

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 92542 / August 2, 2021

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2021-77

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In the Matter of the Claim for an Award

in connection with

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Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that <sup>Redacted</sup> (“Claimant 1”) receive a whistleblower award of more than \$1.1 million, which represents <sup>\*\*\*</sup> percent (<sup>\*\*\*</sup> %) of the monetary sanctions collected, or to be collected, in the above-referenced Covered Action (the “Covered Action”),<sup>1</sup> and that <sup>Redacted</sup> (“Claimant 2”) receive a whistleblower award of more than \$500,000, which represents <sup>\*\*\*</sup> percent (<sup>\*\*\*</sup> %) of the monetary sanctions collected, or to be collected, in the Covered Action.<sup>2</sup> Claimant 1 declined to contest the Preliminary Determination. However, Claimant 2 timely requested reconsideration, arguing that Claimant 2 should receive a higher award allocation as compared to Claimant 1. For the reasons discussed below, the recommendations of the CRS are adopted.

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<sup>1</sup> The Commission finds that <sup>Redacted</sup> <sup>Redacted</sup>, arose out of the same nucleus of operative facts under Securities Exchange Act of 1934 (“Exchange Act”) Rule 21F-4(d), and should be treated together as a single Covered Action for the purpose of making this whistleblower award.

<sup>2</sup> The CRS also preliminarily recommended denying the award application of a third claimant, who did not seek reconsideration. Accordingly, the Preliminary Determination has become the Final Order of the Commission with respect to the third claimant pursuant to Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

## I. Background

### A. The Covered Action

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The Commission charged that

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(“Issue A”).

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### B. The Preliminary Determinations

The CRS preliminarily determined that Claimant 1 should receive an award of <sup>\*\*\*</sup>% of the monetary sanctions collected or to be collected, Claimant 2 should receive an award of <sup>\*\*\*</sup>% of the monetary sanctions collected or to be collected, and Claimant 3’s claim should be denied. In allocating the award percentages between Claimants 1 and 2, the CRS observed that: (1) Claimant 1’s information was more significant than Claimant 2’s information as it was the first information received by the Commission staff relating to Issue A and thus established the outlines of the misconduct; (2) although Claimant 1 initially provided assistance to the Enforcement staff, Claimant 1 did not provide assistance after <sup>Redacted</sup> despite staff’s request to do so, while Claimant 2 provided ongoing assistance to the Enforcement staff during the course of the investigation; (3) Claimant 1 raised concerns internally in an effort to remedy the conduct; and (4) Claimant 2 unreasonably delayed by waiting several years to report the conduct to the Commission, during which time Claimant 2 did not take any steps to report or remediate the conduct.

### C. Claimant 2’s Response to the Preliminary Determinations

Claimant 2 timely filed a request for reconsideration of the preliminary determinations and argued that Claimant 2 should receive a higher award percentage. Claimant 2 contended that (1) Claimant 2 provided information about other conduct that was charged in an enforcement action against the Company (“Issue B”) but not in the Covered Action under consideration here; (2) Claimant 2 should receive credit for information Claimant 2 provided about charges that the Commission could have but chose not to bring; (3) Claimant 2’s information was more

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significant than Claimant 1's information; and (4) Claimant 2 did not unreasonably delay in providing information about Issue A to the Commission.

## II. Analysis

The record demonstrates that both Claimants 1 and 2 voluntarily provided original information to the Commission that led to the Covered Action.<sup>4</sup> Claimant 1 filed a Form TCR in <sup>Redacted</sup> alleging, among other things, facts concerning Issue A. Claimant 2 filed a Form TCR in <sup>Redacted</sup> that described facts concerning Issue A, Issue B, and other issues. The information Claimants 1 and 2 each provided was a principal motivating factor in the staff's decision to open an investigation, which led to two covered actions: (1) the Covered Action, which only involved Issue A and was based in part on original information that Claimants 1 and 2 provided, and (2) an action against the Company (the "Other Covered Action"), the charges for which involved both Issue A and Issue B.

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Claimant 1's application presents no negative factors, and Claimant 1 provided more than limited assistance. Claimant 1 provided a telephonic interview and submitted additional supporting documents to Enforcement staff. And application of the presumption would not be inconsistent with the public interest, protection of investors, or the objectives of the whistleblower program.

Based on the record, and after considering Claimant 2's arguments on reconsideration, we find that making a \*\*\*% award to Claimant 1 and a \*\*\*% award to Claimant 2 is appropriate. Claimant 1's information, which was submitted several months before Claimant 2's information, was more significant as it was the first to inform Enforcement staff of Issue A, the conduct relevant to the Covered Action, which established the broad outlines of the case and rendered some of Claimant 2's information duplicative. Claimant 1's information also was broader and more current as compared to Claimant 2's information. We also considered that Claimant 2 unreasonably delayed in reporting the information to the Commission by waiting approximately four years to provide the information concerning Issue A to the Commission after learning of the

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<sup>4</sup> See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

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conduct and took no steps in the meantime to try to remedy the conduct. By contrast, Claimant 1 repeatedly raised concerns internally about the alleged conduct.

Many of Claimant 2's arguments on reconsideration are framed in terms of Claimant 2's purported contributions regarding Issue B—(1) that Claimant 2 should receive credit for Claimant 2's purported contributions to the Other Covered Action, which involved Issue B; (2) that Claimant 2's information was broader because Claimant 2 provided information about Issue B and Claimant 1 purportedly did not;<sup>6</sup> and (3) that Claimant 2's reporting delay should be measured from when Claimant 2 learned information about Issue B, not Issue A. However, the question before the Commission is how to weigh the claimants' relative contributions to and reporting delay in connection with *this* Covered Action, which only involves Issue A. Claimant 2's contributions to the Other Covered Action will be considered separately.

Nor do Claimant 2's other arguments warrant departing from the CRS's recommendation. Claimant 2 seeks credit for providing information that Claimant 2 believes could have led to other charges. However, as we recently stated in a related context, "the standard for award eligibility is not what the staff would have, or could have done in hypothetical circumstances but, rather, what impact the whistleblower's information actually had on the investigation."<sup>7</sup> In evaluating the appropriate award percentage for Claimant 2, the Commission will not speculate on what other charges might have been brought with Claimant 2's information.

Finally, the Commission rejects Claimant 2's argument that Claimant 2's reporting delay was reasonable in the circumstances. Claimant 2 does not dispute that Claimant 2 took no steps to remedy the misconduct during the period of delay. Rather, Claimant 2 contends that it would have been futile to raise Claimant 2's concerns with the Company's management during the period of delay because they were aware of the issue and had not addressed it. But this purported futility only underscores the urgency of timely reporting to the Commission if Claimant 2 believed the Company was unlikely to address the issue itself. Claimant 2 also argues that Claimant 2 did not understand that the conduct involving Issue A potentially violated the securities laws until Claimant 2 was researching Issue B several years later. However, the record is clear that Claimant 2 understood that the alleged conduct was wrongful, and yet chose not to take any actions to try to remedy the conduct by reporting to the Commission or another government authority.

Accordingly, it is hereby ORDERED that Claimant 1 shall receive an award of \*\*\* percent (\*\*\* %) of the monetary sanctions collected or to be collected in the Covered Action, and

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<sup>6</sup> Claimant 2 also argues that Claimant 2's information must have been more significant than Claimant 1's information because the investigation was opened closer in time to the receipt of Claimant 2's information. But the record, which includes a supplemental declaration from the responsible Covered Action investigation staff, which we credit, reflects that the timing of the opening of the investigation was affected by the progression of a related investigation and does not reflect the relative importance of Claimant 1's and 2's information.

<sup>7</sup> Order Determining Whistleblower Award Claims, Exch. Act Rel. No. 90872, at 4 (Jan. 7, 2021).

Claimant 2 shall receive an award of \*\*\* percent (\*\*\*%) of the monetary sanctions collected or to be collected in the Covered Action.

By the Commission.

Vanessa A. Countryman  
Secretary