

FINAL ORDER- THIS PRELIMINARY DETERMINATION BECAME THE FINAL ORDER OF THE COMMISSION WITH RESPECT TO CLAIMANTS 5 AND 6 ON JULY 31, 2020 PURSUANT TO RULE 21F-10(f) OF THE SECURITIES EXCHANGE ACT OF 1934

Notice of Covered Action [REDACTED]

Department of Justice Actions [REDACTED]

**PRELIMINARY DETERMINATION OF THE CLAIMS REVIEW STAFF**

In response to the above-referenced Notice of Covered Action, the Securities and Exchange Commission (“Commission”) received six whistleblower award claims, two of which were submitted jointly, for the above-referenced SEC enforcement action (“Covered Action”) and the referenced actions brought by the Department of Justice (“DOJ”). Pursuant to Section 21F of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 21F-10 promulgated thereunder, the Claims Review Staff has evaluated each of these claims in accordance with the criteria set forth in Rules 21F-1 through 21F-17. The Claims Review Staff sets forth its Preliminary Determination for each claimant as follows.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

[REDACTED] (Claimant 5) and [REDACTED] (Claimant 6)

Claimants 5 and 6 did not voluntarily provide original information to the Commission as defined by Rule 21F-4(a) of the Exchange Act. The record reflects that Commission staff directed a request for information to Claimant 5 prior to Claimant 5 providing information to the Commission. The record further reflects that staff of the [REDACTED] directed a request for information to Claimant 6 prior to Claimant 6 providing information to the Commission.<sup>5</sup>

Additionally, Claimant 6's award claim was untimely, as it was submitted after the 90-day deadline for submitting award claims for the Covered Action. *See* Rule 21F-10(b).<sup>6</sup>

By: Claims Review Staff

Date: June 1, 2020

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<sup>5</sup> Although not a basis for our preliminary denial, we note that there are other grounds upon which Claimant 5's and Claimant 6's award claims may be denied. First, Claimant 5 and Claimant 6 are not "whistleblowers" because they did not submit information to the Commission pursuant to the procedures set forth in Rule 21F-9(a) under the Exchange Act, as required by Rule 21F-2, and are not eligible for an award because they did not sign the whistleblower declaration, as required under Rule 21F-9(b). Second, both Claimant 5 and Claimant 6 may be excluded from award consideration under Rule 21F-4(b)(4)(iii)(B) [REDACTED] and do not appear to fall within an exception to the rule. Finally, Claimant 5 and Claimant 6 also applied for a related action award in connection with the DOJ Actions. Because Claimant 5 and Claimant 6 do not qualify for an award in the Covered Action, their requests for a related action award are denied. A related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable covered action in the first instance. *See* 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f), and Rule 21F-11(a); *Order Determining Whistleblower Award Claims*, Release No. 34-84506 (Oct. 30, 2018); *Order Determining Whistleblower Award Claims*, Release No. 34-84503 (Oct. 30, 2018).

<sup>6</sup> We have also preliminarily determined that the 90-day filing requirement should not be waived because of "extraordinary circumstances" under Rule 21F-8(a). Claimant 6 contends that the application was late because Claimant 6 was not aware of the posting of the Notice of Covered Action and did not learn about it [REDACTED] informed Claimant 6 of the posting. However, the "extraordinary circumstances" exception is to be "narrowly construed," and requires an untimely claimant to show that "the reason for the failure to timely file was beyond the claimant's control." *See Order Determining Whistleblower Award Claim*, Rel. No. 34-77368, at 3 (Mar. 14, 2016), *pet. for rev. denied sub nom. Cerny v. SEC*, 708 F. App'x 29 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 2005 (2018). Lack of awareness of the whistleblower program or of a NoCA posting, however, is not an "extraordinary circumstance." *See Order Determining Whistleblower Award*, Rel. No. 34-85412 (Mar. 26, 2019). Moreover, even if "extraordinary circumstances" existed, Claimant 6 would not qualify for an award for the other reasons set forth above.