

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73174 / September 22, 2014

WHISTLEBLOWER AWARD PROCEEDING
File No. 2014 -10

In the Matter of the Claim for Award

in connection with

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ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On May 5, 2014, the Claims Review Staff issued a Preliminary Determination for Notice of Covered Action ^{Redacted} and ^{Redacted} related actions.¹ The Preliminary Determination recommended that ^{Claimant} (“Claimant”) receive a whistleblower award pursuant to Section 21F(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-6(b)(1), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).

Because the record demonstrates that Claimant, a foreign resident, voluntarily provided original information to the Commission that led to the successful enforcement of the covered and related actions, the recommendation that Claimant receive an award is hereby

¹ The related actions are:

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adopted.² Further, based on a consideration of the factors specified in Rule 21F-6 in relation to the specific facts and circumstances of the covered and related actions, the award amount shall be Redacted of the monetary sanctions collected or to be collected in the actions.³ Given the monetary sanctions thus far collected, this should yield a total award of

² We believe an award payment is appropriate here notwithstanding the existence of certain extraterritorial aspects of Claimant’s application. *See generally Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247, 266 (2010) (discussing analytical framework for determining whether an application of a statutory provision that involves certain foreign aspects is an extraterritorial or domestic application of the provision; explaining that it is a domestic application of the provision if the particular aspect that is the “focus of congressional concern” has a sufficient U.S. territorial nexus); *European Community v. RJR Nabisco, Inc.*, ___ F.3d ___, ___ 2014 WL 1613878, *10 (2d Cir. Apr. 23, 2014) (applying *Morrison* framework and finding that “[i]f domestic conduct satisfies every essential element to prove a violation of a United States statute that does not apply extraterritorially, that statute is violated even if some further conduct contributing to the violation occurred outside the United States.”). In our view, there is a sufficient U.S. territorial nexus whenever a claimant’s information leads to the successful enforcement of a covered action brought in the United States, concerning violations of the U.S. securities laws, by the Commission, the U.S. regulatory agency with enforcement authority for such violations. When these key territorial connections exist, it makes no difference whether, for example, the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the U.S. securities law violation occurred entirely overseas. We believe this approach best effectuates the clear Congressional purpose underlying the award program, which was to further the effective enforcement of the U.S. securities laws by encouraging individuals with knowledge of violations of these U.S. laws to voluntarily provide that information to the Commission. *See* S. Rep. No. 111-176 at 110 (2010) (“to motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated the securities laws ...”). Finally, although we recognize that the Court of Appeals for the Second Circuit recently held that there was an insufficient territorial nexus for the anti-retaliation protections of Section 21F(h) to apply to a foreign whistleblower who experienced employment retaliation overseas after making certain reports about his foreign employer, *Liu v. Siemens*, ___ F.3d ___, 2014 WL 3953672 (2d Cir. Aug. 14, 2014), we do not find that decision controlling here; the whistleblower award provisions have a different Congressional focus than the anti-retaliation provisions, which are generally focused on preventing retaliatory employment actions and protecting the employment relationship.

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between \$30 and \$35 million.

In reaching the award determination, we have considered the significance of the information provided by Claimant, the assistance that Claimant provided, and the law-enforcement interests at issue.⁴ We also have considered Claimant's delay in reporting the violations, which under the circumstances we find unreasonable. Claimant delayed coming to the Commission for a period of Redacted after first learning of the violations, during which time investors continued to suffer significant monetary injury that otherwise might have been avoided.⁵ We do not agree with Claimant's assertion that Claimant's delay was reasonable under the circumstances because Claimant was purportedly uncertain whether the Commission would in fact take action. There is always some measure of uncertainty about how a law-enforcement agency may respond to a tip, but in our view this does not excuse a lengthy reporting delay while investors continue to suffer losses. Indeed, if Claimant was concerned that the Commission would not respond to Claimant's tip, Claimant also could have reported the violations to other appropriate U.S. authorities; yet Claimant did not do so and the explanations that Claimant offers are not sufficient to mitigate a downward adjustment based on the

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⁴ In Claimant's response to the Preliminary Determination, Claimant suggested that a factor beyond those specified in Rule 21F-6 may have been considered. We wish to make clear that our award determination is based solely on the considerations set forth in Rule 21F-6 as those considerations relate to the specific facts and circumstances of the covered and related actions. Claimant also asserts that Claimant's award is below the average percentage amount awarded to other successful claimants to date, but we find this assertion irrelevant. *First*, every enforcement action is unique and thus each award determination involves a highly individualized review of the facts and circumstances surrounding the particular case; this necessarily precludes any meaningful comparison among award determinations. *Second*, no award determination to date has involved a similar reporting delay.

⁵ Given that Claimant concedes that Claimant could have reported to the Commission as early as "Redacted when the Redacted scheme became clearer" to Claimant, some of the period of the delay occurred before the whistleblower award program was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* Pub. L. No. 111-203, § 922, 124 Stat. 1841 (2010). Although Claimant has not raised any specific legal arguments against application of the unreasonable delay factor for that portion of the delay, we have determined in our discretion not to apply the unreasonable delay consideration as severely here as we otherwise might have done had the delay occurred entirely after the program's creation.

unreasonable reporting delay.

Accordingly, upon due consideration under Rules 21F-10(f) and (h), 17 C.F.R. §§ 240.21F-10(f) and (h), it is hereby ORDERED that Claimant shall receive an award of Redacted Redacted of the monetary sanctions collected in Notice of Covered Action Redacted and the related actions, including any monetary sanctions collected after the date of this Order.

By the Commission.

Kevin M. O'Neill
Deputy Secretary