

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 81227 / July 27, 2017
WHISTLEBLOWER AWARD PROCEEDING
File No. 2017-13

In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On April 21, 2017, the Claims Review Staff (“CRS”) issued a Preliminary Determination related to Notice of Covered Action Redacted The Preliminary Determination recommended that Redacted (“Claimant”) receive a whistleblower award because Claimant voluntarily provided original information to the Commission that led to the successful enforcement of the above-referenced Covered Action pursuant to Section 21F(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-6(b)(1), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).¹ Although Claimant did not comply with Exchange Act Rule 21F-9(d) – an omission which might normally require an award denial – the CRS recommended that the Commission waive that rule here given certain unusual circumstances (which are discussed in footnote 4, below).²

¹ Of particular note, Claimant, a company insider, reported an ongoing securities law violation to the Commission that would have otherwise been difficult to detect. Thereafter, Claimant provided critical information that helped end the multi-year fraud and, as a result, millions of dollars were returned to harmed investors.

² Rule 21F-9(d) requires that an individual must have provided original information “in writing” to the Commission in order for that information to be a basis for a whistleblower award if the information was first submitted to the Commission during the interim period between the enactment of the whistleblower program – *i.e.*, July 21, 2010, when the Dodd-Frank Wall Street

Further, the CRS recommended that such award be set in the amount of Redacted of the monetary sanctions collected, or to be collected, in the Redacted Covered Action, which will equal an award of more than \$1.7 million. In determining the amount of award to recommend, the CRS considered the following factors set forth in Rule 21F-6 of the Exchange Act as they apply to Claimant: (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.³ On May 31, 2017, Claimant provided written notice to the Commission of Claimant's decision not to contest the Preliminary Determination within the 60-day deadline set out in Rule 21F-10(e) promulgated under the Exchange Act, 17 C.F.R. § 240.21F-10(e).

Upon due consideration under Rules 21F-10(f) and (h), 17 C.F.R. § 240.21F-10(f) and (h), the Preliminary Determination of the CRS is adopted.⁴ Accordingly, for the

Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") was signed into law – and the effective date of the Commission's whistleblower rules (*i.e.*, August 12, 2011).

³ In determining the appropriate award percentage, we have considered that Claimant alerted the Commission to a serious, multi-year fraud that would have otherwise been difficult to detect, continued to provide substantial assistance to Enforcement staff during the investigation, Redacted. Against these factors, we have also considered that Claimant became aware of certain discrepancies indicative of the fraud Redacted before Claimant reported to the Commission. In applying the unreasonable reporting delay factor, we also considered that Claimant Redacted. Additionally, we have not applied the delay factor as severely here as we otherwise might have had the delay occurred after the whistleblower program was established by the Dodd-Frank Act and after the whistleblower protections were in place. Finally, Claimant bears some, *albeit* limited, culpability.

⁴ We concur with the CRS's recommendation that we exercise our discretionary authority to waive the Claimant's non-compliance with Rule 21F-9(d). *See* Section 36(a) of the Exchange Act. We find that it is appropriate in the public interest and consistent with the protection of investors to do so in this matter given a number of unusual circumstances, including the following: (1) the Commission's staff was already actively working with the Claimant before enactment of the Dodd-Frank Act; (2) the Claimant provided the new post-Dodd-Frank Act information in the format the Enforcement staff requested Redacted and (3) the indicia of reliability and the certainty as to the time that the information was provided, which are the policy rationales underlying the Rule 21F-9(d) writing provision, is clearly satisfied in the context of this claim because it is undisputed that Claimant Redacted.

reasons set forth in the Preliminary Determination, it is hereby ORDERED that Claimant shall receive an award of ^{Redacted} of the monetary sanctions collected in this Covered Action, including any monetary sanctions collected after the date of this Order.

By the Commission.

Brent J. Fields
Secretary