**UNITED STATES OF AMERICA**
**Before the**
**COMMODITY FUTURES TRADING COMMISSION**

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| In the Matter of Claims for Award by:<br>Redacted<br><br>In Connection with<br>Notice of Covered Action No. Redacted | CFTC Whistleblower Award<br>Determination No. 26-WB-15 |

**ORDER DETERMINING WHISTLBLOWER AWARD CLAIM**

On Redacted , the Commodity Futures Trading Commission ("Commission") issued a Notice of Covered Action No. Redacted regarding Redacted (the "Order" or "Covered Action"). Whistleblower award applications, if any, for this Notice of Covered Action were due within 90 calendar days, Redacted . 17 C.F.R. § 165.7(b)(2). The Commission received the above-listed whistleblower award application from Redacted ("Claimant 7") on Redacted It is therefore untimely.

On Redacted the CRS issued a Preliminary Determination recommending that the award application for Claimant 7 be dismissed due to untimeliness and the Claimant's failure to demonstrate extraordinary circumstances that might warrant a waiver of the timeliness requirement.* Claimant 7, after reviewing the record materials, contests the Preliminary

* The Commission's Claims Review Staff ("CRS") evaluated Claimant 7's application in accordance with the Commission's Whistleblower Rules ("Rules"), Part 165 of the Commission Regulations, 17 C.F.R. pt. 165, promulgated pursuant to Section 23 of the Commodity Exchange Act ("Act"), 7 U.S.C. § 26.

Determination dismissing the claim as untimely and so declining to evaluate the claim under Rule 165.7(f).

For the reasons set forth below, we agree with the CRS's determination. Accordingly, Claimant 7's application is dismissed.

## I. Background

The underlying case involved Redacted

The CRS issued a Preliminary Determinations recommending dismissing the whistleblower award application for Claimant 7, Redacted , because it failed to meet the requirements of Section 23 of the Commodity Exchange Act ("CEA" or "Act") and the Rules. The CRS recommended that the Commission dismiss Claimant 7's application because it was untimely and Claimant 7's voluntariness was unclear on an untimely record. In his/her initial application, Claimant 7 had requested the Commission waive the timeliness requirement, but the CRS determined *** proffered reasons were insufficient to cause the CRS to waive that requirement. Claimant 7 sought reconsideration of the determination. Claimant 7 does not appear to challenge the CRS's determination that the reasons he/she offered in his/her application were insufficient to waive the timeliness requirement. Instead, Claimant 7 has now offered new reasons that the CRS should consider for waiving the timeliness requirement.

The CRS also noted in the Preliminary Determination that it was unclear whether Claimant 7's conduct was voluntary. Redacted

self-reported the conduct in Redacted By Redacted

Further, the record demonstrates that Redacted facilitated the production of Claimant 7 and various circumstances raised the inference that Redacted

In *** reconsideration request, Claimant 7 asserted that his/her conduct was voluntary. He/she submitted affidavits attesting that Claimant 7 Redacted

Claimant 7's attorneys submitted affidavits that state that Claimant 7 resolved to speak to the authorities before he/she knew of an outstanding request, but it is not clear whether Redacted

Further, the record demonstrates that before Claimant 7's Redacted

Finally, Claimant 7 argues that the Commission's definition of voluntariness in the Rules is contrary to the plain meaning of the statute.

## II. Legal Analysis

### A. Claimant 7's Application is Untimely.

Upon review of the record, we agree that Claimant 7's application is untimely, and Claimant 7 has not demonstrated any "extraordinary circumstances" within the meaning of Rule 165.5(c). Therefore, the Commission declines to waive the timing requirement.

In this matter, Claimant 7 first argued Redacted

In the preliminary determination, the CRS noted that Redacted

The CRS also noted that Claimant 7 could have contacted the Commission Redacted but did not do so. Given Claimant 7's failure to raise this issue earlier, the CRS stated his/her unsubstantiated concerns could not form the basis for waiving the timeliness requirement. Further, the CRS noted that Redacted

By that time, therefore, there could no longer be any perceived expectations that would have possibly prevented Claimant 7's application. And yet, Claimant 7 waited two more years to apply for the award. The CRS also stated that it was mindful that Claimant 7 Redacted

Now Claimant 7 presents the Commission with a new argument for an extraordinary circumstance: his/her alleged lack of awareness about the CFTC's whistleblower program and its requirements, and Redacted that he/she would not be eligible Redacted

The Commission determines that a Claimant may not argue a new set of "extraordinary circumstances" at the reconsideration stage. The purpose of a reconsideration is to "contest a Preliminary Determination." 17 C.F.R. § 165.7(g)(2). It is not to raise entirely new arguments or grounds for a determination. Preliminary Determinations require much work, and here, the relevant staff spent considerable resources working with Redacted to understand the facts around Claimant 7's proffered extraordinary circumstances. Those facts conclusively disproved Claimant 7's argument, and now Claimant 7 wishes to abandon this argument for a second bite at the apple. Instead of contesting the Preliminary Determination, Claimant 7 raises an entirely different argument for why he/she meets "extraordinary circumstances" such that the Commission should waive the timeliness requirement. To allow an entirely new set of "extraordinary circumstances" to be argued at this late stage would undermine the efficiency and finality goals of the process. A claimant is welcome to challenge the reasoning of the CRS on a reconsideration request. However, a claimant cannot raise a different set of "extraordinary circumstances" at this late stage.

In addition, the Commission notes that none of Claimant 7's arguments can meet the definition of an extraordinary circumstance. In doing so, the Commission follows analogous areas of federal law involving deadlines, including the judicial doctrine of "equitable tolling." The Supreme Court noted that "courts have typically extended equitable relief only sparingly," *Irwin v. Dept' of Veterans Affairs*, 498 U.S. 89, 96 (1990), such as where "the claimant has actively pursued judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Id.* But courts have been "much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights." *Id.; see*

*also In re Penmont Securities,* SEC No. 34-61967, 2010 WL 1638720, (April 23, 2010), *aff'd* 414 Fed. App'x 465 (3rd Cir. 2011).

The Commission is persuaded by the CRS's determination, including the detailed factual record regarding Claimant 7's reasons for failing to meet the timeliness requirement raised in his/her application. Notably, Claimant 7 does not attempt to disturb the CRS's detailed factual findings. Claimant 7's delay was substantially longer than would have been necessary under his/her stated reasons; it was based on unstated expectations with no evidence Claimant 7 ever raised the issue with either Redacted or the Commission; Claimant 7 waited even longer after Redacted so that Claimant 7 Redacted

Moreover, neither of Claimant 7's newly raised arguments demonstrate extraordinary circumstances. Claimant 7 argues that the delay in applying was caused by a lack of knowledge. Claimant 7 further argues that he/she should not be penalized by Redacted that Claimant 7 was ineligible to file for an award. However, ignorance of the law, simple attorney negligence, or even malpractice are not bases for tolling in the federal courts, and the Commission declines to find any of those arguments constitute extraordinary circumstances. *See Maples v. Thomas*, 565 U.S. 266, 282 (2012); *Young v. Securities and Exchange Commission*, 956 F.3d 650, 656 (D.C. Cir. 2020).

**B. The Commission Does Not Decide the Issue of Claimant 7's Voluntariness.**

The Commission has stated "[i]f the Commission [or another regulator] makes a request, inquiry, or demand to the whistleblower or the whistleblower's representative first, the whistleblower's submission will not be considered voluntary, and the whistleblower will not be eligible for an award, even if the whistleblower's response is not compelled by subpoena or

applicable law." 17 C.F.R. 165.2(o). On reconsideration, Claimant 7 submitted multiple affidavits Redacted that assert that Claimant 7 determined to reach out to regulatory authorities before they learned of the authorities' interest in Claimant 7. It is unclear from these affidavits, however, whether Claimant 7's Redacted

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We agree with the CRS that we need not reach whether the conduct is voluntary. The passage of time is too great.

By the Commission.

Robert Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: July 17, 2026

[†] Claimant 7 also argues that the Commission's definition of the term voluntary for purposes of the Whistleblower Rules does not comport with the term's plain meaning. Because the Commission does not reach whether Claimant 7's conduct was voluntary at all, the Commission declines to entertain this argument.