

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 100809 / August 23, 2024

WHISTLEBLOWER AWARD PROCEEDING

File No. 2024-37

In the Matter of Claims for Awards

in connection with

Redacted

Redacted

Redacted

Redacted

Notice of Covered Actions

Redacted

**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that (1) Redacted (“Claimant I”) receive a whistleblower award of more than \$82,000,000 which represents Redacted percent ( \*\* %) of the monetary sanctions collected in the above-referenced Covered Actions (the “Covered Actions”) and in connection with Redacted

Redacted, and the Redacted reached between the Redacted (“Other Agency”) and Redacted (collectively, the

“Related Actions”),<sup>1</sup> and (2) Redacted (“Claimant II”) receive a whistleblower award of more than \$16,000,000 which represents \*\*\* percent ( \*\* %) of the monetary sanctions

<sup>1</sup> The Commission may pay an award based on amounts collected in related actions that are based on the same original information that the whistleblower voluntarily provided to the Commission and that led the Commission to obtain monetary sanctions totaling more than \$1 million. Exchange Act Rule 21F-3(b), 17 C.F.R. § 240.21F-3(b). The Commission finds that the judgment against Redacted and the \*\*\* between Redacted and the Other Agency constitute “related actions” within the meaning of Exchange Act Rules 21F-3(b) and 21F-4(d)(3)(i).



## B. The Preliminary Determination

The CRS preliminarily determined to recommend to the Commission that it find that Claimants I and II voluntarily provided original information to the Commission that led to the successful enforcement of the referenced Covered Actions and Related Actions pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder, and that Claimant I receive an award of <sup>Redacted</sup> percent (<sup>\*\*\*</sup> %) and that Claimant II receive an award of <sup>\*\*\*</sup> percent (<sup>\*\*\*</sup> %) of the monetary sanctions collected in the Covered Actions and Related Actions. In determining the amount of award to recommend for Claimants I and II for the Covered Actions and Related Actions, 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 Claimants' applications: (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>3</sup> In making this preliminary recommendation, the CRS considered that: (i) Claimant I's information was highly significant in that it alerted Commission staff to the underlying conduct prompting the opening of the investigation; (ii) Claimant I provided substantial, continuing assistance, including meeting with Commission staff multiple times and providing additional helpful submissions; (iii) while Claimant II's information was helpful as it helped Commission staff save time and resources, it was submitted more than a year after the investigation had opened and the new helpful information focused on only one of the transactions whereas Claimant I's information related to all the transactions in the Covered Actions; (iv) Claimant II provided additional assistance to investigative staff, *albeit*, less than the assistance provided by Claimant I; and (v) there are high law enforcement interests as the information would have been difficult to obtain in the absence of Claimant I's and II's information.

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

Claimant II submitted a timely request for reconsideration, arguing that he/she should receive a higher award percentage for the following primary reasons: 1) the information attributed to Claimant I was "less than remarkable" and some of Claimant I's information proved to be factually incorrect; 2) the importance of Claimant II's information was marginalized and he/she provided information on more than one transaction; and 3) Claimant II communicated with different Other Agency staff than the staff with whom OWB conferred concerning Claimant

<sup>2</sup> To avoid double-counting, the amount offset by payments made to the SEC are not included in the amount collected in the Other Agency <sup>\*\*\*</sup>. The Other Agency <sup>\*\*\*</sup> also included the \$ <sup>Redacted</sup> fine against <sup>Redacted</sup>; because it was only paid one time, we are including the \$ <sup>Redacted</sup> fine only once in determining the amount collected. Further, the <sup>Redacted</sup> collected on the amounts imposed, and as such, are being included in the Other Agency <sup>\*\*\*</sup> total collected amount.

<sup>3</sup> Exchange Act Rule 21F-6; 17 C.F.R. § 240.21F-6.

II's contributions to the Related Actions.<sup>4</sup>

## II. Analysis

The record demonstrates that Claimant I voluntarily provided original information that caused the Commission and Other Agency to open investigations leading to the successful enforcement of the referenced Covered Actions and Related Actions, and Claimant II voluntarily provided original information to the Commission and Other Agency that significantly contributed to the success of the Covered Actions and Related Actions. Because the award is 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 <sup>Redacted</sup> percent (<sup>\*\*\*</sup>%) award appropriately recognizes Claimant I's contributions to the success of the Covered Actions and Related Actions and a <sup>Redacted</sup> percent (<sup>\*\*\*</sup>%) award appropriately recognizes Claimant II's contributions to the success of the Covered Actions and Related Actions.

In arguing that Claimant I's information was not that important, Claimant II points out that even though Claimant I had been cooperating with Commission staff for more than a year, <sup>Redacted</sup>

<sup>Redacted</sup> was permitted to go ahead in <sup>Redacted</sup>, "with no objections whatsoever." That misconduct may have occurred after the opening of the investigation does not undermine the importance of Claimant I's information and assistance, particularly when compared to Claimant II's information and assistance. The record supports the conclusion that Claimant I's information and assistance were critical to the investigation and had a significantly greater impact on the success of the enforcement actions.

Relatedly, Claimant II contends that some of Claimant I's information proved to be factually incorrect and cites as an example <sup>Redacted</sup>. Regardless of whether one aspect of Claimant I's information subsequently turned out to be incorrect, the record supports the conclusion that Claimant I's information and assistance to the overall success of the actions significantly outweighed Claimant II's new and helpful information.

Claimant II also complains that the Enforcement staff's initial declaration contained 42 paragraphs devoted to Claimant I's contributions in contrast to "a mere 12" paragraphs

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<sup>4</sup> Claimant I does not contest the Preliminary Determination; however, Claimant I requests that the CRS reject Claimant II's request for a higher award percentage, and should the CRS consider adjusting the current award distribution, it should be Claimant I who should be considered for an increased award percentage rather than Claimant II. Because Claimant I's response is not a contest, it does not fall within the ambit of Rules 21F-10(e)'s and 21F-11(e)'s allowance for a reconsideration response and therefore is not within the scope of the record materials contemplated by Rule 21F-12(a)(3). Consequently, Claimant I's response has not been entered into the record and was not considered by the Commission.

discussing Claimant II's contributions. The fact that the initial staff declaration included a greater discussion of the helpful information and assistance provided by Claimant I underscores the point that Claimant I provided more extensive new and helpful information and assistance as compared to Claimant II. As evidence that his/her information was marginalized, Claimant II complains that the initial staff declaration fails to give him/her credit for providing important insight on the

Redacted

. However, according to a supplemental declaration from the responsible Enforcement staff, which we credit, it was information provided by Claimant I, and not Claimant II, concerning the that the staff found helpful.

Similarly, in an effort to show the importance of his/her information, Claimant II contends that three months after he/she met with Enforcement and Other Agency staff, Enforcement staff contacted and the news media published an article about the investigations. However, Enforcement staff had opened an investigation in and had taken significant investigative steps prior to receiving Claimant II's information, including contacting . That a news organization may have published an article concerning the investigations has no bearing on the importance of Claimant II's information, particularly in light of the fact that the record reflects that both Claimant I and Claimant II were providing information to Commission and Other Agency staff.

Claimant II asserts that the basis of the Preliminary Determination's finding that the helpfulness of Claimant II's information was limited to only one of the transactions is unfounded because he/she provided information about the other transactions in addition to the

However, most of the information provided by Claimant II was already known as a result of Claimant I's information and assistance or as a result of investigative steps already taken during the sixteen months prior to investigative staff's receiving Claimant II's information. While Claimant II may have provided information concerning the other transactions, that information was not new, and as such, cannot form the basis for an award. It was the additional information and detail that Claimant II provided about the that was new and helpful.

Finally, Claimant II complains that the Other Agency staff with whom OWB communicated concerning his/her contributions to the Related Actions were not the staff with whom he/she communicated. The record supports the conclusion that OWB staff communicated with multiple staff from the Other Agency, including a staff member who was on the investigation from the beginning, concerning Claimant I's and Claimant II's contributions to the Related Actions, and the staff with whom OWB communicated were knowledgeable about the Other Agency's investigation. Further, the Other Agency staff's views on Claimant I's and Claimant II's levels of contribution to the investigation and resulting Related Actions were consistent with the views expressed by the Enforcement staff responsible for the Covered Actions – that Claimant I, whose information alerted staff to the conduct and caused the opening

of the investigations, provided significant information about all the transactions, while Claimant II's new and helpful information, provided more than a year later, was much more limited and decidedly less helpful.<sup>5</sup>

### **III. Conclusion**

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

By the Commission.

Vanessa Countryman  
Secretary

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<sup>5</sup> Claimant II questions the motivation behind OWB's request for additional information from him/her concerning the information he/she provided to the Commission. First, OWB routinely requests information from claimants where there is a factual gap in the record. *See* Rule 21F-8(b); 17 C.F.R. § 240.21F-8(b). Second, the information requested by OWB and provided by Claimant II helped establish his/her eligibility for an award.