PUBLIC VERSION

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of Claims for Award by: Redacted ("Claimant 1"), Redacted Redacted Redacted ("Claimant 2"), Redacted Redacted ("Claimant 3"), Redacted Redacted ("Claimant 4"), Redacted Redacted ("Claimant 5"), Redacted Redacted ("Claimant 6"), Redacted Redacted ("Claimant 7"), Redacted Redacted Redacted ("Claimant 8"), Redacted Redacted ("Claimant 9") Redacted In Connection with Notice of Covered Action No. Redacted	CFTC Whistleblower Award Determination No. 22-WB-04

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Commodity Futures Trading Commission ("Commission") received whistleblower award applications from Redacted ("Claimant 1"), Redacted ("Claimant 2"),

Redacted ("Claimant 3"), Redacted ("Claimant 4"), Redacted ("Claimant 5"), Redacted ("Claimant 6"), Redacted ("Claimant 7"), Redacted ("Claimant 8"), and Redacted ("Claimant 9") in response to the Commission's Notice of Covered Action No. Redacted regarding Redacted Redacted ("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 (2020), 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 a *** award, comprised of Redacted *** to Claimant 4, and Redacted each to Claimant 2, Claimant 3, and Claimant 6, of the monetary sanctions collected by the Commission in the Covered Action. The Preliminary Determination also recommended that the award applications of Claimant 1, Claimant 5, Claimant 7, Claimant 8, and Claimant 9 be denied.[1]

For the reasons set forth below, we agree with the CRS's determination. Accordingly, Claimant 4's claim is approved in the amount of ***, Claimant 2's, Claimant 3's and Claimant 6's are approved in the amount of *** each, and Claimant 1's, Claimant 5's, Claimant 7's, and Claimant 8's are denied.

I. BACKGROUND

A. The Award Program

The Commission's Whistleblower Program was created by Section 748 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Whistleblowers are eligible to receive between 10 percent and 30 percent of the monetary sanctions collected in certain

[1] Claimant 9 withdrew *** claim for award on Redacted after receiving the Preliminary Determination.

enforcement actions for which they voluntarily provided original information that led to a successful enforcement. *See* 17 C.F.R. § 165.5(a).

B. Relevant Facts

The matter related to the Covered Action required Redacted and Redacted (collectively, "Defendants") to pay, jointly and severally, Redacted in civil monetary penalties, Redacted Redacted

In response to the Covered Action, the Commission received award applications from nine claimants.

II. DISCUSSION

A. Preliminary Determination

The CRS determined to grant the award applications of Claimant 2, Claimant 3, Claimant 4, and Claimant 6 by awarding a total of *** , comprised of Redacted to Claimant 4, and Redacted each to Claimant 2, Claimant 3, and Claimant 6, of the amount collected by the Commission in the Covered Action because it found these Claimants satisfied the requirements of the CEA and the Rules. Claimant 2, Claimant 3, Claimant 4, and Claimant 6, either jointly or individually, each provided the Commission with original information regarding Redacted According to Division of Enforcement ("Division") staff, these Claimants each provided ongoing cooperation

and assistance to Division staff, which significantly contributed to the success of the Covered Action. The CRS determined to award a higher share Redacted for Claimant 4 because *** provided the highest level of ongoing assistance and cooperation, which included, among other things, providing a Redacted and Redacted in support of the Commission's action against the Defendants. Because the Commission has collected the total sanctions ordered of Redacted in connection with the Covered Action, Claimant 2, Claimant 3, and Claimant 6 would each receive award payments of Redacted , and Claimant 4 would receive an award payment of Redacted , for a total award of Redacted .

The CRS also determined to deny the award applications of Claimant 1, Claimant 5, Claimant 7, Claimant 8, and Claimant 9 because each failed to meet the requirements of the CEA and the Rules. In particular, the CRS found that Claimant 1's information was not voluntary, given that *** provided it after *** received a request or demand from Division staff. *See* 17 C.F.R. § 165.2(o)(1). After receipt of the Preliminary Determination, Claimant 1 requested the records supporting the determination, and WBO staff provided the relevant materials shortly thereafter. Claimant 1 then submitted a timely letter contesting the CRS's Preliminary Determination.

III. ANALYSIS

A. Claimant 1's Request for Reconsideration

In *** letter contesting the Preliminary Determination, Claimant 1 argues that (1) *** information was voluntary; (2) *** assistance was more than merely providing information; and (3) *** was "[p]romised a Whistleblower Award." On the contrary, the record demonstrates that Claimant 1 did not voluntarily provide information. And, while Claimant 1 may have provided some assistance, all of this assistance came after *** received requests and/or subpoenas from

Division staff in connection with its investigation. Finally, there is nothing in the record – and Claimant 1 offers no new evidence at this time – to support *** assertion that Division staff "promised *** that *** would be entitled to whistleblower compensation." Redacted

1. Claimant 1's information was not voluntary.

The Commission opened the investigation into Redacted Redacted based on the information provided by Redacted . According to Redacted Redacted Redacted informed Division staff that the suspicious activity had occurred Redacted Redacted Redacted Redacted

As discussed in more detail below, on Redacted , less than a month after opening an investigation, Division staff sent a "Document Preservation Request" to Redacted Redacted Claimant 1 Redacted in connection with its investigation of Redacted . On or about Redacted , Division staff sent subpoenas for records and testimony to Redacted Claimant 1, Redacted connection with " Redacted ." On or about Redacted Redacted , Division staff issued a subpoena for the testimony of Claimant 1, Redacted Redacted . In Redacted , pursuant to a subpoena, Claimant 1 provided sworn testimony to Division staff regarding Redacted . At that time, Claimant 1 testified *** believed that Redacted was not improper.

In *** request for reconsideration, Claimant 1 does not dispute that *** received the Commission's subpoena on Redacted (though *** fails to mention the Redacted

subpoena for documents and testimony). Nor does *** deny providing testimony under subpoena to Division staff in Redacted . Clearly, by this time, Claimant 1 – Redacted Redacted – was well aware of the CFTC's investigation of Redacted Claimant 1, instead, argues that: "Upon the realization that Redacted was, in fact, Redacted Redacted voluntarily contacted the CFTC to discuss Redacted not only in the Redacted the CFTC's original subpoena covered, but also several other Redacted Redacted " According to Claimant 1, the Redacted "ultimately prompted *** to reach out to the CFTC and voluntarily provide this new information, as well as the necessary explanation and context for the CFTC to understand and ultimately utilize said information."

Information is voluntarily submitted if the whistleblower gave information to the Commission before receiving a request, inquiry, or demand for information from the Commission or another authority. *See* 17 C.F.R. § 165.2(o)(1). Here, it is undisputed that Claimant 1 provided information to the Commission only after receiving requests from Division staff in connection with the investigation. As noted above, Claimant 1 received Redacted requests and/or subpoenas seeking information about potentially Redacted Redacted Redacted . Even accepting as true Claimant 1's assertion that *** understanding of Redacted may have changed Redacted Redacted that newfound understanding does not change the underlying facts (documents and information) regarding Redacted that the Commission had already requested from Claimant 1. In other words, *** opinion of the facts may have changed after reading the Redacted , but the facts themselves were in *** possession throughout and

did not change – and the requests required *** to produce documents and information related to the facts.

Claimant 1 also suggests that *** can escape the voluntariness requirement because*** "voluntarily contacted the CFTC to discuss Redacted CFTC's original subpoena covered, but also several Redacted , including but not limited to, Redacted ." Claimant 1's view of the Commission's investigation of Redacted Redacted is far too narrow. From the outset, Claimant 1 was on notice that the Commission's investigation of the Redacted was not limited to just Redacted Indeed, the Commission's Redacted document preservation request for the Redacted Redacted investigation demanded that Claimant 1 preserve, and safeguard against destruction of documents, communications, and other information concerning and/or Redacted

(emphasis added).

In addition, Claimant 1 relies on a prior Commission order to support *** argument that the Commission requests/subpoenas do not make *** information not voluntarily submitted. That reliance is misplaced. Claimant 1 contends that "[i]t has been held that the Commission intended the phrase 'documents or information from the whistleblower' to apply only to Redacted

" *See* Order Determining Whistleblower Award Claims No. 20-WB-07 (July 20, 2020). That is true, but it does not help Claimant 1, Redacted Redacted . One way or the other, Claimant 1 "possess[ed]"

the information the Commission requested, and it "necessar[ily]" had to come from *** in order to respond to the subpoena.[2]

The CRS concluded that Claimant 1 was not eligible for an award given that *** did not voluntarily submit his information. Because it is undisputed that Claimant 1 received multiple requests for documents and information, Redacted , the Commission agrees that the CRS correctly determined that Claimant 1's information was not provided voluntarily.

2. Claimant 1's assistance came after Commission requests and subpoenas.

In *** request for reconsideration, Claimant 1 argues that *** "involvement in the Redacted case transcended mere document production and testimony. *** actively participated in the Redacted ." Claimant 1 adds that, "[w]ithout *** expert consultation, the CFTC's Redacted would have been severely limited, if not out-right impossible."

As stated in the CRS's preliminary determination, "Claimant 1 provided information to the Commission only after receiving requests from Division staff in connection with the investigation." Even if Claimant 1's assistance was indeed "transcendent," as suggested above, *** indisputably received subpoenas for the information prior to providing *** assistance. Because *** assistance was not voluntary, *** is not eligible for an award. *See* 17 C.F.R. § 165.5(a)(1). And because Claimant 1 is not eligible for an award, the Commission does not need to further evaluate the value of Claimant 1's assistance at this time.

[2] Even if Claimant 1's information had been submitted voluntarily, it is unclear whether *** information would satisfy the "independent knowledge" requirement, Redacted . *See* 17 C.F.R. § 165.2(g)(4).

3. Claimant 1 provides nothing to support *** contention that *** was promised a whistleblower award.

Claimant 1 contends that *** was "Promised a Whistleblower Award" by Division staff. In *** request for reconsideration, Claimant 1 wrote, "[a]s enticement to have *** become actively involved in the Redacted , [Division staff] promised *** that *** would be entitled to whistleblower compensation."

There is nothing in the record to support a supposed "promise" of a whistleblower award.[3] Nor does Claimant 1 put forth any evidence to support this claim. Claimant 1 adds that "[o]n or about Redacted , [Division staff] advised [Claimant 1] that if [Claimant 1] provided relevant information and cooperated with the CFTC's investigation into Redacted would be treated as a whistleblower." As stated in the Preliminary Determination:

> According to Claimant 1, on Redacted , as a result of Redacted with Redacted expressing concern over Redacted Redacted . Then, on Redacted , Redacted Claimant 1 contacted Division staff about cooperating with the Commission. Claimant 1 met with the Division staff again, in several sessions occurring in Redacted , pursuant to subpoena, which Division staff issued at the request of Claimant 1's legal counsel. Claimant 1 did not submit a Form TCR to the Commission until Redacted .

As noted above, Claimant 1 does not provide any document or other evidence to support *** claim that Division staff "promised a whistleblower award." Rather, it appears that Claimant 1 decided to "cooperate" with Division staff Redacted . And, while being a whistleblower may include an award for certain "eligible" individuals, it also can mean defined protections from retaliation. *See* 17 C.F.R.

---

[3] Even if such a promise or assurance had been made, that alone cannot override the requirements of the Whistleblower Program set out by statute and rule. *See* 7 U.S.C. §26; 17 C.F.R. pt. 165.5. At best, Claimant 1 would have an argument sounding in equity or reliance. Although the rules do permit the Commission to "waive any procedural requirements based upon a showing of extraordinary circumstances," that waiver applies only to procedural requirements (like filing deadlines) and can be exercised only by the Commission, not staff. 17 C.F.R. § 165.5(c). Through the statute and rules (published in August 2011, 76 Fed. Reg. 53172), Claimant 1, with assistance of counsel, was on notice of what the Whistleblower Program permitted and required.

§ 165.20. Based on the context of Claimant 1 coming back to Division staff to "cooperate," it appears that Division staff may have been attempting to direct Claimant 1 (and *** legal counsel) to the retaliation provisions under the Rules. Regardless, as discussed above, Claimant 1's decision to "cooperate" occurred well after Division staff first issued document and/or testimony subpoenas to Claimant 1 Redacted Redacted .

In *** request for reconsideration, Claimant 1 also describes some of the hardships *** endured, including retaliation. As reflected in both the Preliminary Determination, and Claimant 1's response, Claimant 1 had legal counsel at the time *** came forward to cooperate with Division staff. Claimant 1's own legal counsel served to guide Claimant 1 with respect to *** cooperation in the investigation related to the Covered Action. While Redacted treatment of Claimant 1 may have been Redacted Redacted , based on the record, *** remains ineligible for an award given that the information was requested by subpoena on prior occasions by Division staff.

B. <u>The Other Claimants</u>

No other claimants requested reconsideration of the Preliminary Determination. Pursuant to Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination became final with respect to Claimant 2, Claimant 3, Claimant 4, Claimant 5, Claimant 6, Claimant 7, and Claimant 8. The failure to timely submit a response contesting the Preliminary Determination constitutes a failure to exhaust administrative remedies. Accordingly, these Claimants are prohibited from pursuing an appeal under Rule 165.13, 17 C.F.R. § 165.13.

IV. CONCLUSION

Accordingly, it is hereby ORDERED that Claimant 2, Claimant 3, and Claimant 6 each shall receive an award of Redacted and Claimant 4 receive an award of Redacted *** of the monetary sanctions collected in the Covered Action; and it is further ORDERED that the claims of Claimant 1, Claimant 5, Claimant 7, and Claimant 8 are denied.

By the Commission.

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

Dated: March 25, 2022