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. 21-WB-07

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

On [redacted], the Claims Review Staff ("CRS") issued a Preliminary Determination recommending that we deny Claimant 1's whistleblower award application in relation to [redacted] ("Order" and "Covered Action"), and for related actions brought by the [redacted] ("Federal Regulator"), [redacted] ("Foreign Regulator"), and [redacted] ("State Regulator") (collectively, the "Related Actions").[1]

Claimant 1 submitted a timely request for reconsideration of the Preliminary Determination, providing additional information in relation to how Claimant 1's information was utilized by a Federal Regulator, which conducted a parallel [redacted] investigation into the conduct at issue in the Covered Action.[2] The Commission evaluated the award applications under Section 23 of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 26 (2018), and the Whistleblower Rules, 17 C.F.R. pt. 165 (2020). Based on the additional information received from Claimant 1 and the Federal Regulator, the Commission has determined that Claimant 1 significantly contributed to the success of the Covered Action and two of the Related Actions.

For the reasons stated below, Claimant 1's award claim is approved in the amount of [redacted]% for the Covered Action, [redacted]% for the related action brought by the Federal Regulator, and [redacted]% for the related action brought by the Foreign Regulator. Claimant 1's additional related action award application is denied because he/she did not establish that his/her information was provided to the State Regulator.

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[1] *See* Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions, [redacted]

[2] The Preliminary Determination further recommended that the award applications submitted by Claimant 2 be denied. Claimant 2 failed to submit a request for reconsideration of the Preliminary Determination, and, therefore, the Preliminary Determination denying his/her claims for award has become the Final Order of the Commission. 17 C.F.R. § 165.7(h).

I. BACKGROUND

A. Preliminary Determination

On [redacted] the CRS preliminarily determined to recommend that the Commission deny Claimant 1's claim because he/she had not provided sufficient information to establish that he/she led to the successful enforcement of the Covered Action. The CRS determined that the information Claimant 1 provided contained original information and was voluntarily provided.

B. Request for Reconsideration

[redacted], Claimant 1's counsel provided additional, specific information that related to the assistance Claimant 1 provided to the Federal Regulator. On [redacted], Claimant 1 submitted a timely request for reconsideration arguing that he/she was entitled to an award because the information he/she provided "significantly contributed" to the successful enforcement action by providing assistance that benefitted both the Federal Regulator and the Commission's Division of Enforcement ("Division") staff. Claimant 1 also claimed to have reinvigorated the Federal Regulator's investigation by contributing to a [redacted] article.

II. CLAIMANT 1'S ASSISTANCE TO THE FEDERAL REGULATOR

The Commission's Whistleblower Office ("WBO") staff investigated Claimant 1's contentions on reconsideration. The Federal Regulator's investigative staff provided a sworn declaration corroborating that Claimant 1 was the first to explain that certain [redacted] ("Company X") had a large position that would benefit from [redacted] ("Trading Position").[3] Although Claimant 1 did not himself/herself provide direct evidence of [redacted] Claimant 1's information led directly to evidence [redacted]: Claimant 1 increased the Federal Regulator's understanding of the Trading Position, and the Federal Regulator benefited from this increased understanding when it questioned a [redacted] for Company X [redacted]). During the Federal Regulator's interview of the [redacted], the Federal Regulator obtained several admissions as to the frequency of the [redacted] in relation to the Trading Position. The Federal Regulator staff and Division staff benefitted from these admissions, and both agencies incorporated these admissions into the [redacted] valuations of their respective cases.

A. The Covered Action and Claimant 1's Tip

The Covered Action arose out of an investigation that was opened in response to [redacted] that related to the [redacted] On [redacted] Claimant 1 submitted through his/her counsel a detailed description of the Trading Position on a CFTC Form TCR. As a result of this information, Division staff and staff from the Federal Regulator and the [redacted]

[3] Prior to Claimant 1 filing his/her Form TCR, the Federal Regulator's investigators had already identified documents relating to the Trading Position that were provided by Company X.

[redacted] interviewed Claimant 1 multiple times. Claimant 1 did not provide direct evidence of [redacted].

B. Claimant 1's Contribution Through [redacted]

Claimant 1 has satisfied the Commission that he/she was the original source of a [redacted]. The [redacted] revealed that certain Company X traders had a position, the Trading Position, that [redacted]

The [redacted] also alerted other regulators that Division staff had information from a [redacted], which caused the Federal Regulator and the Foreign Regulator to request copies of the information Claimant 1 had provided the Division.[5] Division staff provided Claimant 1's Form TCR to both regulators. The Federal Regulator started interviews of Company X witnesses [redacted], and Division staff attended some of those interviews. Claimant 1 was the second person the Federal Regulator interviewed in this set of interviews.

III. RULE REGARDING SIGNIFICANT CONTRIBUTION

A whistleblower's information can lead to a successful enforcement action by either causing an investigation to be opened, or by significantly contributing to the success of an ongoing action.[6] Because the Division opened the Covered Action on the basis of [redacted], the only avenue to an award for Claimant 1 is by establishing that he/she significantly contributed to the matter. In this instance, Claimant 1 provided information that led to direct evidence of the underlying violations, but did not provide direct evidence of violations himself/herself. Therefore, the question before the Commission is whether a whistleblower can significantly contribute to the success of an action by providing information that leads to direct evidence.

The Whistleblower Rules do not define the term "significantly contribute." However, the adopting releases to the Proposed and Final Whistleblower Rules provide insight into how the Commission should interpret the term. First, the adopting release for the Proposed Whistleblower Rules contemplated a whistleblower receiving an award for providing information that led staff to direct evidence:

> A whistleblower whose information did not provide this degree of evidence in itself, but who played a critical role in advancing the investigation by *leading the*

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[4] [redacted]

[5] Division staff provided an unredacted version of Claimant 1's Form TCR to the Federal Regulator on [redacted], and a redacted version of that Form TCR to the Foreign Regulator on [redacted].

[6] 17 C.F.R. § 165.2(i).

staff directly to evidence that provided important support for one or more of the Commission's claims could also receive an award, in particular *if the evidence the whistleblower pointed to might have otherwise been difficult to obtain.*[7]

Second, the adopting release for the Final Whistleblower Rules clarified that, in order for a whistleblower to receive a whistleblower award, there must be a "meaningful nexus" between the information the whistleblower provided and the "Commission's ability to successfully complete its investigation, and to either obtain a settlement or prevail in a litigated proceeding."[8]

IV. ANALYSIS OF COVERED ACTION AWARD APPLICATION

Upon review of the record, with the information provided by the Federal Regulator following Claimant 1's request for reconsideration, we determine that Claimant 1 provided information that led to the successful enforcement of the Covered Action and two of the related actions because he/she significantly contributed to the Division's investigation through original information that he/she voluntarily provided, pursuant to Section 23(b)(1) of the CEA.[9]

Claimant 1 provided information to the Commission voluntarily by submitting it prior to any request by the Division for information from Claimant 1.[10] Claimant 1 submitted his/her information to the government prior to the publication of the [redacted] article. Therefore, the information he/she provided as a source for the article was also voluntarily submitted to the Federal Regulator.[11] The Federal Regulator interviewed Claimant 1 after reading the [redacted] article but prior to Claimant 1 providing information to the Federal Regulator. The Commission considers the information Claimant 1 provided to the Federal Regulator to be voluntarily submitted because he/she had voluntarily provided information to other agencies of the government before the [redacted] article was published.[12]

Although Division and Federal Regulator staff already knew about the Trading Position from documents provided by Company X, Claimant 1 provided original information because certain information he/she provided related to the Trading Position was unknown to Division staff.[13] Claimant 1 also provided original information through the [redacted] article because the

[7] Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act, 75 Fed. Reg. 75,728, 75,731 (Dec. 6, 2010) (emphasis added).

[8] Whistleblower Incentives and Protection, 76 Fed. Reg. 53,172, 53,177 (Aug. 25, 2011).

[9] 7 U.S.C. § 26(b)(1) (2018).

[10] Claimant 1 first voluntarily submitted information about the Covered Action to the [redacted]

[11] 17 C.F.R. § 165.2(o)(1).

[12] The Whistleblower Program is designed to motivate whistleblowers to come forward and report wrongdoing to regulators. As the Commission explained: "the statutory purpose of [the Whistleblower Program is] creating a strong incentive for whistleblowers to come forward early with information about possible violations of the CEA rather than wait until Government or other official investigators 'come knocking on the door.'" Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act, 75 Fed. Reg. at 75,734.

[13] We note that the burden is on the whistleblower to provide additional information to substantiate claims that he/she provided information to another regulator or entity that assisted Division staff: "[t]he whistleblower must satisfy the

Commission determines that he/she has provided sufficient information through phone records to establish he/she was a source for the article.[14]

Claimant 1's information significantly contributed to the successful enforcement of the Covered Action. The [redacted] article caused the Federal Regulator to focus its attention on the information Claimant 1 provided. Shortly after the [redacted] article was published, the Federal Regulator obtained a copy of Claimant 1's Form TCR and initiated interviews of current and former Company X employees [redacted]. Division staff attended some of these interviews and learned valuable information related to the frequency of Company X's [redacted] as a result of the interviews.

Additionally, Federal Regulator staff used the Trading Position information from Claimant 1 to question the [redacted] about his/her [redacted]. In this way, Claimant 1's information led directly to evidence of [redacted]. When questioned by the Federal Regulator, the [redacted] admitted [redacted] the Trading Position that Claimant 1 highlighted.

Claimant 1's information significantly contributed to the success of the Covered Action. Information regarding the [redacted] admissions, a description of the underlying position, and an explanation of how the underlying position allowed Company X to profit from [redacted] all helped justify the outcome and sanctions imposed on Company X not only in the Federal Regulator's Order but also in the Commission Order and the Foreign Regulator's Order. Claimant 1's information thereby led to a successful enforcement action because it had a meaningful nexus to the Commission's ability to obtain [redacted] of the Covered Action.

V. ANALYSIS OF RELATED ACTION AWARD APPLICATIONS

Claimant 1 applied for awards based on related actions brought by the Federal Regulator, the Foreign Regulator, and the State Regulator. We evaluated these claims and determined that Claimant 1 qualifies for an award for the Federal and Foreign Regulator actions, but does not qualify for an award brought by the State Regulator.

Under the CEA, a related action is a "judicial or administrative action" brought by certain agencies.[15] A whistleblower will qualify for an award on a related action if the other regulator's case was "based on the original information provided by a whistleblower pursuant to subsection

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whistleblower's status as the original source of information to the Commission's satisfaction." 17 C.F.R. § 165.2(*l*). In this case, Claimant 1 met that burden by providing (1) a summary of what the other regulator told Claimant 1 about his/her assistance, (2) the names of the Federal Regulator contacts, and (3) information that corroborated he/she was the original source of the [redacted] Article that was relevant to the Commission's investigation. The Federal Regulator confirmed that Claimant 1's information was helpful.

[14] *See* 7 U.S.C. § 26(a)(4); 17 C.F.R. § 165.2(k)(3). A whistleblower can provide original information through the "news media" if the whistleblower is a source of the information.

[15] 7 U.S.C. § 26(a)(5).

(a) that led to the successful enforcement of the Commission action."[16] We interpret this Rule to be satisfied when the whistleblower's information was shared with the other agency.[17]

We find that Claimant 1's information led to the successful resolution of a related action brought by the Federal Regulator. The Commission shared Claimant 1's information with the Federal Regulator, and Claimant 1 later provided additional information to the Federal Regulator (and the Division) through interviews. The Federal Regulator's [redacted] action was based, at least in part, on the original information that Claimant 1 voluntarily submitted to the Commission, and led to the successful resolution of the Federal Regulator action (and the Covered Action).[18] The Federal Regulator related action constituted a [redacted] matter [redacted]) and a [redacted] matter [redacted] against two different Company X entities.[19]

We similarly find that the Commission shared Claimant 1's information with the Foreign Regulator, and note that the Foreign Regulator's Order also relies on the Trading Position and the [redacted] admissions. We also find that Claimant 1 timely applied for the Foreign Regulator related action [redacted].

We find that Claimant 1's application for an award related to the State Regulator action should be denied because Claimant 1's information was not shared with the State Regulator.

VI. AWARD DETERMINATION

In determining the appropriate award percentage, we weighed the factors specified in Rule 165.9(a), including the significance of the information provided by Claimant 1, the assistance that Claimant 1 provided, and the law-enforcement interests at issue.[20] Our determination of the percentage reflects the fact that Claimant 1 did not provide direct evidence, but instead provided information that led to direct evidence. Additionally, the significance of his/her assistance was not readily obvious to Division staff, his/her information related to only some of the misconduct in the Covered Action, and Claimant 1 delayed reporting the misconduct to regulators until [redacted]. Based on the confluence of these factors, we find that Claimant 1 should receive an award of [redacted]% of the monetary sanctions collected in the Covered Action. With respect to the Federal Regulator action[21]

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[16] *Id.*

[17] The interpretation is consistent with the SEC's related action requirements. The SEC's Rules make this requirement explicit: WBO "may ask the whistleblower to demonstrate that [they] directly (or through the Commission) voluntarily provided the governmental agency, regulatory authority or self-regulatory organization the same original information that led to the Commission's successful covered action, and that this information led to the successful enforcement of the related action." 17 C.F.R. § 240.21F-11(c).

[18] *See* 7 U.S.C. § 26(a)(5); 17 C.F.R. § 165.11.

[19] [redacted].

[20] 17 C.F.R. § 165.9(a).

[21] The Commission also recognizes the hardships that Claimant 1 suffered [redacted]

and the Foreign Regulator action,[22] we find that Claimant 1 should also receive awards of [redacted]% for each action, based primarily on the indirect nature of the evidence of the underlying violations Claimant 1 submitted.

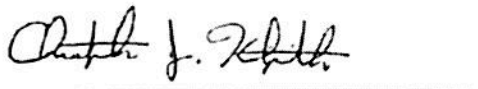
VII. CONCLUSION

Upon consideration of the record, including Claimant 1's request for reconsideration, as well as the additional factual information provided by Federal Regulator staff, we find that Claimant 1's information led to the successful enforcement of the Covered Action, the related Federal Regulator action, and the related Foreign Regulator action.

It is hereby ORDERED that Claimant 1 shall receive an award of the monetary sanctions collected, or to be collected of [redacted] ([redacted]%) in the Covered Action, [redacted] ([redacted]%) in the related Federal Regulator action, and [redacted] ([redacted]%) in the related Foreign Regulator action. Claimant's 1's application for an award for the State Regulator's action is denied. The total award for Claimant 1 would amount to approximately $[redacted].

[22] [redacted]

By the Commission.



Christopher J. Kirkpatrick

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Dated: October 15, 2021