

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 78356 / July 19, 2016

WHISTLEBLOWER AWARD PROCEEDING

File No. 2016-15

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In the Matter of the Claims for Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Commission received twelve claims for award in connection with Notice of Covered Action Redacted (“Covered Action”).<sup>1</sup> On July 13, 2015, the Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that all twelve award claims be denied because none of the Claimants’ information led to the successful enforcement of the Covered Action. *See* Section 21F(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”); Rules 21F-3(a)(3) and 21F-4(c).<sup>2</sup> Two of the twelve claimants, Claimant #11

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<sup>1</sup> The following twelve individuals submitted claims for award in the Covered Action: Claimants  
Claimants  
Claimants  
(collectively, “Claimants”).

<sup>2</sup> As relevant here, original information leads to the success of a covered action if it: (1) causes the Commission to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation, and the Commission brings a successful judicial or administrative action based in whole or in part on conduct that was the subject of the original information, under Rule 21F-4(c)(1) of the Exchange Act; or (2) the information significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

(“Claimant #11”) and Claimant #9 (“Claimant #9”), submitted requests for reconsideration of the preliminary denial of their claims.<sup>3</sup>

For the reasons stated below, the claims submitted by Claimants #11 and #9 are denied.

**I. Background**

The Covered Action arose out of two separate investigations, one by Enforcement staff in the Commission’s Home Office and the other by Enforcement staff in the Denver Regional Office (“DRO”), into

Redacted

Redacted

The Home Office investigation was opened based on the staff’s review of academic literature and general market information. Likewise, the DRO investigation was opened based on the staff’s review of academic literature, general market information, and data and other information produced by Redacted in response to document requests. Additionally, the DRO investigation was based on information that the investigative staff learned as a result of Redacted Redacted

The two investigations resulted in

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**II. Claimant #11’s Claim Is Denied**

After careful consideration of the administrative record, including Claimant #11’s written response, we deny Claimant #11’s award application. We find that Claimant #11 is not entitled

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<sup>3</sup> The other ten claimants 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

Claimants

denying their claims for award has become the Final Order of the Commission.

<sup>4</sup>

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to an award because the record conclusively demonstrates that Claimant #11's information did not lead to successful enforcement of the Covered Action.

Claimant #11 bases the claim for award on a tip Claimant #11 submitted to the Commission in Redacted Claimant #11's tip was forwarded to Enforcement staff in the Los Angeles Regional Office ("LARO") in connection with an investigation that was separate from and unrelated to the investigations that led to the Covered Action. LARO Enforcement staff closed Claimant #11's tip with a disposition of no further action (or "NFA"),<sup>6</sup> and the tip was not forwarded to Enforcement staff responsible for the investigations that led to the Covered Action. Both Home Office and DRO Enforcement staff confirmed that they do not know Claimant #11, had no communications with Claimant #11, and did not receive any information from Claimant #11, before or during the course of their investigations.

In the Response, Claimant #11 fails to show how the information provided by Claimant #11 led to the successful enforcement of the Covered Action. Rather, Claimant #11 argues that the record is insufficient because it does not include materials from the underlying investigations and that additional declarations from individuals both inside and outside of the Commission are necessary to show whether Claimant #11's information was used in the Covered Action.

Claimant #11's argument that Claimant #11 should have received Enforcement staff's investigative files, in connection with Claimant #11's request for the record, is without merit. Exchange Act Rule 21F-12(a) specifically identifies those materials that may comprise the record upon which the CRS's preliminary determination is based; they do not include Enforcement staff's investigative files. Rule 21F-12(b) specifically states that claimants are not entitled to obtain from the Commission any materials other than those listed in Rule 21F-12(a).

Furthermore, based on our careful review of the record, we disagree with Claimant #11's argument that additional declarations are necessary to show that Claimant #11's information did not lead to successful enforcement. The administrative record demonstrates that Claimant #11's tip was not referred to either of the teams conducting the investigations that led to the Covered Action. The record, which includes declarations from the Enforcement staff responsible for the underlying investigations, also demonstrates that the investigative teams never received any information from, or had any communications with, Claimant #11. We believe that the current

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<sup>6</sup> When a tip is NFA'd by Enforcement investigative staff, this means both that the tip was deemed to not be useful to the investigation and that Enforcement staff will not take any additional investigative steps in connection with the tip unless subsequent information leads to a reopening or reexamination of that tip.

record therefore provides us with a sufficient basis to determine that Claimant #11's information did not lead to the success of the Covered Action.<sup>7</sup>

Finally, Claimant #11's Response appears to concede that Claimant #11's information did not relate specifically to the charges brought in the Covered Action, instead arguing that Claimant #11's information globally related to Redacted Redacted. The whistleblower rules require, however, that a claimant's information lead to the successful enforcement of the particular Covered Action. That Claimant #11's information purportedly helped advance Redacted does not mean that Claimant #11's information had any impact on the Covered Action. The record conclusively demonstrates that Claimant #11's information was not used in connection with the underlying investigations, as neither the Home Office nor the DRO investigative staff received any information from Claimant #11 before or during the course of their investigations. As such, Claimant #11's claim for award should be, and hereby is, denied.

### III. Claimant #9's Claim Is Denied

After careful consideration of the administrative record, including Claimant #9's written response, we deny Claimant #9's award application. We find that Claimant #9 is not entitled to an award because the record conclusively demonstrates that Claimant #9's information did not lead to successful enforcement of the Covered Action.

Claimant #9 submitted information to the Commission in Redacted and again in Redacted alleging Redacted Claimant #9's information was forwarded to Enforcement staff in the Atlanta Regional Office ("ARO") in connection with an investigation that was separate from and unrelated to the Home Office's and DRO's investigations, and the tip was not forwarded to Enforcement staff responsible for the investigations that led to the Covered Action. Both Home Office and DRO staff responsible for the underlying investigations that led to the Covered Action confirmed that they do not know Claimant #9, had no communications with Claimant #9, and received no information from Claimant #9 before or during the course of their investigations.

Claimant #9's Response contesting the Preliminary Determination failed to offer any evidence to the contrary. Rather, Claimant #9 contends that we should contact a former Commission Chair and former Commission staff to understand how the information Claimant #9 submitted to the Commission was used. We decline to do so, as the record clearly shows that

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<sup>7</sup> We note that obtaining declarations from other individuals who had no direct responsibility for the investigations leading to the Covered Action, or for the prosecution of the Covered Action, would be a futile effort, as such individuals would not be in a position to state whether Claimant #11's information was used in the investigations, let alone whether the information "led to" the success of the Covered Action.

Claimant #9's information was forwarded to Enforcement staff in ARO in connection with a separate and unrelated investigation, and not forwarded to investigative staff responsible for the underlying investigations that led to the Covered Action. Moreover, Home Office and DRO Enforcement staff responsible for the underlying investigations confirmed that they did not receive any information from Claimant #9 before or during the course of their investigations.

Claimant #9 also argues that the whistleblower rules do not require an on-going relationship between Enforcement staff and the whistleblower in order for the whistleblower to receive an award. While we do not disagree, we think it is plain that the responsible Enforcement staff must have, at the very least, received the whistleblower's information in order for the information to have contributed to the success of the enforcement action. Because Claimant #9's information did not lead to the successful enforcement of the Covered Action, Claimant #9's claim for award should be, and hereby is, denied.

#### **IV. Conclusion**

Accordingly, it is ORDERED that Claimant #11's and Claimant #9's whistleblower award claims are denied.

By the Commission.

Brent J. Fields  
Secretary