

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 76921 / January 15, 2016

WHISTLEBLOWER AWARD PROCEEDING

File No. 2016-2

In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On June 5, 2015, the Claims Review Staff (“CRS”) issued a Preliminary Determination related to Notice of Covered Action Redacted . The Preliminary Determination recommended that Redacted (“Claimant #1”) receive a whistleblower award of Redacted . The Preliminary Determination also recommended that award applications submitted by Redacted (“Claimant #2”), Redacted (“Claimant #3”), and Redacted (“Claimant #4”) be denied. Only Claimant #4 filed a response contesting the Preliminary Determination.¹

For the reasons stated below, Claimant #1’s claim is approved in the amount of Redacted , and Claimant #4 is denied.

I. Background

On Redacted , the Commission filed an enforcement action, Redacted (“Covered Action”). The Commission found that Redacted

¹ Claimants #2 and #3 failed to submit a timely response contesting the Preliminary Determination. Accordingly, pursuant to Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f), the Preliminary Determination as to Claimants #2 and #3 denying their claims for award has become the Final Order of the Commission with respect to these claims.

Redacted

The Commission also found that Redacted these violations. Among other relief, the Commission ordered Redacted to pay Redacted Redacted

The Covered Action arose out of an investigation into Redacted
In response to Redacted
Enforcement staff opened the investigation underlying the Covered Action.

On Redacted the Office of the Whistleblower (“OWB”) posted Notice of Covered Action Redacted for the Covered Action. All claimants filed timely whistleblower award claims.

II. Claimant #1’s Claim Is Approved

In Redacted Claimant #1 provided a detailed analysis to the Commission showing that Redacted

This information was provided to the Commission before the enactment of the whistleblower award program and, therefore, could not serve as the basis for an award.²

In Redacted —after Congress enacted the whistleblower award program as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010— Claimant #1 provided additional analysis to the Commission. This additional analysis showed that Redacted The CRS preliminarily determined that this additional analysis constituted original information, that Claimant #1 voluntarily provided it to the Commission, and that this information significantly contributed to the successful enforcement of the Covered Action. *See* Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).

The CRS also preliminarily determined to recommend that Claimant #1’s award be set in the amount of Redacted of the monetary sanctions collected in the Covered Action, which will equal payment of more than \$700,000. In arriving at this recommendation, the CRS considered the factors set forth in Rule 21F-6, 17 C.F.R. § 240.21F-6, in relation to the facts and circumstances of Claimant #1’s application.

² *See* Exchange Act Rule 21F-4(b), 17 C.F.R. § 240.21F-4(b); *see also* *Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015).

Claimant #1 did not contest the Preliminary Determination of the CRS. Accordingly, pursuant to Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f), the Preliminary Determination became the Proposed Final Determination of the CRS.

Upon due consideration under Rules 21F-10(f) and (h), 17 C.F.R. §§ 240.21F-10(f) and (h), and for the reasons set forth in the Preliminary Determination, it is hereby ORDERED that Claimant #1 shall receive ^{Redacted} of the monetary sanctions collected in the Covered Action.

III. Claimant #4's Claim Is Denied

A. Preliminary Determination and Claimant #4's Response

On June 5, 2015, the CRS also preliminarily determined to deny Claimant #4's award application because Claimant #4 did not provide any information that led to the successful enforcement of the Covered Action. *See* Section 21F(b)(1) of the Exchange Act, and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).

On October 3, 2015, Claimant #4 submitted a written response contesting the Preliminary Determination (hereinafter, "Response"). In the Response, Claimant #4 failed to identify any specific tip or complaint ^{Redacted} made to the Commission in connection with the Covered Action. Claimant #4 also attached various documents to the Response, but none of these materials had any apparent relevance to the question of whether Claimant #4 had provided information to the Commission that led to the successful enforcement of the Covered Action.³

B. Analysis

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered judicial or administrative action or related action. 15 U.S.C. § 78u-6(b)(1). As relevant here, original information "leads to" a successful enforcement action if either: (i) the original information caused the staff to open an investigation, reopen an investigation, or inquire into different conduct as part of a current investigation, and the

³ These materials included:

Redacted

Commission brought a successful action based in whole or in part on conduct that was the subject of the original information; or (ii) the conduct was already under examination or investigation, and the original information significantly contributed to the success of the action. Rule 21F-4(c)(1)-(2), 17 C.F.R. § 240.21F-4(c)(1)-(2).

We find that none of the information Claimant #4 submitted led to the successful enforcement of the Covered Action. *First*, none of the tips that Claimant #4 has submitted to the Commission was provided to investigative staff for further inquiry or for use in connection with any investigation; instead, each of Claimant #4's tips was designated for "no further action." Moreover, at no point prior to the settlement of the Covered Action did the staff members responsible for the Covered Action have any contact with, or receive any information from, Claimant #4. *Second*, based on our own assessment of the information that Claimant #4 submitted, we cannot see how this information could have led to the successful enforcement of the Covered Action given the absence of relevant factual connections between the two.

Because the record demonstrates that Claimant #4's information did not lead to the successful enforcement of the Covered Action and ^{Redacted} has not shown otherwise in ^{Redacted} request for reconsideration of the Preliminary Determination, we deny Claimant #4's application for an award.⁴

⁴ In ^{Redacted} Response, Claimant #4 contends that the OWB unlawfully withheld from ^{Redacted} the materials underlying the CRS's Preliminary Determination. We disagree. Under Exchange Act Rule 21F-12(b), 17 C.F.R. § 240.21F-12(b), individuals requesting Preliminary Determination materials may be required by staff in the OWB to sign a confidentiality agreement as a prerequisite to receiving a copy of the record. In accordance with this Commission rule, it is standard practice of OWB staff to require all claimants seeking copies of the record to sign a confidentiality agreement to prevent the disclosure of potentially sensitive information. On July 8 and again on July 17, OWB staff sent Claimant #4 a standard confidentiality agreement. ^{Redacted} OWB staff also advised Claimant #4 that ^{Redacted} would not be provided with the record materials if ^{Redacted} declined to sign the confidentiality agreement. After receiving an extension of time to consider the draft agreement, Claimant #4 ultimately refused to sign it. As a result, ^{Redacted} was not provided with the record in accordance with Rule 21F-12(b).

IV. Conclusion

Accordingly, it is ORDERED that Claimant #1 shall receive an award of Redacted
of the monetary sanctions collected in this Covered Action.

ORDERED that Claimant #4's whistleblower award claim is denied.

By the Commission.

Brent J. Fields
Secretary