
In the Matter of Claim for Award by:)
)
 Redacted)
 Form WB-APP Redacted) CFTC Whistleblower Award
) Determination No. 20-WB-11
)
 In Connection with)
 Noticed of Covered Action No. Redacted)
)
)

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Commodity Futures Trading Commission (“Commission”) received a whistleblower award application from Claimant 1 in response to Notice of Covered Action No. Redacted. The corresponding enforcement actions are Redacted.

(collectively, the “Covered Action”). The Claims Review Staff (“CRS”) evaluated the application 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 (2018). On Redacted, the CRS issued a Preliminary Determination recommending that Claimant 1 receive a whistleblower award in the amount of \$ of monetary sanctions collected in the Covered Action. For the reasons set forth below, the CRS’s determination is adopted.

I. BACKGROUND

The Covered Action arose out of an investigation opened in response to information that Claimant 1 submitted to the Commission regarding Redacted Claimant 1, alleged that Redacted.

The CFTC’s Division of Enforcement (“Division”) staff found Claimant 1’s information to be specific and credible and opened an investigation. The investigation resulted in Redacted actions that arose out of the same nucleus of operative facts. The Division brought the Redacted Actions on Redacted.

After the actions concluded, Claimant 1 submitted a whistleblower award application for the matter. To date, the CFTC has collected a total of Redacted.

II. PRELIMINARY DETERMINATION

On ^{Redacted}, the CRS issued a Preliminary Determination recommending that Claimant 1 receive a whistleblower award in the amount of ^{***} of monetary sanctions collected in the Covered Action because Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of a covered action. Claimant 1 responded by informing the WBO staff in writing that ^{***} would not contest the Preliminary Determination. Pursuant to Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination became the Proposed Final Determination.

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). The CRS determined that Claimant 1 voluntarily provided the Commission with original information that led to the successful enforcement of a covered action. Claimant 1 is a whistleblower because Claimant 1 submitted information on a Form TCR regarding potential violations of the CEA. Claimant 1 provided the information voluntarily, as Claimant 1 was not under any legal obligation to report to the Commission. In addition, Claimant 1's information was original. The information was previously unknown to the Commission and derived from Claimant 1's ^{Redacted}

Lastly, Claimant 1's information led the Commission to open an investigation.

The CRS recommended the award amount to be ^{***} of the amount of monetary sanctions collected in the Covered Action, which would result in a payment of ^{Redacted}. This recommendation is adopted. 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. 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.

In arriving at this award amount, 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. Many of the factors that would increase an award apply to Claimant 1, but one factor that would

decrease an award also applies. Claimant 1 provided significant information that formed the basis of the Division's investigation. When the Commission brought the Covered Action, the Commission made numerous findings that were directly based on information Claimant 1 provided. Further, Claimant 1 provided ongoing assistance throughout the investigation. After causing the Division to open an investigation, Claimant 1 provided additional information and produced documents that were direct evidence of some of the reported violations. Claimant 1 also met with Division staff both in person and over the phone multiple times. In addition, not only did Claimant 1 report the violations to the Commission, Claimant 1 also reported the violations to another authority and a compliance officer, facts supporting increasing the award amount. However, the award will be reduced because Claimant 1 had delayed reporting the violations. Claimant 1 had remained silent instead of approaching ^{Redacted}

The Commission encourages all whistleblowers with knowledge of violations of the CEA or the Commission's regulations to come forward promptly and not turn a blind eye, as delayed reporting could lead to more victims and losses. Nevertheless, in this case, but for Claimant 1's ultimate decision to come forward, the Division would not have learned of the violations. The totality of the facts and circumstances justifies an award of ***

IV. CONCLUSION

It is hereby ORDERED that Claimant 1 shall receive *** of monetary sanctions collected in the Covered Action.

Redacted

- PUBLIC VERSION

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 the name.

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

Dated: September 28, 2020