Action as it added to Enforcement staff's early understanding of Redacted, helped focus their attention on relevant witnesses, and influenced their decisions as to what documents to request and from which witnesses to take testimony, which saved time and resources.

Because a maximum award would be more than \$5 million, the 30% presumption under Rule 21F-6(c) does not apply here. Instead, the Commission considers the Rule 21F-6(a) and (b) factors identified above. We agree with the CRS's recommendation that a \*\*\* % award appropriately recognizes Claimant's contributions to the success of the Covered Action.

Contrary to Claimant's assertions, he/she does not satisfy Rule 21F-4(c)(1) because Enforcement staff opened the MUI before receiving his/her tip and interviewing him/her.<sup>2</sup> In determining whether a claimant's tip causes Enforcement staff to open an investigation under Rule 21F-4(c)(1), the Commission has historically deemed an investigation to have been opened on the date on which the MUI was opened.<sup>3</sup> Further, according to a supplemental declaration from the Enforcement staff, which we credit, the decision to convert the MUI to an investigation was not based on Claimant's information. Regardless of whether Claimant satisfies Rule 21F-4(c)(1) or 21F-4(c)(2), such determination impacts a claimant's award eligibility and not the

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<sup>2</sup> Claimant also did not provide information that caused Commission staff to inquire into different conduct as part of a current examination or investigation. See Rule 21F-4(c)(1).

<sup>3</sup> See *Order Determining Whistleblower Award Claims*, Release No. 34-87663 (Dec 5, 2019).

award percentage, which is based on a consideration of the Rule 21F-6 factors.<sup>4</sup>

With respect to Claimant's argument that he/she provided evidence of scienter that allowed the Commission to obtain a favorable settlement, the Commission did not bring any scienter-based charges in the Covered Action and did not bring charges against any individuals. Claimant appears to concede this point, by noting in the Reconsideration Request that <sup>Redacted</sup> <sub>Redacted</sub>.

Claimant takes issue with the Preliminary Determination's not appearing to give specific credit for his/her internal anonymous report in <sup>Redacted</sup>. The Preliminary Determination does not specifically mention Claimant's internal report; however, the Enforcement staff declaration, upon which the Preliminary Determination was based in part, expressly acknowledges Claimant's internal report. It is unnecessary for the Preliminary Determination to describe each fact underlying the award percentage recommendation. For clarity, we specifically acknowledge that the <sup>\*\*\*</sup> % award reflects, among other things, Claimant's participation in an internal compliance system.

We have also considered Claimant's assertion that he/she submitted the <sup>\*\*\*</sup> TCR and that it has a close nexus with the Commission's Order. First, that Claimant voluntarily submitted a TCR to the Commission in <sup>\*\*\*</sup> relates to his/her award eligibility, not the award percentage. Second, as noted above, EXAMS' referral, which prompted the opening of the MUI, specifically identified the potential violations and underlying conduct. In other words, it was the referral from EXAMS, and not Claimant's <sup>\*\*\*</sup> TCR, that alerted Enforcement staff to the conduct that became the basis for the charges in the Covered Action. As the Commission has stated, award eligibility is not based on what the staff would have or could have done in hypothetical circumstances, but rather on what actual impact a claimant's information had on the investigation.<sup>5</sup> Similarly, for award percentage purposes, we consider what impact the claimant's information had on the investigation, not how the information could have impacted the investigation in hypothetical circumstances.

Finally, Claimant objects that although he/she has no negative factors, the award is below the "top third" of the award range historically given to whistleblowers with no negative factors under Rule 21F-6(b). Rule 21F-5(b) provides that, if all of the conditions are met for a whistleblower award the Commission is authorized to decide the percentage amount of the

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<sup>4</sup> Similarly, Claimant surmises that his/her internal report may have prompted an internal investigation and Respondents then provided the findings to the Commission, and as such, may satisfy Exchange Act Rule 21F-4(c)(3). Again, whether Claimant satisfies Rule 21F-4(c)(3) does not affect the award percentage, as it only relates to award eligibility. Additionally, there is insufficient evidence to conclude that Claimant's internal report prompted an internal investigation, the results of which were provided to the Commission. According to a supplemental staff declaration, which we credit, Respondents did not conduct an internal investigation.

<sup>5</sup> See *Order Determining Whistleblower Award Claim*, Release No. 34-98655 (Sept. 29, 2023); *Order Determining Whistleblower Award Claim*, Release No. 34-97408 (May 1, 2023); *Order Determining Whistleblower Award Claim*, Release No. 34-96657 (Jan. 13, 2023).

award by applying the criteria set forth in Rule 21F-6, provided that the percentage is at least 10 percent, and no more than 30 percent of the monetary sanctions collected. Rule 21F-6 lists a number of factors that the Commission may consider in deciding whether to increase or decrease the percentage to be awarded to an eligible whistleblower. The Adopting Release clarifies that Rule 21F-6 “does not establish... a methodology that would permit a mathematical calculation of the appropriate award percentage;” rather, since “every enforcement matter is unique, the analytical framework adopted by the Commission in the final rule provides general principles without mandating a particular result.”<sup>6</sup> “The determination of the amount of an award is in the discretion of the Commission.”<sup>7</sup>

Furthermore, the Adopting Release provides that “the absence of any one of the positive factors does not mean that the award percentage will be lower than 30 percent, nor does the absence of negative factors mean the award percentage will be higher than 10 percent.”<sup>8</sup> Here, given the totality of the factors discussed above, a \*\*\* % award appropriately recognizes Claimant’s contribution to the successful Covered Action.

### III. Conclusion

Accordingly, it is hereby ORDERED that Claimant shall receive an award of <sup>Redacted</sup> percent (\*\*\* %) of the monetary sanctions collected in the Covered Action.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>6</sup> See *Securities Whistleblower Incentives & Protections* (“Adopting Release”), 76 Fed. Reg. 34300, 34331 (June 13, 2011).

<sup>7</sup> Rule 21F-5(a); 17 C.F.R. § 240.21F-5(a).

<sup>8</sup> Adopting Release at 343331. The OWB Guidance that Claimant cites to states that OWB makes recommendations based on guiding principles and the rules of the SEC’s whistleblower program, and “taking into account the unique facts and circumstances of each claim.” OWB Guidance for Whistleblower Award Determinations (Sept. 23, 2020) at page 2.