

UNITED STATES OF AMERICA
before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of Claims for Award by:)
)
 Redacted)
)
 Redacted WB-APP Redacted ;)
)
 Redacted WB-APP Redacted ;) CFTC Whistleblower Award
) Determination No. 18-WB-1
 Redacted WB-APP Redacted ; and)
)
 Redacted WB-APP Redacted)
)
 In Connection with)
 Notice of Covered Action Redacted)
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)

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Commodity Futures Trading Commission (“Commission”) received whistleblower award applications from Redacted (“Claimant #1”), Redacted (“Claimant #2”), *** Redacted (“Claimant #3”), and Redacted (“Claimant #4”) in response to the Commission’s Notice of Covered Action Redacted regarding Redacted

The Claims Review Staff has evaluated each of the applications in accordance with the Commission’s Whistleblower Rules (“Rules”), 17 C.F.R. pt. 165 (2017) (as amended by 82 Fed. Reg. 24,487, 24,496–521 (May 30, 2017)), promulgated pursuant to Section 23 of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. § 26 (2012). On January 9, 2018, the Claims Review Staff issued a Preliminary Determination recommending that Claimant #4 receive a whistleblower award in the amount of ***% of monetary sanctions collected in ***

Redacted because Claimant #4 voluntarily provided original information to the

Commission that led to the successful enforcement of a covered action. The Preliminary Determination also recommended denying the other award claims because the other applicants played no role in ^{Redacted}

I. LEGAL ANALYSIS

Section 23(b)(1) of the CEA requires the Commission to pay an award to an individual who voluntarily provides the Commission with original information that leads to the successful enforcement of a covered or related action. 7 U.S.C. § 26(b)(1) (2012). The Claims Review Staff has determined that Claimant #4 voluntarily provided the Commission with original information that led to the successful enforcement of a covered action. Even though Claimant #4 did not submit a Form TCR (Tip, Complaint or Referral) until after the Commission concluded the enforcement action, Claimant #4 is a whistleblower. As a foreign national, Claimant #4 did not know about the Commission's whistleblower program when he/she initiated contact with the Commission regarding an ongoing litigation matter. Claimant #4 provided significant information and assistance to Commission staff during the litigation, and he/she thereafter submitted a Form TCR to perfect his/her whistleblower status. Accordingly, Claimant #4 is a whistleblower within the meaning of the Rules. Claimant #4 also provided the information voluntarily, as he/she was not under a legal obligation to report to the Commission, and Commission staff did not know about Claimant #4's existence until he/she came forth out of his/her own volition. In addition, Claimant #4's information was original, as it was previously unknown to the Commission and derived from his/her personal experiences and observations. Lastly, Claimant #4 significantly contributed to the Commission's action by helping Commission staff successfully settle the action and thereby avoid a costly trial.

The Claim Review Staff recommended the award amount to be ***% of the amount of monetary sanctions collected in the covered action.¹ We agree with this determination. In arriving at this award amount, the Claims Review Staff applied the factors set forth in Rule 165.9, 17 C.F.R. § 165.9, in relation to the facts and circumstances of Claimant #4's award application. The determination of the appropriate percentage of a whistleblower award involves a highly individualized review of the facts and circumstances. Depending upon the facts and circumstances of each case, some factors may not be applicable or may deserve greater weight than others. The analytical framework in the Rules provides general principles without mandating a particular result. The criteria for determining the amount of an award in Rule 165.9, 17 C.F.R. § 165.9, are not listed in any order of importance and are not assigned relative importance. The Rules do not specify how much any factor in Rule 165.9(b) or (c) should increase or decrease the award percentage. Not satisfying any one of the positive factors does not mean that the award percentage must be less than 30%, and the converse is true. Not having any one of the negative factors does not mean the award percentage must be greater than 10%. These principles serve to prevent a vital whistleblower from being penalized for not satisfying the positive factors. For example, a whistleblower who provides the Commission with significant information and substantial assistance such as testifying at trial and producing smoking gun documents could receive 30% even if the whistleblower did not participate in any internal compliance systems. In contrast, in order to prevent a windfall, a whistleblower who provides some useful but partial information and limited assistance to the Commission may receive 10% even if none of the negative factors were present.

¹ The Commission collected Redacted of sanctions imposed, which means Claimant #4 would receive Redacted in payout. While circumstances may change, the Commission does not anticipate being able to collect the remaining amount.

As applied, Claimant #4 significantly contributed to the Commission's case, but he/she was involved in the CEA violations at issue in the covered action. However, it was unlikely that Claimant #4 acted with scienter, as he/she was a junior-level employee in a foreign nation given instruction by his/her employer Redacted

. Further, Claimant #4 did not financially benefit from the violations, and his/her information led the Commission to successfully settle the case and thereby avoid a potentially costly, risky, and cumbersome trial against Redacted. After considering the mitigating factors, we find that the Claims Review Staff's determination of ***% is appropriate.

The remaining Claimants did not contribute to the covered action. Commission staff responsible for the covered action did not know who the remaining Claimants were until the Commission's Whistleblower Office informed staff of these Claimants' award applications.

II. RESPONSE TO PRELIMINARY DETERMINATION

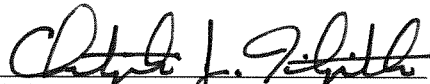
On January 11, 2018, Claimant #1 wrote to the Commission to withdraw his/her award application from this proceeding. Therefore, Claimant #1 is no longer a claimant in this determination. On January 31, 2018, Claimant #4 informed the Commission in writing that he/she would not contest the Preliminary Determination within the 60-day deadline set out in Rule 165.7(g), 17 C.F.R. § 165.7(g). Accordingly, pursuant to Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination became the Proposed Final Determination of the Claims Review Staff with respect to Claimant #4.

Claimant #2 and Claimant #3 did not respond to the Preliminary Determination. Pursuant to Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination became final with respect to Claimant #2 and Claimant #3. Claimant #2's and Claimant #3's failure to submit a timely response contesting the Preliminary Determination constituted a failure to exhaust administrative

remedies. Accordingly, Claimant #2 and Claimant #3 are prohibited from pursuing an appeal under Rule 165.13, 17 C.F.R. § 165.13.

It is hereby ORDERED that Claimant #4 shall receive ***% of monetary sanctions collected in ^{Redacted} ; and it is further ORDERED that Claimant #2's and Claimant #3's whistleblower award claims be, and hereby are, denied.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, N.W.
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Dated: July 12, 2018