

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88014 / January 22, 2020

WHISTLEBLOWER AWARD PROCEEDING
File No. 2020-5

In the Matter of the Claim for an Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that Redacted (“Claimant”) receive a whistleblower award in the amount of *** percent (*** %) of the monetary sanctions collected in Covered Action Redacted (the “Covered Action”) for a payout of \$45,000. Claimant provided written notice of Claimant’s decision not to contest the Preliminary Determination.

The recommendation of the CRS is adopted. The record demonstrates that Claimant voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.¹ In reaching this determination, we have relied upon Exchange Act Rule 21F-4(b)(7) to treat Claimant as a whistleblower eligible for an award as of the date Claimant reported the misconduct to a state Attorney General, which was before our staff contacted Claimant seeking information.²

¹ See Section 21F(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

² Rule 21F-4(b)(7), 17 C.F.R. § 240.21F-4(b)(7), in relevant part provides, “If you provide information to ... [certain designated persons or agencies, including a state Attorney General] ..., and you, within 120 days, submit the same information to the Commission pursuant to §240.21F-9 of this chapter, ... then, for purposes of evaluating your claim to an award ..., the Commission will consider that you provided [the] information as of the date of your original disclosure, report or submission to one of these other authorities or persons.” The rule operates as a 120-day safe harbor, assuring an individual who voluntarily reports misconduct to certain other agencies first that the individual will be deemed for award purposes to have reported directly to the Commission at the same time that the individual reported to the other agency. See *Order Determining Whistleblower Award Claim*, Release No. 34-82996, 2018 SEC LEXIS 856 (April 5, 2018). Claimant also satisfied the voluntariness requirement by voluntarily reporting the violations to the state Attorney General before being contacted by the Commission staff. See Exchange Act Rule 21F-4(a)(2), 17 C.F.R. § 240.21F-4(a)(2).

Applying the award criteria in Rule 21F-6 of the Securities Exchange Act of 1934 to the specific facts and circumstances here, we find the proposed award amount is appropriate.³ In reaching that determination, we positively assessed the following facts: Claimant was a harmed investor who lost money in the scheme; while not the source of the investigation, Claimant provided new, critical, time-sensitive information that allowed staff to recover assets that were later returned to harmed investors; Claimant's information saved the staff time and resources in conducting its investigation and helped the Commission shut down a fraudulent scheme targeting retail investors; Claimant provided continuing assistance; and collections from the defendants of the monetary sanctions ordered were low.

Accordingly, it is hereby ORDERED that Claimant shall receive an award of *** % of the monetary sanctions collected or to be collected in the Covered Action.⁴

By the Commission.

Vanessa A. Countryman
Secretary

³ In assessing the appropriate award amount, Exchange Act 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. Exchange Act Rule 21F-6, 17 C.F.R. § 240.21F-6.

⁴ The defendants in the Covered Action were found to be liable for over \$1,000,000 in disgorgement and prejudgment interest, with all but \$ Redacted of the total amount waived due to demonstrated financial inability to pay. We have treated the full amount for which defendants were held liable as "monetary sanctions," thus making the action eligible for award consideration as a covered judicial action. See Exchange Act Section 21F(a)(1), 15 U.S.C. § 78u-6(a)(1). However, the whistleblower award payment can only be based on the \$ Redacted actually "collected." See Exchange Act Section 21F(b)(1)(A) and (B), 15 U.S.C. § 78u-6(b)(1)(A) and (B); see also *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34,300 at 34,348-34,349 n. 373 (June 13, 2011) ("[I]f monetary sanctions are ordered to be paid ... but payment is waived, in whole or in part, for inability to pay or for other reasons, payment to a whistleblower is made only with respect to the amounts actually collected in such action. However, this does not affect whether the \$1,000,000 monetary sanctions threshold is satisfied for purposes of qualifying as a covered action.").