

Redacted

PUBLIC VERSION

In the Matter of Claims for Award by:

Redacted (“Claimant 1”),
Redacted

; and

Redacted (“Claimant 2”),
Redacted

In Connection with
Notice of Covered Action No. Redacted

CFTC Whistleblower Award
Determination No. 20-WB-01

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Commodity Futures Trading Commission (“Commission”) received whistleblower award applications from Redacted (“Claimant 1”) and Redacted (“Claimant 2”) in response to the Commission’s Notice of Covered Action No. Redacted regarding Redacted

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Redacted (“Redacted Order” or “Covered Action”). The Claims Review Staff (“CRS”) has evaluated each of the applications in accordance with the Commission’s Whistleblower Rules (“Rules”), 17 C.F.R. pt. 165 (2019) (as amended by 82 Fed. Reg. 24,487, 24,496–521 (May 30, 2017)), promulgated pursuant to Section 23 of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. § 26 (2012). On Redacted the CRS issued a Preliminary Determination recommending that Claimant 1 receive *** % of the amount of monetary sanctions collected in the Covered Action, and that Claimant 2’s claim be denied. For the reasons set forth below, we agree with the CRS’s determination. Accordingly, Claimant 1’s claim is approved in the amount of *** %, and Claimant 2’s claim is denied.

I. BACKGROUND

The Redacted Order arose out of an investigation opened in response to a Form TCR that Claimant 1 submitted to the Commission regarding a possible Redacted operated by Redacted, Redacted and Redacted. The Commission received Claimant 1's Form TCR on or around Redacted in which Claimant 1, a Redacted, identified and discussed several "red flags" that supported *** belief that Redacted was a Redacted. Claimant 1 also noted that Redacted appeared to be Redacted because the firm was purportedly seeking new employees and requesting new client referrals. The Commission opened an enforcement investigation based on the information supplied by Claimant 1.

For several months thereafter, Claimant 1 sent additional documents to Division staff including account statements, text messages, and checks. Division staff found Claimant 1's additional information to be useful because: (1) the account statements directly supported Division staff's theory that Redacted were Redacted to further Redacted; (2) the text messages, which appeared to be current, furthered the Division staff's belief that the Redacted was ongoing and active; and (3) the checks contained financial account information that Division staff used to draft subpoenas for information related to the Defendants' bank accounts. Claimant 1 also participated in telephonic interviews on Redacted, at the outset of the investigation and, again, on Redacted, Redacted, which provided additional information helpful to Division staff.

Claimant 1, however, did not provide the highest level of assistance to Division staff. Specifically, Claimant 1 declined Division staff's request to provide a declaration in support of the Commission's enforcement action against Redacted. According to Division

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staff, Claimant 1 declined to provide the declaration because he/she did not want to jeopardize any potential quarterly payments due from Redacted ; and he/she feared that disclosure of his or her identity would result in some type of personal retribution from Redacted . Division staff noted that, aside from not providing a declaration, Claimant 1 was very helpful in the investigation of

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On Redacted , the Commission filed a complaint against Redacted . And, on Redacted , the Court entered the Redacted Order against Redacted in which they were ordered to pay, jointly and severally, \$ Redacted in restitution and an \$ Redacted civil monetary penalty. Redacted

obtained in connection with the Covered Action. Claimant 1 and Claimant 2 each subsequently submitted a Form WB-APP in response to Notice of Covered Action No. Redacted regarding the Redacted Order.

II. PRELIMINARY DETERMINATION

On Redacted the CRS issued a Preliminary Determination recommending that Claimant 1 receive a whistleblower award in the amount of *** % of sanctions collected because Claimant 1 voluntarily provided original information that led to the successful enforcement of a covered action. In its Preliminary Determination, the CRS noted that “when asked by Division staff, [Claimant 1] declined to provide a declaration in support of the Commission’s enforcement action.” The CRS decided that *** % appropriately recognized Claimant 1’s contributions to the success of the Covered Action given that Claimant 1’s decision not to provide a declaration ultimately had only a minimal impact on the Redacted investigation. The Preliminary

Determination also recommended denying Claimant 2's claim because the information provided by Claimant 2 was not useful to the Commission's investigation and, therefore, did not lead to the successful enforcement of the Covered Action.

Claimant 1 did not request to review the record of materials that formed the basis for the CRS's Preliminary Determination. *See* 17 C.F.R. § 165.10. However, on Redacted , Claimant 1 timely submitted a brief written response contesting the CRS's Preliminary Determination. *See* Rule 165.7(g)(2)(ii). In *** request, Claimant 1 asked the CRS to "reconsider a 30% full award rate in lieu of the preliminary *** % suggested rate..."

Claimant 2 did not respond to the Preliminary Determination.

III. LEGAL ANALYSIS

The CRS has discretion in determining the award amount but must consider certain criteria specified in the CEA. 7 U.S.C. § 26(c)(1)(A). The Rules contain both factors that incorporate the statutory criteria for determining the award amount and factors that may increase or decrease the award amount. The determination of the appropriate percentage of a whistleblower award involves a highly individualized review of the facts and circumstances. Depending upon the facts and circumstances of each case, some factors may not be applicable or may deserve greater weight than others. The analytical framework in the Rules provides general principles without mandating a particular result. The criteria for determining the amount of an award in Rule 165.9, 17 C.F.R. § 165.9, are not listed in any order of importance and are not assigned relative importance. The Rules do not specify how much any factor in Rule 165.9(b) or (c) should increase or decrease the award percentage. Not satisfying any one of the positive factors does not mean that the award percentage must be less than 30%, and the converse is true. Not having any one of the negative factors does not mean the award percentage must be greater

than 10%. These principles serve to prevent a vital whistleblower from being penalized for not satisfying the positive factors. For example, a whistleblower who provides the Commission with significant information and substantial assistance such as testifying at trial and producing smoking gun documents could receive 30% even if the whistleblower did not participate in any internal compliance systems. In contrast, in order to prevent a windfall, a whistleblower who provides some useful but partial information and limited assistance to the Commission may receive 10% even if none of the negative factors were present.

One of the factors in determining whether to increase the amount of an award is the degree of assistance provided by a whistleblower. 17 C.F.R. § 165.9(a)(2), (b)(2). In assessing assistance, the Commission will consider whether the whistleblower provided ongoing, extensive, and timely cooperation by, for example, explaining complex transactions, interpreting key evidence, or identifying new and productive lines of inquiry. 17 C.F.R. § 165.9 (b)(2). In determining the amount of award for Claimant 1, the CRS considered Claimant 1's degree of assistance.

A. Claimant 1's Request for Reconsideration

In a brief letter, Claimant 1 noted items already considered by the CRS when it issued its Preliminary Determination, including that he/she: (1) provided "crucial evidence" related to Redacted websites; (2) contacted "professional help" to review Redacted ; (3) produced documents including Redacted account statements, text records, and phone records; and (4) promptly reported the Redacted , which limited additional investor harm. In addition, Claimant 1 suggested that he/she would have been willing to provide a declaration to Division staff in the enforcement matter ("become more visible in the trial portion") if Commission staff would have confirmed that he/she was the first whistleblower ("original information provider") in the matter.

Claimant 1 also wrote that he/she was never informed that an award may be reduced for failing to provide the additional assistance to Division staff, such as providing a declaration. For the above reasons, Claimant 1 asked the CRS to increase *** award from *** % to 30%.

The CRS reviewed Claimant 1's request and did not believe an increase in award was warranted under the circumstances. We agree with the CRS's award determination.

1. The CRS Has Considered All Relevant Documents and Assistance in Making its Award Determination

In making its Preliminary Determination, the CRS appropriately considered all relevant award factors under Rule 165.9.

In *** letter requesting reconsideration, Claimant 1 reiterated the assistance he/she provided to Division staff, such as "crucial evidence" related to Redacted websites, other documentary evidence, and *** promptness in contacting the Commission. But these points had already been considered by the CRS in making its award determination. Further, the CRS's findings with respect to Claimant 1's contributions were clearly noted in the Preliminary Determination. The CRS found that Claimant 1's information via his/her Form TCR was sufficiently specific, credible, and timely to cause the Commission to open an investigation. Thereafter, and as noted in the Preliminary Determination, Claimant 1 provided significant, ongoing assistance to Division staff by submitting supplemental documents and participated in telephonic interviews. Further, "Claimant 1's information was particularly crucial because, prior to the filing of the Commission's enforcement action, Claimant 1 was the only Redacted to come forward with information regarding this matter." Therefore, the Commission believes that the CRS has already appropriately considered the value of the information and documents supplied by Claimant 1. The Commission does not believe an increase in the award percentage is warranted based on the information and assistance that is already reflected by the *** % award.

2. In Assessing “Degree of Assistance,” the CRS Appropriately Considered Claimant 1’s Decision Not to Provide a Declaration

According to Division staff, Claimant 1 declined to provide the declaration at the time requested because he/she did not want to jeopardize any potential quarterly payments due to him/her from Redacted ; and he/she feared that disclosure of Claimant 1’s identity would result in some type of personal retribution from Redacted . According to Division staff, while it would have been more helpful to have a declaration from Claimant 1, Division staff proceeded with the filing of a complaint against the Defendants without the declaration. Division staff noted that, aside from not providing a declaration, Claimant 1 was very helpful in the investigation of Redacted . Therefore, the overall impact of Claimant 1’s decision not to provide a declaration on the success of the Redacted investigation appeared to be minimal.

On this point, the CRS’s Preliminary Determination noted:

The Claims Review Staff also notes that Claimant 1, when asked by Division staff, declined to provide a declaration in support of the Commission’s enforcement action. Division staff noted that, while it would have been helpful to have a declaration from Claimant 1, it still proceeded with the filing of the complaint that led to the Redacted Order without a declaration from Claimant 1. Based on information in the record, it appears that Claimant 1’s decision not to provide a declaration ultimately had only a minimal impact on the Covered Action.

If Claimant 1 had provided the declaration, the Commission would have been more likely to grant a full 30% award; however, based on a review of Claimant 1’s overall degree of assistance, the Commission agrees with the CRS’s recommendation of *** %.

Claimant 1 also wrote that he/she was never informed that an award may be reduced for failing to provide the additional assistance to Division staff (such as providing a declaration). We believe that this argument also holds no merit. Neither Division staff nor the Whistleblower Office is under any obligation to inform a witness that a potential whistleblower award may be reduced for failing to provide less than full assistance. Further, any whistleblower is free to view

the Whistleblower Rules (posted on the *whistleblower.gov* website) and form an opinion as to how their assistance may be evaluated, should he/she later seek an award.

Finally, the Commission notes that the CRS made only a Redacted deduction in the award amount to *** % after carefully weighing all of the positive and negative factors discussed in Rule 165.9.

For the above reasons, we agree with the CRS's determination to award *** % to Claimant 1.¹

B. Claimant 2

Claimant 2 did not respond to the Preliminary Determination. Pursuant to Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination has become final with respect to Claimant 2. Claimant 2's failure to timely submit a response contesting the Preliminary Determination constituted a failure to exhaust administrative remedies. Accordingly, Claimant 2 is prohibited from pursuing an appeal under Rule 165.13, 17 C.F.R. § 165.13.

IV. CONCLUSION

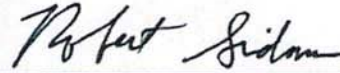
Accordingly, it is hereby ORDERED that Claimant 1 shall receive an award of *** percent (*** %) of the monetary sanctions collected, or to be collected, in the Covered Action; and it is further ORDERED that Claimant 2's whistleblower award claim be, and hereby is, denied.

¹ The Commission collected \$ Redacted in sanctions, which means Claimant 1 would receive a payment of \$ Redacted . While circumstances may change, the Commission does not anticipate being able to collect the remaining amount of sanctions ordered.

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By the Commission.



Robert Sidman
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Dated: October 24, 2019