PUBLIC VERSION

In the Matter of Claims for Awards by: Redacted ("Claimant 1"), Form WB-APP Redacted ; and Redacted ("Claimant 2"), Form WB-APP Redacted In Connection with Notice of Covered Action No. Redacted	CFTC Whistleblower Award Determination No. 21-WB-05

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Commodity Futures Trading Commission ("Commission") received whistleblower award applications from two claimants in response to the Commission's Notice of Covered Action No. Redacted regarding Redacted ("Covered Action"). The Claims Review Staff ("CRS") has evaluated the award applications in accordance with the Commission's Whistleblower Rules ("Rules"), 17 C.F.R. pt. 165 (2020), 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 the monetary sanctions collected in the Covered Action. This proposed award would yield Redacted based on the funds recovered in the Covered Action to date. The Preliminary Determination further recommended that the award application submitted by Claimant 2 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 Redacted, and Claimant 2's claim is denied.

I. LEGAL ANALYSIS

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 led to the successful enforcement of a covered judicial or administrative action. 7 U.S.C. § 26(b)(1). The CRS has determined that Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action. Claimant 1 provided the information voluntarily, as Redacted not under any legal obligation to report to the Commission. The information, which was previously unknown to the Commission and derived from Claimant 1's personal experience and observations, was sufficiently specific, credible, and timely to cause the Commission to open an investigation. The Commission then brought a successful covered action based, in part, on conduct that was the subject of the original information that Claimant 1 provided. Claimant 1 also provided Commission staff with assistance throughout the course of the investigation, including by engaging in telephone conversations and e-mail correspondence,

answering questions about the fraudulent scheme employed by Redacted , and providing to the Commission documentation to substantiate Redacted misconduct and continued efforts to defraud victims.

The CRS recommended an award amount of Redacted of the monetary sanctions collected in the Covered Action, which would resulted in Redacted at this time. We agree with this determination. In arriving at this award amount, the CRS considered the factors set forth in Rule 165.9, 17 C.F.R. § 165.9, in relation to Claimant 1's award application and the facts and circumstances of the investigation. The determination of the appropriate percentage of a whistleblower award involves a highly individualized review of the facts and circumstances. 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 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. The absence of any one of the positive factors in Rule 165.9(b) does not mean that the award percentage will be lower than 30%, nor does the absence of negative factors in Rule 165.9(c) mean the award percentage will be higher than 10%. Not all factors may be relevant to a particular decision.

Claimant 1's contributions to this case were substantial. Claimant 1 submitted a Form TCR to the U.S. Securities and Exchange Commission ("SEC Form TCR") that was referred to the Commission shortly thereafter. The information contained on Claimant 1's SEC Form TCR was specific, credible, and timely. The Division opened its investigation into Redacted , in part, as a result of Claimant 1's SEC Form TCR. Claimant 1 later filed a Form TCR with the Commission.

In addition, Claimant 1 provided significant, ongoing assistance to Division staff throughout the course of the investigation by engaging in telephone conversations and e-mail correspondence, answering questions about Redacted fraudulent scheme, and providing the Commission documentation to substantiate Redacted misconduct and continued efforts to defraud victims. Given the importance of Claimant 1's information both to the opening and ultimate success of the Covered Action, an award of Redacted is appropriate.

The CRS further recommended that the Commission deny the award application of Claimant 2 because it failed to meet the requirements of Section 23 of the Act and the Rules. Claimant 2 did not file a Form TCR with the Commission, so is not a "whistleblower," as defined by the Rules. *See* Rules 165.2(p)(1), 165.3(a), 17 C.F.R. §§ 165.2(p)(1), 165.3(a). Furthermore, Claimant 2 did not provide original information to the Commission that led to the successful enforcement of this Covered Action.

II. RESPONSE TO PRELIMINARY DETERMINATION

Neither Claimant 1 nor Claimant 2 submitted a request for reconsideration of the Preliminary Determination. Accordingly, pursuant to Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination became the Proposed Final Determination of the Claims Review Staff with respect to Claimant 1, and the Final Order of the Commission with respect to Claimant 2.

Claimant 2's failure to submit a timely response contesting the Preliminary Determination constituted a failure to exhaust administrative remedies. Consequently, Claimant 2 is prohibited from pursuing an appeal under Rule 165.13, 17 C.F.R. § 165.13.

III. CONCLUSION

It is hereby ORDERED that Claimant 1 shall receive an award of Redacted of the monetary sanctions collected, or to be collected, in the Covered Action. It is further ORDERED that Claimant 2's award claim shall be, and is, denied.

By the Commission.

Robert Sidman

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Dated: April 30, 2021