

PUBLIC VERSION

In the Matter of Claims for Award by:

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In Connection with

Notice of Covered Action No.

Redacted

CFTC Whistleblower Award
Determination No. 20-WB-05

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Commodity Futures Trading Commission (“Commission”) received whistleblower award applications from Claimant 1, Claimant 2, Claimant 3, Claimant 4, and Claimant 5 (collectively, “Claimants”) in response to Notice of Covered Action No. Redacted. The underlying enforcement action is Redacted.

The Claims Review Staff (“CRS”) has evaluated the award applications in accordance with the Commission’s Whistleblower Regulations (“Regulations” or “Rules”), promulgated pursuant to Section 23 of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. § 26 (2018). On Redacted, the CRS issued a Preliminary Determination recommending that Claimant 1 receive a whistleblower award in the amount of Redacted of monetary sanctions collected in Redacted. The Preliminary Determination also recommended denying the remaining award claims from Claimant 2, Claimant 3, Claimant 4, and Claimant 5. For the reasons set forth below, the CRS’s determination is adopted.

I. BACKGROUND

Redacted arose out of an investigation opened in response to information Redacted submitted to the Commission that Claimant 1 Redacted regarding Redacted.

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Claimant 1, Claimant 2, Claimant 3, Claimant 4, and Claimant 5 subsequently submitted whistleblower award applications in response to Notice of Covered Action No. ^{Redacted}

II. PRELIMINARY DETERMINATION

On ^{Redacted}, the CRS issued a Preliminary Determination recommending that Claimant 1 receive a whistleblower award in the amount of ^{Redacted} of sanctions collected in ^{Redacted} because Claimant 1 voluntarily provided original information that led to the successful enforcement of a covered action. The Preliminary Determination also recommended denying the remaining award claims because Claimant 2, Claimant 3, Claimant 4, and Claimant 5 did not contribute to ^{Redacted}.

Claimant 2, Claimant 3, and Claimant 4 did not respond to the Preliminary Determination. Thus, pursuant to Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination became the Final Order of the Commission with respect to Claimant 2, Claimant 3, and Claimant 4. Their failure to contest the Preliminary Determination constituted failure to exhaust administrative remedies. Accordingly, Claimant 2, Claimant 3, and Claimant 4 are prohibited from appealing the Final Order pursuant to Rule 165.13, 17 C.F.R. § 165.13.

Claimant 1 and Claimant 5, on the other hand, requested and obtained the record supporting the Preliminary Determination. Claimant 1 did not contest the Preliminary Determination after obtaining the record. Thus, under Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination became the Proposed Final Determination with respect to Claimant 1. Claimant 1 is prohibited from pursuing an appeal under Rule 165.13, 17 C.F.R. § 165.13, because Claimant 1 did not exhaust administrative remedies.

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III. LEGAL ANALYSIS

A. Claimant 1

Section 23(b)(1) of the CEA requires the Commission to pay an award to an individual who voluntarily provides the Commission with original information that leads to the successful enforcement of a covered or related action. 7 U.S.C. § 26(b)(1) (2018). The CRS determined that Claimant 1 voluntarily provided the Commission with original information that led to the successful enforcement of a covered action. Claimant 1 is a whistleblower because Claimant 1 submitted information on a Form TCR regarding potential violations of the CEA. Claimant 1 provided the information voluntarily, as Claimant 1 was not under any legal obligation to report to the Commission. In addition, Claimant 1's information was original. The information was previously unknown to the Commission and derived from Redacted

. Lastly, Claimant 1's information led the Commission to open an investigation.

The CRS recommended the award amount to be ^{***} of the amount of monetary sanctions collected in the covered action, which would result in a payment of ^{***}. This recommendation is adopted. In arriving at this award amount, the CRS applied the factors set forth in Rule 165.9, 17 C.F.R. § 165.9, in relation to the facts and circumstances of Claimant 1's award application. 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. Rule 165.9(b) provides a list of factors that may increase the award amount, and Rule 165.9(c) provides a list of factors that may decrease the award amount. However, 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 documents containing direct evidence of violations 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.

As applied, Claimant 1

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B. Claimant 5

Claimant 5 objected to the CRS's denial of ^{***} award claim. Claimant 5 claimed that
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The arguments are baseless.

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Division staff did not use or need Claimant 5's information at any point in time. As such, Division staff did not contact or attempt to contact Claimant 5 to seek assistance. Thus, Claimant 5's award claim is denied.

IV. CONCLUSION

It is hereby ORDERED that Claimant 1 shall receive ^{***} of monetary sanctions collected in ^{Redacted}. It is further ORDERED that Claimant 5's whistleblower award claim be, and hereby is, denied.

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By the Commission.

A handwritten signature in black ink that reads "Robert Sidman". The signature is written in a cursive style with a horizontal line underneath it.

Robert Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Dated: June 5, 2020