

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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. 24-WB-02

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Commodity Futures Trading Commission ("Commission") received a whistleblower award application from Claimant 1 and Claimant 2 in response to Notice of Covered Action No. Redacted regarding Redacted or the "Covered Action"). On Redacted, the CRS issued a Preliminary Determination recommending that Claimant 1 receive an award of \* % on the Covered Action, Redacted

The Preliminary Determination also recommended denying the other award claim because Claimant 2 did not contribute to the Covered Action.

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

I. BACKGROUND

The Covered Action arose out a complaint filed by Claimant 1 with the Commission's Division of Enforcement ("Division"). In his/her Complaint, Claimant 1, Redacted

. Based on Claimant 1's Complaint, the Division opened an investigation into Redacted activities.

1 If the Commission collected the Redacted ordered by the court, a \* % award would result in a total payment Redacted

On Redacted, the court issued the Order against Redacted in connection with Redacted

## II. PRELIMINARY DETERMINATION

On Redacted, the CRS issued a Preliminary Determination recommending that the Commission grant an award of \* % to Claimant 1 on the Covered Action.<sup>2</sup> The CRS also recommended denying Claimant 2's application because his/her information did not lead to the successful enforcement of the Covered Action.

Notice of the Preliminary Determination was provided to both claimants. Claimants did not respond to the Preliminary Determination. As a result, pursuant to 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). We find that the record demonstrates that Claimant 1 voluntarily provided the Commission with original information that led to the successful enforcement of a covered action. His/Her information caused the investigation to be opened, and the Covered Action was based at least in part on conduct that was the subject of Claimant 1's information.

The CRS determined that Claimant 1 has met all eligibility requirements for an award, and we concur. *See* 17 C.F.R. §§ 165.5(b), 165.6. Claimant 1 voluntarily provided original information that led to a successful enforcement action and filed a Commission Form TCR. Claimant 1 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 does 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 receives an award amounting to \* % of the total monetary sanctions collected in the Covered Action. We agree with this determination. To date, Redacted have been collected in the Covered Action, which means that Claimant 1 would receive an award payment of Redacted. Claimant 1 will not need to file additional claims for any future amounts collected. If the Commission does eventually collect the full amount of \$ \* ordered by the court, a \* % award would result in a total payment of \$ \* to Claimant 1.

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<sup>2</sup>

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 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's information was sufficiently specific, credible, and timely to cause Division staff to open an investigation.<sup>3</sup> Claimant 1's information was highly significant given that Redacted

The Commission then brought a successful covered action based in part on conduct that was the subject of the original information provided by Claimant 1. Division staff however noted that other than providing his complaint and Redacted Claimant 1 did not provide any additional information or assistance. Claimant 1 did not produce any documents to Division staff other than the documents he/she provided with his/her initial submission. For the remainder of the investigation and the discovery phase of the litigation, Division staff obtained information from Redacted

Given the importance of Claimant 1's information to both the opening and the ultimate success of the Covered Action, but also given the limited nature of Claimant 1's assistance, an award of 20% to Claimant 1 is appropriate.

The CRS has also determined to recommend that the Commission deny the award application of Claimant 2 because Claimant 2 failed to meet the requirements of Section 23 of the Act and the Rules. We agree with this determination. Claimant 2 did not submit a TCR or provide information voluntarily to the Commission. Instead, Claimant 2 only provided

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<sup>3</sup> Claimant 1 first filed a complaint with the Commission. Claimant 1 later filed a whistleblower Form TCR with the Commission.

information after he/she was contacted by Division staff, and the information Claimant 2 provided did not significantly contribute to the success of the Covered Action.

**IV. CONCLUSION**

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

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

Dated: January 4, 2024