

Notice of Covered Action 2015-147  
*In the Matter of JP Morgan Chase Bank, N.A. and  
JP Morgan Securities LLC*, File No. 3-17008 (Dec. 18, 2015)

### **PRELIMINARY DETERMINATION OF THE CLAIMS REVIEW STAFF**

In response to the above-referenced Notice of Covered Action, the Securities and Exchange Commission received six timely whistleblower award claims. Pursuant to Section 21F of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 21F-10 promulgated thereunder, the Claims Review Staff has evaluated each of these claims in accordance with the criteria set forth in Rules 21F-1 through 21F-17. The Claims Review Staff sets forth its Preliminary Determination for each award claimant as follows with respect to the Covered Action.<sup>1</sup>



The Claims Review Staff has preliminarily determined to recommend to the Commission that Claimant #1 and Claimant #2 voluntarily provided original information to the Commission that led to the successful enforcement of the referenced Covered Action pursuant to § 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder. Further, the Claims Review Staff has preliminarily determined to recommend that Claimant #1 receive an award of 5% of the monetary sanctions collected or to be collected in the Covered Action, and that Claimant #2

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<sup>1</sup> Both Claimant #1 and Claimant #2 submitted claims for a related-action award in connection with the successful enforcement action brought by the U.S. Commodity Futures Trading Commission ("CFTC"), *In the Matter of JPMorgan Chase Bank, N.A.*, C.F.T.C. Dekt. No. 16-05 (Dec. 18, 2015) ("CFTC Action"). We are preliminarily recommending that the Commission deny those award applications, however, because CFTC enforcement actions do not qualify as related actions under our whistleblower rules. *See, e.g.*, Exchange Act Rule 21F-3(b) (defining a "related action" as a "judicial or administrative action that is brought by," among other entities, an "appropriate regulatory authority"); Exchange Act Rule 21F-4(f) & (g) (defining an appropriate regulatory authority, but not including the CFTC within the definition).

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receive an award of 18% of the monetary sanctions collected or to be collected in the Covered Action.<sup>2</sup>

In determining the amount of awards to recommend, and the relative allocation of the awards among Claimant #1 and Claimant #2, we considered the following factors set forth in Rule 21F-6 of the Exchange Act as they apply to the facts and circumstances of Claimant #1's and Claimant #2's applications: (1) the significance of information provided to the Commission; (2) the assistance provided in the Covered Action; (3) the law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems.

In assessing the appropriate award percentage allocation between Claimants #1 and #2, we considered the expediency with which Claimant #2 reported to the Commission, the significance of the information provided by Claimant #2 relative to the information provided by Claimant #1, and the extensive and continuing assistance provided by Claimant #2.

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<sup>2</sup> We understand that, in connection with the Commission's Covered Action, Claimant #2 is also seeking a whistleblower award from the CFTC under its whistleblower award program. We do not believe that Congress, when it enacted the Commission's and the CFTC's whistleblower award programs under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, intended that individuals could obtain a "double recovery" on the same enforcement action. Indeed, in our view, a double recovery would produce an impermissible absurd result. To ensure that this absurd result does not occur, we intend to recommend to the Commission that it delay issuing any final order in this matter until the CFTC has announced its decision on Claimant #2's whistleblower application, *unless*, within the sixty (60) days permitted under Exchange Act Rule 21F-10(e) for response to this Preliminary Determination, Claimant #2 provides the Commission and the CFTC binding written notice that he or she is not seeking an award from the CFTC with respect to the *Commission's* Covered Action. If we receive such notice, we will recommend that the Commission finalize the processing of the award applications without awaiting any determination from the CFTC.

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Claimant #1 in his or her application for an award has argued that, in assessing whether a whistleblower's delay in reporting to the Commission was "unreasonable" as that term is used in Exchange Act Rule 21F-6(b)(2), the Commission must consider whether the whistleblower subjectively believed that questionable practices of which he or she was fully aware during the delay period constituted securities law violations, and that the absence of such a belief should be dispositive regarding whether a delay was unreasonable.

We preliminarily disagree. First, the text of the rule does not expressly include a requirement that we consider whether the individual actually was aware that a securities law violation may have occurred. Rather, in assessing whether a delay was unreasonable, the rule requires only that the individual must have been "aware of the relevant facts" that underlie a potential violation.<sup>3</sup> Second, in assessing whether a particular delay was unreasonable so as to warrant a downward departure in the award analysis, we think it is appropriate to measure the reasonableness of the delay against how a reasonable person would have behaved under the circumstances. This approach will not only provide a more readily administrable standard, it will encourage people who are unsure whether a securities law violation has occurred or is occurring to default in favor of reporting to us, which in turn may help ensure that we receive information about potential securities law violations sooner. Indeed, given that most whistleblowers are non-lawyers, we are concerned that a standard for evaluating delay that turned on whether the whistleblower subjectively understood that a violation of the federal securities laws had, in fact occurred, could substantially undercut the purpose of the rule to incentivize prompt reporting to the Commission.<sup>4</sup>

Applying that standard here, the record reflects that  
Claimant #1 knew the relevant facts underlying the violation, and

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<sup>3</sup> Compare with Exchange Act Rule 21(b)(1)(i) (requiring as a precondition for employment anti-retaliation protections that an individual "possess a reasonable belief that the information ... relates to a possible securities law violation").

<sup>4</sup> See also Exchange Act Rule 21F-2(a) (defining a "whistleblower" for award purposes as an individual or individuals who provide the Commission with information that "relates to a possible violation of the federal securities laws...").

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Redacted As such, Claimant #1  
waited approximately one year to report the facts underlying the violations to the Commission,  
and during this period of delay, investors continued to suffer harm and the disgorgement  
amounts (upon which Claimant #1's award will be partly based), continued to increase. Further,  
Claimant #1 Redacted

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The Claims Review Staff has preliminarily determined to recommend that the Commission deny awards to Claimant #3, Claimant #4, Claimant #5, and Claimant #6. The basis for this determination is as follows:

None of Claimant #3's, Claimant #4's, Claimant #5's, nor Claimant #6's information led to the successful enforcement of the referenced Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder because none of the information that the claimants submitted:

1. caused the Commission 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
2. significantly contributed to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

By: Claims Review Staff  
Date: July 18, 2017