UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 85412 / March 26, 2019

WHISTLEBLOWER AWARD PROCEEDING

File No. 2019-4

In the Matter of the Claims for Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff ("CRS") issued a Preliminary Determination related to Covered Action Redacted ("Covered Action"). The Preliminary Determination recommended that Redacted ("Claimant #1") receive a whistleblower award of *** in the Covered Action and that Redacted ("Claimant #2") receive a whistleblower award of *** in the Covered Action. The Preliminary Determination also recommended that the award application submitted by Redacted ("Claimant #4") be denied. Redacted (referred to herein as "Claimant #7") subsequently filed an untimely award claim in connection with the Covered Action. The CRS issued a second Preliminary Determination denying Claimant #7's untimely award claim. Claimants #4 and #7 filed timely responses contesting the preliminary denial of their award claims.[1]

For the reasons stated below, we make the following determinations: Claimant #1's award claim is approved in the amount of *** of the monetary sanctions collected in the Covered Action, for a payout of more than $13,000,000; Claimant #2's award claim is approved in the amount of *** of the monetary sanctions collected in the Covered Action, excluding the amount upon which Claimant #2's award from Redacted

[1] The Preliminary Determination further recommended that the award applications submitted by three other claimants be denied. Those three claimants failed to submit a response contesting the Preliminary Determination and, therefore, the Preliminary Determination denying their claims for awards has become the final order of the Commission with respect to their award applications.

Redacted "Other Agency") was based, for a payout of more than $37,000,000; and the applications submitted by Claimants #4 and #7 are denied.

I. Background

A. The award program

In 2010, Congress added Section 21F to the Securities Exchange Act of 1934 (the "Exchange Act"). Among other things, Section 21F authorizes the Commission to pay monetary awards—subject to certain limitations, exclusions, and conditions—to individuals who voluntarily provide the Commission with original information about a violation of the securities laws that leads to a successful Commission judicial or administrative action in which the monetary sanctions exceed $1,000,000.[2] The total award amounts paid shall be "not less than 10 percent, in total, of what has been collected of the monetary sanctions" and "not more than 30 percent, in total, of what has been collected[.]"[3]

B. Relevant facts

On Redacted the Commission instituted a settled administrative and cease-and-desist proceeding in the Covered Action. The Commission charged Redacted Redacted

Redacted (inclusive of all subsidiaries or affiliates, "the Firm"). Redacted Redacted

In the same order, the Commission also charged Redacted Redacted

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[2] *See* Exchange Act §§ 21F(a) & (b).

[3] Exchange Act § 21F(b)(1). We note that, in the context of an award proceeding involving two or more meritorious whistleblower claimants, the award must be allocated among the claimants and may never exceed an aggregate percentage amount of 30% of the monetary sanctions collected. *See* Exchange Act Rule 21F-5(c) (explaining that "[i]f the Commission makes awards to more than one whistleblower in connection with the same action or related action," then "in no event will the total amount awarded to all whistleblowers in the aggregate be … greater than 30 percent of the amount the Commission or the other authorities collect").

Redacted

In addition to other relief, the Commission ordered Redacted

all of which has been paid in full.[4]

Because the monetary sanctions imposed on the Respondents exceeded the statutory threshold for a potential whistleblower award under Section 21F of the Exchange Act, the Office of the Whistleblower ("OWB") posted Notice of Covered Action ("NoCA") Redacted for the Covered Action on the Commission's public website.

II. Claimant #1

We find that Claimant #1 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder.[5]

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[4] On the same day, the Other Agency instituted administrative proceedings against the Firm for Redacted

(hereinafter, "Other Agency Action"). In settlement of those proceedings, the Other Agency ordered the Firm to pay Redacted Redacted By the terms of this order, Redacted

Both Claimant #1 and Claimant #2 applied for a related action award in connection with the Other Agency Action. The CRS preliminarily determined to deny the related action award claims because enforcement actions by the Other Agency do not qualify as related actions under the Commission's whistleblower rules. Redacted

Neither Claimant #1 nor Claimant #2 contested the preliminary denial of their related action claims. As a result, the CRS's Preliminary Determination of the related action claims became the final determination of the Commission pursuant to Exchange Act Rule 21F-11(f).

Based on our review of the record, including declarations from Commission staff who handled the Covered Action, we find the following events occurred with respect to Claimant #1's award application.

On Redacted counsel for Claimant #1 met with staff in the Commission's Division of Enforcement ("Enforcement") to brief staff about a tip that Claimant #1 would be making concerning the Firm. On the same date, staff opened a Matter Under Inquiry ("MUI"). A few days later, Claimant #1 submitted an online tip alleging, among other things, that the Firm had Redacted

Staff elevated the MUI to an investigation on Redacted (hereinafter, "First Investigation"). During the First Investigation, Claimant #1 met with staff one time to provide additional information and assistance.

Based on the foregoing contributions that Claimant #1 made to the Commission's successful pursuit of this Covered Action, and considering the relative contributions of Claimant #1 vis-à-vis the other meritorious whistleblower in this matter, we adopt the Preliminary Determination's recommendation that Claimant #1 should receive *** of the monetary sanctions collected in the Covered Action. In reaching this determination, we have carefully considered the award criteria specified in Exchange Act Rules 21F-5 and 21F-6 as they relate to Claimant #1's contributions to the Covered Action. In particular, we have considered the facts that the information Claimant #1 provided to the Commission was significant in that one of the findings in the Commission's Order concerning Redacted was based on Claimant #1's information; and that Claimant #1 provided some additional assistance to the Enforcement staff during the First Investigation. We also have taken into account that Claimant #1 unreasonably delayed in reporting the information to the Commission, during which time investors were continuing to suffer harm and the disgorgement amounts upon which Claimant #1's award will be based were growing, and that Claimant #1 passively financially benefitted from the underlying misconduct during a portion of the period of delay.

III. Claimant #2

We find that Claimant #2 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder.[6]

Based on our review of the record, including declarations from Commission staff who handled the Covered Action, we find the following events occurred with respect to Claimant #2's

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[5] 17 C.F.R. § 240.21F-3(a).

[6] 17 C.F.R. § 240.21F-3(a).

award application. On Redacted Claimant #2 submitted a specific and detailed whistleblower tip alleging that the Firm had engaged in Redacted

Redacted Claimant #2 alleged that Redacted

Redacted The tip also alleged that the Firm had Redacted

The whistleblower submission was accompanied by a number of key documents that substantiated the allegations about Redacted as well as demonstrated Redacted

On Redacted —following two meetings with Claimant #2 and Claimant #2's counsel—Enforcement staff opened a new and separate investigation (the "Second Investigation") (the First and Second Investigations are referred to herein collectively as the "Covered Action Investigations") focused on Claimant #2's allegations. During the Second Investigation, Claimant #2 met with Enforcement staff two additional times and provided information and documentation that were of a significantly high quality and critically important to staff's ability to bring the Covered Action Investigations to an efficient and successful resolution. The documents Claimant #2 provided staff were akin to "smoking gun" evidence in that they indisputably showed that Redacted

Based on the foregoing contributions that Claimant #2 made to the Commission's successful pursuit of this Covered Action, and considering the relative contributions of Claimant #2 and Claimant #1 to this matter, we adopt the Preliminary Determination's recommendation that Claimant #2 should receive *** of the monetary sanctions collected in the Covered Action, excluding the amount of monetary sanctions for which Claimant #2 has already received an award from the Other Agency under its whistleblower award program.[7] In reaching

[7] On Redacted the Other Agency issued Claimant #2 a whistleblower award of Redacted calculated as *** of the full Redacted of monetary sanctions in the Other Agency Action—including both the Redacted payable to the Other Agency and also the Redacted

As a result, were we to grant Claimant #2 an award based on the full amount of monetary sanctions collected in the Covered Action, we would effectively grant Claimant #2 a second award with respect to the same Redacted Redacted that was paid just once in satisfaction of both orders.

this determination, we have carefully considered the award criteria specified in Exchange Act Rules 21F-5 and 21F-6 as they relate to Claimant #2's contributions to the Covered Action. In particular, we have considered the facts that Claimant #2's information was highly significant and critical to the success of the Covered Action; that Claimant #2 acted swiftly in reporting the information to the Commission; and that Claimant #2 provided continuing additional assistance to the Enforcement staff.

IV. Claimant #4's Claim Is Denied

A. Preliminary Determination

The CRS preliminarily determined to deny Claimant #4's award claim because Claimant #4's information did not lead to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-

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We believe this situation exposes an ambiguity in the operation of the organic statutes for our whistleblower program and that of the Other Agency, both of which Redacted

Redacted *First*, Congress wrote Dodd-Frank to establish a 30% ceiling on awards Redacted

To permit double-counting of the Redacted Redacted Other Agency's award and in our award to Claimant #2 would vitiate the statutory ceiling. *Second,* neither Redacted suggests that Congress considered Redacted when a payment to one agency offsets an obligation to the other. Redacted *Third*, permitting such double-counting would also produce the irrational result of encouraging multiple "bites at the apple" in adjudicating claims for the same action and potentially could allow multiple recoveries. *See Lawson v. Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949) (rejecting literal application of statutorily defined term that would "create obvious incongruities in the language"); *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1068 (D.C. Cir. 1998) ("If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity."). Indeed, we cited similar concerns about multiple "bites at the apple" when we adopted Rule 21F-3(b)(3), which provides that we will not pay on a related action if the whistleblower program administered by the U.S. Commodities Futures Trading Commission has issued an award for the same action. *See Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34,300, 34,305 (June 13, 2011); *see also* Order Determining Whistleblower Award Claim, Release No. 34-77530, at 2 n.1 (April 5, 2016) (ordering that monetary sanctions collected in the covered action or in the related criminal action that are either deemed to satisfy or are in fact used to satisfy any payment obligations of the defendants in the other action shall not be double counted for purposes of paying an award).

We believe this ambiguity is best resolved by excluding from our award calculation the amount of monetary sanctions Redacted for which Claimant #2 already received an award from the Other Agency. This approach respects the textual limit of 30% Redacted Redacted and thus accords with the fundamental rule that courts should "interpret the statute as a symmetrical and coherent regulatory scheme." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation and internal quotation marks omitted).

4(c) thereunder. None of the information submitted by Claimant #4 caused the Commission in connection with *this* Covered Action to: (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act; or significantly contributed to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

In reaching this preliminary determination, the CRS considered record evidence—including a declaration from an Enforcement staff member assigned to the Covered Action Investigations (hereinafter, "Responsible Covered Action Staff")—that revealed that the information provided to the Commission by Claimant #4 did not contribute in any way to the Covered Action Investigations or assist with any of the charges brought in the Covered Action.

In Redacted Claimant #4's counsel approached staff in the Redacted Regional Office ("Regional Office Staff") with allegations concerning certain Redacted by the Firm, including related Redacted Counsel met with Regional Office Staff, submitted a tip through the Commission's online portal, and provided additional documents, including Redacted between Claimant #4 and the Firm. Based on Claimant #4's information, exam staff in the Regional Office opened an exam, and, in Redacted Redacted referred to Enforcement staff the exam's findings that the Firm had Redacted The resulting enforcement investigation led to a successful enforcement action against the Firm ("Other Covered Action").[8] In the Other Covered Action, the Commission found that, between Redacted The Commission issued a whistleblower award to Claimant #4 in connection with the Other Covered Action.

Although the Regional Office investigation was focused on Redacted Redacted , in Redacted staff assigned to the Regional Office investigation became aware that other Commission staff were pursuing an investigation of the Firm related to Redacted issues, which was a particular focus of Claimant #4's counsel. In Redacted , after the First and Second Investigations had opened, Regional Office Staff forwarded the Redacted that Claimant #4 had provided to the Responsible Covered Action Staff. Responsible Covered Action Staff provided a declaration affirming that the Redacted did not contain any information that was useful to their investigations, and that they did not take any further action based on this information. Responsible Covered Action Staff had no communications with Claimant #4 or Claimant #4's counsel, and nothing in the Redacted contributed to the success of the Covered Action.

8 Redacted

B. Response

Claimant #4's Response makes the following principal contentions. *First*, Claimant #4 argues that Claimant #4's tip alleged not only misconduct relating to Redacted (which, as noted, was the subject of the Other Covered Action), but also the Firm's Redacted Redacted As such, Claimant #4 contends that Claimant #4's tip was the first, on-point tip the Commission received relating to the issues in the Covered Action. Claimant #4 argues that the declaration provided by the Responsible Covered Action Staff does not accurately consider the significance of Claimant #4's tip or Redacted *Second,* Claimant #4 contends that Claimant #4 should not be denied an award because the tip was not triaged properly or because of a breakdown in communication between the Commission's offices. Along with the Response, Claimant #4 submits affidavits and other exhibits detailing the contacts and communications between Claimant #4's counsel and Regional Office Staff and between counsel and OWB staff. Based on discussions with Regional Office Staff, Claimant #4's counsel understood that Claimant #4's information was valuable and would be shared with other Commission offices.

C. Analysis

We find that, as the record clearly demonstrates, Claimant #4 did not provide information that led to the successful enforcement of the Covered Action under Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. In reaching this conclusion, we have carefully considered the entire record as it relates to Claimant #4's award application, including the materials that Claimant #4 submitted in response to the Preliminary Determination and the detailed supplemental declaration prepared by the Responsible Covered Action Staff ("Supplemental Declaration"), as well as a declaration from Regional Office Staff who met with Claimant #4's counsel ("Regional Office Declaration").

Under the whistleblower rules, as relevant here, an individual's original information leads to the success of an action where it causes the staff to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act; or alternatively, where in the context of an existing investigation, the individual's original information significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.[9] In determining whether an individual's information significantly contributed to an action, we consider factors such as whether the information allowed us to bring: the action in significantly less time or with significantly fewer resources; additional successful claims; or successful claims against

[9] 17 C.F.R. § 240.21F-4(c)(1)-(2).

additional individuals or entities.[10] The individual's information must have been "meaningful" in that it "made a substantial and important contribution" to the success of the covered action.[11]

As discussed below, Claimant #4's information does not satisfy either prong of the "led to" requirement, as the information did not cause the Responsible Covered Action Staff to open the Covered Action Investigations, and it did not significantly contribute to the success of the Covered Action.[12]

In the first place, we find based on the record evidence that Claimant #4's information did not cause the staff to open either of the two investigations that culminated in the Covered Action. The initial and supplemental declarations by the Responsible Covered Action Staff state unequivocally that the staff opened the MUI that became the First Investigation on Redacted Redacted as a result of information provided by Claimant #1 through counsel that same day, and that the staff opened the Second Investigation on Redacted as a result of information provided by Claimant #2. Although Claimant #4's counsel initiated contact with the Regional Office Staff on Redacted Claimant #4's information was forwarded by the Regional Office Staff and reviewed by the Responsible Covered Action Staff only in Redacted after both of the Covered Action Investigations were already opened. Moreover, the Regional Office Declaration corroborates this timeline.[13]

Claimant #4 offers no reason to doubt the staff declarations in the record and instead argues that Claimant #4's tip should be credited as first in time for this Covered Action because Claimant #4's counsel met with Regional Office Staff on Redacted —three days before the MUI was opened in the First Investigation—and followed up with a formal tip through the Commission's website on Redacted Even assuming that Claimant #4 was first in time, however, that fact would be relevant at most to our consideration of whether any later claimant's

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10 *See Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. at 34,325.

11 Order Determining Whistleblower Award Claim, Release No. 34-77833 (May 13, 2016).

12 We do not read Claimant #4's Response as raising any argument that Claimant #4's information caused the staff to commence an examination or to inquire into different conduct as part of an existing examination or investigation. *See* Rule 21F-4(c)(1).

13 Claimant #4 appears to misunderstand the timeline of events. In the Response, Claimant #4 provides a chronology that suggests that the Responsible Covered Action Staff opened a MUI in Redacted Redacted and then only opened the investigation a year later in Redacted However, the record is clear that the Responsible Covered Action Staff opened the MUI in Redacted based on Claimant #1's information, and elevated the MUI to an investigation (the First Investigation) in Redacted The Responsible Covered Action Staff then opened the Second Investigation in Redacted based on information provided by Claimant #2. Neither of the Covered Action Investigations was opened based on information provided by Claimant #4.

information was sufficiently "original" to qualify for an award,[14] and would fail, by itself, to establish Claimant #4's own entitlement to an award. What matters for Claimant #4's award claim under Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a) and 21F-4(c)(1) is not whether Claimant #4's information was first in time but whether that information led to the success of the Covered Action by causing the staff to open either of the Covered Action Investigations.[15] The undisputed evidence shows that it did not.

Claimant #4 also contends that Claimant #4's initial tip should have been forwarded to and reviewed by the Responsible Covered Action Staff when it was submitted in Redacted not later in Redacted and that this delay was inconsistent with the policies on the OWB website and in the Division of Enforcement Manual. We find that Claimant #4 has failed to demonstrate any error by the staff. As the Regional Office Declaration explains, Claimant #4's tip was properly triaged and prompted the examination that culminated in the Other Covered Action for which Claimant #4 has already received an award; and after the Regional Office Staff learned of the Covered Action Investigations in or about Redacted they forwarded Claimant #4's Redacted Redacted to the Responsible Covered Action Staff for their independent

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[14] *See* Exchange Act § 21F(a)(3)(B) (requiring that "original information" be "not known to the Commission from any other source…."). Where the Commission already knows some information about a matter, a whistleblower can receive credit in award consideration for information that "materially adds" to that base of knowledge. *See* Exchange Act Rule 21F-4(b)(6), 17 C.F.R. 240 § 21F-4(b)(6). Even assuming that Claimant #4 was the first to provide information regarding the Firm's Redacted Redacted we find that both Claimant #1 and Claimant #2 provided other information about this general subject matter that was "original" because it materially added to the information in our possession from Claimant #4. First, information from Claimant #1 and Claimant #2 showed how the Firm had Redacted as distinct from Claimant #4's information, which—Claimant #4 argues—focused on the Firm's Redacted Redacted Second, Claimant #1 provided information about the Firm's Redacted and therefore was not part of Claimant #4's tip. Third, Claimant #2, Redacted Redacted was able to provide information that demonstrated the Redacted Redacted and that also demonstrated the Firm's Redacted Redacted

[15] *See* Order Determining Whistleblower Award Claims, Release No. 34-82181, at 14-16 (Nov. 30, 2017) (denying whistleblower award to claimant who claimed to be first in time, because information submitted did not actually lead to successful enforcement of covered action), *pet. for rev. docketed*, Nos. 18-1124, 18-1127 (2d Cir. Apr. 19, 2018); *see also* Order Determining Whistleblower Award Claim, Release No. 34-79464, at 2-3 (Dec. 5, 2016) (denying whistleblower award to claimant who argued that submitted information should have caused the staff to open an investigation, when information did not actually lead to successful enforcement of covered action); Order Determining Whistleblower Award Claim, Release No. 34-75752, at 1-2 (Aug. 24, 2015) (similar).

assessment.[16] In any event, even assuming the staff erred in processing Claimant #4's information, that fact would fail to establish Claimant #4's entitlement to an award. What matters for Claimant #4's award claim is that the undisputed evidence shows that, regardless of any such error, Claimant #4's information did not lead to the Covered Action by causing the staff to open either of the Covered Action Investigations.[17]

Furthermore, we also find based on the record evidence that Claimant #4's information did not significantly contribute to the success of the Covered Action. The Supplemental Declaration emphatically states that "none of the information provided by [Claimant #4] . . . helped advance the . . . Investigations, played any role in our settlement negotiations with [the Firm], or affected any of the charges brought by the Commission" in the Covered Action.[18] The same declaration also explains why the Responsible Covered Action Staff determined not to use or further pursue Claimant #4's information: Claimant #4's submissions addressed Redacted issues gleaned from Claimant #4's Redacted and did not address how the Firm had Redacted which was the core misconduct investigated by the staff and charged by the Commission in the Covered Action. Further, the First Investigation had been ongoing for over a year by the time the Responsible Covered Action Staff received the Redacted and, in any event, focused on Redacted and hence was not a subject of Claimant #4's tip. In addition, before the Responsible Covered Action Staff received the Redacted they spent many hours over two days interviewing Claimant #2, Redacted who was able to provide direct evidence showing that Redacted

Against this backdrop of the different investigative focus

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16 The Regional Office Declaration clarifies that to the extent they stated or implied that Claimant #4's information was valuable, it was only with respect to the Other Covered Action, as the Regional Office Staff were not members of the teams conducting the Covered Action Investigations that resulted in this Covered Action, and as such, were not in a position to comment on the usefulness or relevance of Claimant #4's information to the Covered Action. Further, the same declaration confirms that in sending Claimant #4's materials to the Responsible Covered Action Staff, Regional Office Staff was not making an independent assessment as to the usefulness or relevance of Claimant #4's information to the Covered Action.

17 *See* Order Determining Whistleblower Award Claim, Release No. 34-79294 (Nov. 14, 2016) (denying whistleblower award to claimant who argued that staff errors resulted in improper processing of submission, because information submitted did not actually lead to successful enforcement of covered action), *pet. for rev. denied sub nom. Doe v. SEC*, 729 F. App'x 1 (D.C. Cir. 2018).

18 Supp'l Decl. ¶16. Claimant #4 does not dispute, and we therefore credit, the initial declaration's representation that the Responsible Covered Action Staff received no information originating from Redacted Claimant #4 aside from the Redacted between Claimant #4 and

and the compelling evidence already obtained, the Responsible Covered Action Staff did not find Claimant #4's Redacted to be helpful.[19]

V. Claimant #7's Claim is Denied

A. Preliminary Determination

On Redacted Claimant #7 submitted a single untimely application for award on Form WB-APP in connection with 7 different Covered Actions, including Covered Action Redacted Redacted This submission was approximately 15 months after the deadline for filing award claims in this matter, as OWB posted NoCA Redacted on Redacted and thus all whistleblower award applications were due 90 days later on Redacted Redacted[20] On Redacted the CRS preliminarily denied Claimant #7's award claim in the Covered Action as untimely.

B. Response

Claimant #7 submitted a timely request for reconsideration. Claimant #7 contends that the Commission has "a pattern and practice of avoidance not communicating the status of covered actions" and that the agency never alerted Claimant #7 to the issue of filing for a whistleblower award in the Covered Action. Claimant #7 was under the impression that the Commission would contact claimants about filing an award application. Claimant #7 also attached a series of emails to the reconsideration request between Claimant #7 and various Commission staff concerning issues not related to this Covered Action, as well as Claimant #7's demands for payment.

C. Analysis

The 90-day deadline set forth in Rule 21F-10(b) serves several important programmatic functions. The deadline ensures fairness to potential claimants by giving all an equal opportunity

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[19] To be clear, we do not consider Claimant #4's award claim as being in any way intertwined with those of Claimants #1 and #2. Rather, we have considered Claimant #4's award claim strictly on its own merits. In that context, we credit the Responsible Covered Action Staff's assessment of the claimants' respective information, as documented in the Supplemental Declaration, as a cogent explanation why the staff did not use Claimant #4's information in the Covered Action Investigations and the Covered Action.

[20] *See* Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a) ("A claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred."). Both NoCA Redacted and the corresponding deadline may still be found at the following Redacted public website: https://www.sec.gov/whistleblower/nocas?aId=edit-year&year=

to have their competing claims evaluated at the same time. The deadline also brings finality to the claim process so that we can make timely awards to meritorious whistleblowers.[21]

Notwithstanding these important programmatic functions, we recognize that there may be rare situations where an exception should be made. To allow for this, Rule 21F-8(a) provides that "the Commission may, in its sole discretion, waive" the 90-day filing requirement "upon a showing of extraordinary circumstances."[22] We have explained that the "extraordinary circumstances" exception is "narrowly construed" and requires an untimely claimant to show that "the reason for the failure to timely file was beyond the claimant's control."[23] Further, we have identified "attorney misconduct or serious illness" that prevented a timely filing as two examples of the "demanding showing" that an applicant must make before we will consider exercising our discretionary authority to excuse an untimely filing.[24]

Applying that demanding standard here, we find that Claimant #7 has failed to show that extraordinary circumstances beyond Claimant #7's control were responsible for the roughly 15-month delay between the application deadline for NoCA Redacted in Redacted and Claimant #7's untimely whistleblower award application in Redacted Contrary to Claimant #7's contentions, the Commission is not obligated to notify a claimant of the posting of a NoCA or the deadline for submitting an award application.[25] As we have explained, our whistleblower rules provide "for constructive, not actual, notice of the posting of a covered action and of the deadline for submitting a claim."[26] The NoCA for this matter was clearly posted on the Commission's website, along with the deadline. Under our rules, that is all the notice that Claimant #7 was due.

Despite Claimant #7's asserted unawareness of this notice, "a lack of awareness about the [whistleblower award] program does not . . . rise to the level of an extraordinary circumstance as a general matter [since] potential claimants bear the ultimate responsibility to learn about the

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21 *See Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. at 34,343.

22 17 C.F.R. § 240.21F-8(a).

23 Order Determining Whistleblower Award Claim, Release No. 34-77368, at 3 (Mar. 14, 2016), *pet. for rev. denied sub nom. Cerny v. SEC*, 708 F. App'x 29 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 2005 (2018).

24 *See id.*; Order Determining Whistleblower Award Claim, Release No. 34-82181 (Nov. 30, 2017); Order Determining Whistleblower Award Claim, Release No. 34-72659 (July 23, 2014); Order Determining Whistleblower Award Claim, Release No. 34-72178 (May 16, 2014).

25 Order Determining Whistleblower Award Claim, Release No. 34-77368, at 3 (Mar. 14, 2016).

26 *Id.* at *3-4 & n.11 (citing Rule 21F-10(a)).

program and to take the appropriate steps to perfect their award applications."[27] "A potential claimant's responsibility includes the obligation to regularly monitor the Commission's web page for NoCA postings and to properly calculate the deadline for filing an award claim."[28] Claimant #7's failure to regularly monitor the Commission's web page for NoCA postings is not an "extraordinary circumstance" that might trigger our discretion to excuse the fact that Claimant #7 submitted the award application approximately 15 months late.

VI. Conclusion

Accordingly, it is ORDERED that Claimant #1 shall receive an award of *** percent *** of the monetary sanctions collected in the Covered Action.

ORDERED that Claimant #2 shall receive an award of Redacted percent *** of the monetary sanctions collected in the Covered Action, excluding the amount upon which Claimant #2's award from the Other Agency was based.

ORDERED that Claimant #4's whistleblower award claim be denied.

ORDERED that Claimant #7's whistleblower award claim be denied.

By the Commission.

Eduardo A. Aleman
Deputy Secretary

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[27] Order Determining Whistleblower Award Claim, Release No. 34-72659, at 5 (July 23, 2014) ("The Commission is under no duty to provide Claimant . . . with direct notice of the filing deadline.").

[28] Order Determining Whistleblower Award Claim, Release No. 34-77368, at 4 (Mar. 14, 2016).