

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 86010 / June 3, 2019

WHISTLEBLOWER AWARD PROCEEDING

File No. 2019-7

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In the Matter of the Claim for Award

in connection with

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

<sup>Redacted</sup>

<sup>Redacted</sup>

<sup>Redacted</sup>

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Commission received timely claims for whistleblower awards from <sup>Redacted</sup> <sup>Redacted</sup> (“Claimant 1”) and <sup>Redacted</sup> (“Claimant 2”) (collectively “Claimants”) for the above referenced Notice of Covered Action. The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that Claimant 1 and Claimant 2 jointly receive a whistleblower award in the amount of <sup>Redacted</sup> percent ( ) of the monetary sanctions collected or to be collected in the Covered Action. Claimants provided written notice of Claimants’ decision not to contest the Preliminary Determination.<sup>1</sup> After considering the administrative record, we choose to depart from the Preliminary Determination’s recommendation and jointly award Claimants <sup>Redacted</sup> percent ( ) of the monetary sanctions collected or to be collected in the Covered Action, for an undivided payout of approximately \$3,000,000.<sup>2</sup>

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<sup>1</sup> The CRS also recommended that Claimants’ claims for award in connection with an action brought by the <sup>Redacted</sup> (“Other Authority”), be preliminarily denied because none of Claimants’ information led to the successful enforcement of that action. *See* Rule 21F-3(b)(2). Claimants did not contest that determination, and as such, the CRS’s preliminary determination as to the Other Authority action became the final determination of the Commission pursuant to Exchange Act Rule 21F-11(f).

<sup>2</sup> We have determined to treat Claimant 1 and Claimant 2 jointly as a “whistleblower” for purposes of the award determination given that they jointly submitted a Form TCR and their respective Forms WB-APP are substantively identical. *See* Exchange Act Section 21F(a)(6) (defining “whistleblower” to mean “2 or more

We find that the record demonstrates that Claimants provided original information to the Commission that led to<sup>3</sup> the successful enforcement of the above-referenced Covered Action pursuant to Section 21F(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>4</sup> and Rule 21F-3(a) thereunder.

We conclude that Claimants did not act voluntarily under Section 21F(b)(1) and Rule 21F-4(a) thereunder because their submission of original information to the Commission was preceded by a related information request from the Other Authority to their employer asking for a response from Claimants.<sup>5</sup> In relevant part, Rule 21F-4(a)(1) provides that “[y]our submission of information is made *voluntarily* . . . if you provide your submission before a request, inquiry, or demand that relates to the subject matter of your submission is directed to you or anyone representing you (such as an attorney)” by the Commission or another designated government or regulatory authority.<sup>6</sup> Rule 21F-4(a) thus establishes a straightforward, temporal test for voluntariness; the whistleblower must come forward *before* the Commission or other designated authorities seek information from the whistleblower.<sup>7</sup> While we do not treat an information request to an employer as necessarily “directed to” all employees who may possess responsive information,<sup>8</sup> we treat a request to an employer specifically seeking an interview of, or other information from, a particular employee as “directed to” that employee or the employee’s representative for purposes of Rule 21F-4(a)(1).

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individuals acting jointly who provide information relating to a violation of the securities laws to the Commission”). Our proceeding in this way has not impacted the net total award percentage to Claimants. Unless Claimants, within ten (10) calendar days of the issuance of this Order, make a joint request, in writing, for a different allocation of the award between the two of them, the Office of the Whistleblower is directed to pay each of them individually 50% of their joint award.

<sup>3</sup> In making this determination, we apply Exchange Act Rule 21F-4(c)(2) because, at the time Claimants reported their information to the Commission, there was an ongoing investigation by the Other Authority. Although we generally apply the standards set forth under Rule 21F-4(c)(1) where (as was the case in this matter) a whistleblower’s information causes us to initiate the investigation that results in the Covered Action, the more demanding standard of Rule 21F-4(c)(2) governs here because, at the time that the Claimants submitted their tip to the Commission, the conduct that was the subject of the Claimants’ information was already under investigation by the Other Authority.

<sup>4</sup> 15 U.S.C. § 78u-6(b)(1).

<sup>5</sup> The information request from the Other Authority did not reference Claimants by name but did request a response from the relevant employees—which Claimants still were as of the date of that information request.

<sup>6</sup> 17 C.F.R. § 240.21F-4(a)(1) (emphasis in original). *See also id.* § 240.21F-4(a)(2) (“If the Commission or any of these other authorities direct a request, inquiry, or demand as described in paragraph (a)(1) of this section to you or your representative first, your submission will not be considered voluntary, and you will not be eligible for an award, even if your response is not compelled by subpoena or other applicable law.”).

<sup>7</sup> *See Whistleblower Award Proceeding* No. 2018-11, Exchange Act Release No. 84046 (Sept. 6, 2018).

<sup>8</sup> *See Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34309 (June 13, 2011) (“[W]e have decided not to adopt a rule that would treat a request to an employer as directed as well to all employees whose documents or information fall within the scope of the request.”).

Nonetheless, we have determined that it is appropriate in the public interest and consistent with the protection of investors that we exercise our discretionary authority under Section 36(a) of the Exchange Act to waive the “voluntary” requirement of Rule 21F-4(a) in light of the unique facts and circumstances of this case. In particular, we note that: (1) neither Claimant was informed of the request from the Other Authority; (2) Claimants did not learn of the existence of the Other Authority’s investigation until several months after they reported their information to the Commission; (3) Claimants’ candid discussions <sup>Redacted</sup>

in turn prompted the Other Authority to open its investigation—thus, Claimants’ own remedial efforts, in part, were an indirect cause of the investigation that resulted in the request for information from Claimants; and (4) absent a waiver, Claimants would be subject to undue hardship and unfairness as a result of their efforts in the circumstances described here.

Moreover, applying the award criteria specified in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find that an award of <sup>\*\*\*</sup> of the monetary sanctions collected in this matter is appropriate.<sup>9</sup> In reaching that determination, we positively assessed the facts that Claimants undertook significant and timely steps to have the firm remediate the harm caused by the violations, including advocating for full disclosure of the violation and for compensation of harmed investors. We also positively assessed the following facts: Claimants promptly participated in the firm’s internal compliance system after learning of the misconduct; Claimants experienced hardships by raising concerns about the violation; Claimants assisted the Commission staff by meeting with them in-person and identifying potential witnesses; and the significant law enforcement interest in deterring violations involving retail investors.

Accordingly, it is hereby ORDERED that Claimants shall receive an award of <sup>Redacted</sup> percent ( <sup>\*\*\*</sup> ) of the monetary sanctions collected in the Covered Action, including any monetary sanctions collected after the date of this Order.

By the Commission.

Vanessa A. Countryman  
Acting Secretary

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<sup>9</sup> In assessing the appropriate award amount, Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems.