

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of Claims for Award by:)	
Redacted (“Claimant 1”),)	
Redacted)	
;)	
Redacted (“Claimant 2”),)	
Redacted)	
;)	CFTC Whistleblower Award
Redacted (“Claimant 3),)	Determination No. 23-WB-04
Redacted)	
; and)	
Redacted (“Claimant 4”))	
Redacted)	
In Connection with)	
Notice of Covered Action No. Redacted)	

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

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

“Covered Action”). The Claims Review Staff (“CRS”) evaluated each of the applications in accordance with the Commission’s Whistleblower Rules (“Rules”), 17 C.F.R. pt. 165, promulgated pursuant to Section 23 of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. § 26. On June 17, 2021, the CRS issued a Preliminary Determination recommending that Claimant 1 and Claimant 3 receive an award of * % each, and that Claimant 2 receive an award of * %. The CRS also recommended denying Claimant 4’s award application.

For the reasons set forth below, the CRS’s determination is adopted.

I. BACKGROUND

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II. PRELIMINARY DETERMINATION

On Redacted, the CRS issued a Preliminary Determination recommending that Claimant 1 and Claimant 3 each receive an award of *% and Claimant 2 receive an award of *%. Claimants did not respond to the Preliminary Determination. Thus, under Rule 165.7(h) 17 C.F.R. § 165.7(h), the Preliminary Determination became the Proposed Final Determination. Claimants are prohibited from pursuing an appeal under Rule 165.13, 17 C.F.R. § 165.13, because they did not exhaust administrative remedies.

III. 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 leads to the successful enforcement of a covered or related action. 7 U.S.C. § 26(b)(1) (2018). We find that the record demonstrates that Claimant 1, Claimant 2, and Claimant 3 voluntarily provided the Commission with original information that led to the successful enforcement of a covered action.

The CRS determined that Claimant 1, Claimant 2, and Claimant 3 have met all eligibility requirements for an award, and we concur. *See* 17 C.F.R. §§ 165.5(b), 165.6. Claimant 1 and Claimant 2 provided original information on a Commission Form TCR. Claimant 3 provided original information but did not file a Form TCR. According to Division of Enforcement (“Division”) staff, he/she intended to do so but had difficulty understanding or fulfilling the requirements for participating in the Whistleblower Program, evidently owing to Redact

. Claimant 3 specifically stated in his/her Form WB-APP that Redacted. The CRS determined that it would not be fair or equitable to penalize Claimant 3 for failing to meet the requirement of filing a Form TCR with the CFTC, when he/she had previously submitted a Form TCR to the Redacted.¹ According to the CRS, his/her Redacted constitutes an “extraordinary circumstance” under Rule 165.5(c), 17 C.F.R. § 165.5. Taking Claimant 3’s circumstances into account, including Claimant 3’s not having a permanent address and staff’s reasonable efforts to support Claimant 3 in filing a CFTC Form TCR, the

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Redacted

Commission finds it to be in the public interest and consistent with the protection of customers to find the whistleblower eligibility requirements satisfied here. Such a finding would reward Claimant 3 for his/her good faith efforts to report wrongdoing and assist the Commission, and it would encourage similar would-be whistleblowers to come forward in the future. But this finding should not in any way suggest that a putative whistleblower is relieved of the requirement to file a Form TCR merely because they first report to another government agency, and that same information is provided by a government agency to the Commission.

The Commission finds that Claimant 3 voluntarily provided original information to the Commission, and that this information led to the successful enforcement of the Covered Action, consistent with Rule 165.3(a). It is important to note that the Redacted complaint form includes an attestation like that in the Commission's Form TCR. In his/her complaint, Claimant 3 certified that the information he/she provided was true and correct to the best of his/her knowledge, thus fulfilling a requirement equivalent to the Commission's requirement for attestation under Rule 165.3(b).

Claimant 1, Claimant 2, and Claimant 3 each timely filed a Form WB-APP in response to a Notice of Covered Action, and provided explanations and assistance to Division staff. Further, Claimant 1, Claimant 2, and Claimant 3, do not fall into any of the categories of individuals ineligible for an award, as set forth in Rule 165.6(a), 17 C.F.R. § 165.6(a).

The CRS recommended that Claimant 1, Claimant 2, and Claimant 3, share an award amounting to * % of the total monetary sanctions collected in the Covered Action. In particular, the CRS recommends that Claimant 2 receives an award of * % while Claimant 1 and Claimant 3 each receive slightly higher awards of * %. We agree with this determination. Redacted

If the Commission collects the full \$ Redacted ordered, the recommended awards would result in payments of \$ Redacted each to Claimant 1 and Claimant 3, and \$ Redacted to Claimant 2 (along with respective percentages of any post-judgment interest). Redacted

In arriving at these award percentages, 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 claimants' award applications. 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 caused the case to be opened and Claimant 3 provided the highest level of ongoing assistance and cooperation. Claimant 1's information was sufficiently specific, credible, and timely to cause Division staff to open an investigation. The Commission then brought a successful covered action based in part on the conduct that was the subject of Claimant 1's original information. The information from Claimant 2 and Claimant 3 significantly contributed to the success of the Covered Action.

After the investigation was opened, Claimant 1, Claimant 2, and Claimant 3 each provided ongoing cooperation and assistance to Division staff, which significantly contributed to the success of the Covered Action. According to Division staff, their level of cooperation was outstanding in terms of their willingness to submit documents and be interviewed as well as the level of detail that they provided. Division staff interviewed each of the claimants over the phone on multiple occasions. Their statements were consistent with their initial accounts and further bolstered the allegations. During his/her interview, Claimant 1 provided information on how the scheme operated, which Division staff used to direct its investigation. Claimant 2 and Claimant 3 provided numerous documents to the Division. Among the information and documents that they provided that were instrumental were Redacted

The detailed information that Claimant 1, Claimant 2, and Claimant 3 provided led Division staff to piece together and ultimately describe coherently Redacted the systematic and predatory nature of Redacted conduct. Division staff significantly relied on information provided by Claimant 1, Claimant 2, and Claimant 3 in Redacted Redacted. Division staff specifically referenced the information they provided in its Redacted

In addition to the assistance referenced above, Division staff found that Claimant 3 provided critical evidence and support to the Commission by furnishing a Redacted. The Redacted he/she provided was a necessary component in Redacted Redacted, because Claimant 3 had Redacted. Overall, Division staff found that Claimant 3 provided the highest level of ongoing assistance and cooperation of the three meritorious claimants.

Claimant 2 also significantly contributed to the success of the Covered Action. Claimant 2's Form TCR explained in detail how Redacted

Redacted

served as a guide for Division staff to put together

Claimant 2's detailed explanation
Redacted

The CRS has also determined to recommend that the Commission deny the award application of Claimant 4 because Claimant 4 failed to meet the requirements of Section 23 of the Act and the Rules. We agree with this determination. Claimant 4 did voluntarily submit information to the Commission on a Form TCR. However, the information Claimant 4 provided was unrelated to the Covered Action. Claimant 4 played no role in the Commission's successful enforcement action, and no information he/she provided was used in the investigation. Division staff had not heard of Claimant 4 until the WBO informed them of his/her award claim. Accordingly, the information provided by Claimant 4 was not useful to the Commission's investigation and, therefore, did not lead to the successful enforcement of the Covered Action.

IV. CONCLUSION

It is hereby ORDERED that Claimant 1 and Claimant 3 each shall receive an award of * % of monetary sanctions collected in the Covered Action, and that Claimant 2 shall receive an award of * % of the monetary sanctions collected in the Covered Action. It is further ORDERED that Claimant 4's whistleblower award be, and hereby is, denied.

By the Commission.



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

Dated: August 11, 2023