

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 90057 / September 30, 2020

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2020-38

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In the Matter of the Claim for an Award

in connection with

Redacted

Redacted

Redacted

Redacted

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

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that <sup>Redacted</sup> (“Claimant”) receive a whistleblower award of <sup>Redacted</sup>, which is equal to <sup>Redacted</sup> percent (<sup>\*\*\*</sup> %) of the monetary sanctions collected in the above-referenced Covered Action (the “Covered Action”).<sup>1</sup> Claimant provided timely notice contesting the Preliminary Determination.<sup>2</sup> After considering the administrative record, we choose to depart from the Preliminary Determination and award Claimant <sup>Redacted</sup> percent (<sup>\*\*\*</sup> %) of the monetary sanctions collected in the Covered Action for a payout of over \$1.7 million.

**I. Background**

**A. The Covered Action**

On <sup>Redacted</sup>, the Commission <sup>Redacted</sup>

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<sup>1</sup> For the purposes of making an award, we consider the administrative actions in this matter as a single Covered Action because they arose out of the same nucleus of operative facts. *See* Exchange Act Rule 21F-4(d)(1), 17 C.F.R. § 240.21F-4(d)(1).

<sup>2</sup> Two additional claimants on the matter did not seek reconsideration of their denials and, as such, the Preliminary Determination with respect to their claims became the Final Order of the Commission, pursuant to Exchange Act Rule 21F-10.

Redacted finding Redacted (the “Company”) and Redacted (“Company Employee”) Redacted Redacted Redacted Redacted Redacted This practice resulted in the Company Redacted The Commission also found that Redacted Redacted Redacted Redacted Redacted Redacted

The Office of the Whistleblower posted the above-referenced Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.<sup>3</sup> Claimant timely filed a whistleblower award claim.

### **B. Preliminary Determination**

The CRS issued a Preliminary Determination<sup>4</sup> recommending that Claimant receive an award of Redacted, which is equal to \*\*\* % of the monetary sanctions collected in the Covered Action. In reaching its determination, the CRS noted the following key facts: (i) Claimant’s information was significant and implicated strong law enforcement interests, which prompted the Enforcement staff to open an investigation, resulting in a successful action; and (ii) Claimant provided ongoing and extensive assistance to the Enforcement staff, which conserved the Commission’s time and resources. The CRS also considered the Claimant’s almost four-year delay in reporting the violations which, under the circumstances, was found to be unreasonable. While Claimant first learned of the misconduct in Redacted, Claimant waited until Redacted to report to the Commission. Therefore, all but thirteen (13) months of Claimant’s forty-five (45) month delay occurred after the creation of the Commission’s whistleblower program under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>5</sup> Further, during the period of delay, the violations continued and the respondents in the Covered Action obtained additional ill-gotten gains, with a resulting increase in the monetary sanctions upon which the Claimant’s award is based.

### **C. Claimant’s Response to the Preliminary Determination**

On Redacted, Claimant submitted a timely response contesting the Preliminary Determination.<sup>6</sup> First, Claimant asserts that the Commission should excuse Claimant’s delay because some of it occurred before the creation of the Commission’s whistleblower program. Second, Claimant argues that the Commission should measure Claimant’s delay from no earlier than August 2011, when the Commission first identified unreasonable delay as a ground to

<sup>3</sup> See Securities Exchange Act of 1934 (“Exchange Act”) Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

<sup>4</sup> See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

<sup>5</sup> See Pub. L. No. 111-203, § 922, 124 Stat 1841 (2010).

<sup>6</sup> See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

reduce a whistleblower award. Third, Claimant maintains that Claimant had legitimate reasons to delay reporting the violations – namely, that Claimant (and, for some portion of the time, Claimant and Claimant’s counsel) was documenting allegations against the Company, and Claimant feared retaliation by the Company and Company Employee. Lastly, Claimant states that Claimant worked to stop investor harm after leaving the Company and before reporting to the Commission.

## II. Analysis

The record demonstrates that Claimant, a whistleblower, is eligible for an award because Claimant voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.<sup>7</sup> Applying the award criteria specified in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, Claimant’s delay in submitting information to the Commission led the CRS to recommend a reduction in Claimant’s award amount. We agree with the CRS that this period of delay is unreasonable, but we believe an\*\*\*% reduction is more appropriate under the specific facts and circumstances here. In particular, we acknowledge that Claimant took some steps during the period of delay to alert investors to the conduct and mitigate the harm. In addition we acknowledge that Claimant feared retaliation for reporting the violations while employed at the Company. Accordingly, we conclude that a reduction of \*\*\*% for this delay is more appropriate.<sup>8</sup>

We are not persuaded by Claimant’s arguments for increasing the award further.

First, Claimant’s delay resulted in continuing harm  
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Redacted  
This delay resulted in the Company and the  
Redacted  
Company Employee  
Redacted

Second, while we recognize Claimant’s efforts to document the Company’s and the Company Employee’s wrongdoing, we find that Claimant’s decision to delay reporting information to the Commission for approximately three years after the adoption of the Dodd-Frank Act to be unreasonable. Moreover, we find it difficult to reconcile Claimant’s contention that Claimant waited to report because of efforts to document wrongdoing and fear of retaliation when Claimant delayed reporting to the Commission an additional seven months after resigning from the Company.

Third, while we find Claimant’s efforts to stop investor harm to be laudable, such efforts

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<sup>7</sup> See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

<sup>8</sup> 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. 17 C.F.R. § 240.21F-6.

occurred after Claimant resigned from the Company and were significantly delayed from the time Claimant first learned of the underlying conduct. Only after Claimant resigned – approximately three years after first learning of the conduct – did Claimant finally disclose the Company’s misconduct to <sup>Redacted</sup>

<sup>Redacted</sup> As a result of this delay, <sup>Redacted</sup> suffered continuing financial harm, minimizing the weight and our consideration of this argument. However, because Claimant took these steps to mitigate the harm, albeit late in the delay period, we have determined to slightly increase Claimant’s award.

Finally, we have emphasized that the whistleblower rules “should incentivize the prompt and early submission of high quality tips.”<sup>9</sup> Section 21F provided whistleblowers with confidentiality protections, including the right of whistleblowers to report to the Commission anonymously. In fact, Claimant took advantage of these provisions and submitted the Form TCR anonymously through counsel. As such we believe that Claimant’s delay was unreasonable in light of the protections available to whistleblowers under the whistleblower program.<sup>10</sup>

### III. Conclusion

Accordingly, it is hereby ORDERED that Claimant shall receive an award of over \$1.7 million, which is equal to <sup>Redacted</sup> percent ( <sup>\*\*\*</sup> %) of the monetary sanctions collected, or to be collected, in the Covered Action.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>9</sup> *Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, Release No. 34-64545, at 217 (Aug. 12, 2011).

<sup>10</sup> *See Order Determining Whistleblower Claim*, Exchange Act Release No. 76338, at 2 (Nov. 4, 2015).