

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 99939 / April 11, 2024

WHISTLEBLOWER AWARD PROCEEDING

File No. 2024-16

In the Matter of the Claims for an Award

in connection with

Redacted

Notice of Covered Action Redacted

**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim submitted by Redacted (“Claimant”) in connection with the above-referenced covered action (the “Covered Action”). Claimant filed a timely response contesting the preliminary denial.<sup>1</sup> For the reasons discussed below, Claimant’s award claims are denied.

**I. Background**

**A. The Covered Action**

On Redacted, the Commission instituted settled cease-and-desist proceedings against Redacted (“Respondent”), Redacted. The Commission found that Redacted. Redacted. Redacted. Redacted. Redacted.

<sup>1</sup> The Preliminary Determination of the CRS also recommended denying the award applications of three other claimants. These claimants did not submit requests for reconsideration and, as such, the Preliminary Determinations with respect to their award claims have become Final Orders of the Commission, pursuant to Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).



### C. Claimant's Response to the Preliminary Determination

Claimant submitted a timely written response (the "Response") contesting the Preliminary Determination. First, the Response argues that Claimant "was very likely the source of the [Redacted] reports into massive [Redacted] [Respondent]" that led the Commission to initiate the Investigation "because [Claimant] was speaking in [Redacted] with [Redacted] (and [Redacted]) authorities about such [Redacted]." The Response claims that a [Redacted] article posted by Claimant in [Redacted], as well as assistance he/she provided to [Redacted] and [Redacted] authorities prior to [Redacted], "snowballed into the wider press coverage of [Redacted] [Respondent] that caught the SEC's attention." The Response asserts that a description of the media reports that prompted the Commission's initial inquiry included in a staff declaration supporting the Preliminary Determination of the CRS "is consistent with the information [Claimant] gave to the SEC in [Redacted] and [Redacted], and to [Redacted] authorities in [Redacted]." According to the Response, Claimant "was the earliest source of public information concerning [Redacted] [Respondent's] [Redacted], the earliest notice of which was posted by [Claimant] on [Redacted] [in] [Redacted] [Redacted], preceding by almost a year the SEC's investigation into significantly overlapping conduct and the press reports the SEC says sparked that investigation."

Second, the Response contends that information Claimant provided in his/her second tip, in [Redacted], must have materially added to the information the Commission already possessed and significantly contributed to the success of the Covered Action. The Response asserts that any enforcement agency would have viewed Claimant's information "as important corroboration that the target [Redacted] and that significant evidence existed to prove this," and that Claimant's information contributed significantly to the success of the Covered Action "in many direct and indirect ways, including, for example, by allowing the SEC to craft more effective requests for documents, and to pursue new lines of inquiry from existing sources."

Third, the Response appears to argue that information Claimant provided to Other Agency and [Redacted] authorities was helpful to the Investigation. According to the Response, there is an "inescapable inference" that the Investigation was "substantially enriched by details of a [Redacted] . . . provided by [Claimant] in [Claimant's] TCRs, and provided by [Claimant] also to the [Redacted] authorities from which the SEC has said it received [Redacted] substantial help." The Response claims that it is "inconceivable" that the [Redacted] which Claimant asserts was based largely on his/her information, did not add materially to the information in the Commission's possession. The Response further asserts that after submitting his/her TCR, Claimant continued to help government enforcement agencies, including Other Agency, with related investigations and provided Other Agency with documents evidencing [Redacted] between [Redacted] and Respondent. The Response states that Claimant substantially aided Other Agency in its settlement with [Redacted] and questions how the Commission's Investigation into [Redacted] could not have substantially profited from that settlement. Further, the Response argues that information Claimant provided to Other Agency materially added to information that significantly advanced the Investigation.

Fourth, the Response asserts that Claimant’s award claim was timely filed because amendments to the Whistleblower Program Rules which took effect in December 2020 (“2020 Amendments”)<sup>3</sup> expanded the definition of “action” to cover <sup>Redacted</sup> and provided that a “final order” triggering the requirement to submit the WB-APP claim form for related actions runs, as relevant to Claimant’s claim, from the effective date of the amendments, which was December 7, 2020. Citing the adopting release for the amended rules, the Response argues that, provided the agreement was entered into after July 21, 2010, the amended rules would apply to any <sup>Redacted</sup> “that would otherwise fall within the terms of the rule.” The Response contends that because the Covered Action “was effectuated as an accepted ‘offer of settlement’” and <sup>Redacted</sup> Claimant’s whistleblower award application should be considered “as timely on the basis of the 2020 amendments.”

In the alternative, Claimant argues that the Commission should excuse the untimeliness pursuant to either Rule 21F-8(a)<sup>4</sup> or Section 36(a) of the Exchange Act. The Response claims that Claimant missed the deadline because of “extraordinary retaliation” by <sup>Redacted</sup> and because Claimant was devoting significant time, without the aid of whistleblower counsel, to aiding investigations into <sup>Redacted</sup>. The Response asserts that Claimant was “under the care of medical professionals and was being medicated for anxiety and depression” as a result of these “extraordinary pressures.” The Response adds that as soon as Claimant “became aware of the NoCa,” he/she “re-engaged whistleblower counsel” and submitted the award claim and supporting materials “as soon as possible and without any delay.”

## II. Analysis

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.<sup>5</sup> As relevant here, under Exchange Act Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered action if either (1) the original information caused the staff to open an investigation “or to inquire concerning different conduct as part of a current . . . investigation” and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information;<sup>6</sup> or (2) the conduct was already under investigation, and the original information “significantly contributed to the success of the action.”<sup>7</sup>

In determining whether information “significantly contributed” to the success of the action, the Commission will consider whether the information was “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.<sup>8</sup> For example, the

---

<sup>3</sup> See Whistleblower Program Rules, Exchange Act Release No. 89963 (Sept. 23, 2020) (“Adopting Release”).

<sup>4</sup> Exchange Act Rule 21F-8(a), 17 C.F.R. § 240.21F-8(a).

<sup>5</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>6</sup> See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

<sup>7</sup> See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

<sup>8</sup> See Order Determining Whistleblower Award Claims, Exchange Act Release No. 90922 at 4 (Jan. 14, 2021); see also Order Determining Whistleblower Award Claims, Exchange Act Release No. 85412 at 9 (Mar. 26, 2019).

Commission will consider a claimant's information to have significantly contributed to the success of an enforcement action if it allowed the Commission to bring the action in significantly less time or with significantly fewer resources; additional successful claims; or successful claims against additional individuals or entities.<sup>9</sup>

Claimant does not qualify for a whistleblower award in this matter because his/her information did not cause the staff to open the Investigation, nor did Claimant's information cause the staff to inquire into different conduct or significantly contribute to the ongoing Investigation. According to a sworn declaration ("Initial Declaration") provided under penalty of perjury by a Division of Enforcement ("Enforcement") attorney who was assigned to the Investigation, which we credit, the Investigation was opened based on public news reports regarding Respondent's misconduct, not Claimant's tips, and staff assigned to the Investigation ("Staff") did not receive Claimant's tips until after the Investigation was opened.<sup>10</sup> Further, according to a supplemental declaration provided by the same Enforcement attorney ("Supplemental Declaration"), which we also credit, that attorney does not recall any reference to either Claimant or Claimant's <sup>Redacted</sup> article in the public news reports that prompted the opening of the Investigation, and Claimant's <sup>Redacted</sup> article was not relevant to the decision to open the Investigation.

Claimant's argument that he/she deserves credit as the "original source" of the information in the public news reports that led staff to open the Investigation is without merit. Claimant's Response asserts that "[i]t was [Claimant's] <sup>Redacted</sup> article and [his/her] subsequent tireless aid to <sup>\*\*\*</sup> and <sup>Redacted</sup> authorities prior to <sup>Redacted</sup> that snowballed into the wider press coverage of [Respondent] <sup>Redacted</sup> that caught the SEC's attention."

Under Rule 21F-4(b)(5), a claimant will be considered an original source "of the same information that we obtain from another source" if, among other things, "the other source obtained the information from [the claimant] or [the claimant's] representative."<sup>11</sup> Claimant has not provided information demonstrating that Claimant or his/her representative provided information to any media sources in connection with the public news reports that led to the opening of the Investigation.<sup>12</sup> Accordingly, the record does not support a finding that Claimant is an "original source" of the information contained in those news reports under Rule 21F-4(b)(5).

---

<sup>9</sup> See Exchange Act Release No. 85412 at 8-9.

<sup>10</sup> Although Claimant's first tip was provided to Enforcement staff in the Commission's <sup>Redacted</sup> Office in relation to a separate matter, it was not shared with any member of the team responsible for the Investigation prior to the opening of the Investigation. Staff assigned to the Investigation received Claimant's tips in approximately <sup>Redacted</sup>.

<sup>11</sup> See Exchange Act Rule 21F-4(b)(5), 17 C.F.R. § 240.21F-4(b)(5).

<sup>12</sup> With respect to Claimant's argument that, because the Initial Declaration did not identify the specific media reports that the staff relied upon in opening the Investigation, it is "difficult to identify who was responsible for the underlying information," we note that the Initial Declaration by the staff attorney included a description of the subject matter of those reports. The Response fails to identify any media reports for which Claimant acted as a source that match that description.

Moreover, even if a claimant is considered the “original source” under Rule 21F-4(b)(5) of information the Commission has previously obtained from another source, that does not by itself mean that an award is due; among other requirements, the information the claimant gave to the Commission must lead to a successful Commission enforcement action.<sup>13</sup> Rule 21F-4(c)(1) provides that the Commission will consider a claimant to have provided original information that led to the successful enforcement of a Covered Action if the claimant gave the Commission original information that was sufficiently specific, credible, and timely “to cause” the staff to commence an examination, open an investigation, reopen an investigation that the Commission had closed, or to inquire concerning different conduct as part of a current examination or investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of the claimant’s original information. In this case, the two tips Claimant gave the Commission did not cause the staff to open the Investigation, reopen a closed investigation, or inquire concerning different conduct as part of the Investigation. Rather, it was the public news reports regarding Respondent’s misconduct, and not either of Claimant’s tips, that led staff to open the Investigation. Further, Claimant’s information did not lead staff assigned to the Investigation to inquire into different conduct as part of the open Investigation. Thus, with respect to the Covered Action, Claimant is not eligible for an award under Rule 21F-4(c)(1).

Nor does Claimant satisfy the eligibility requirements of Rule 21F-4(c)(2), as his/her information did not significantly contribute to the success of the Covered Action. According to the Initial Declaration, although Staff reviewed both of Claimant’s tips after the Investigation was opened, Claimant never met, communicated with, or otherwise assisted Staff during the course of the Investigation or Covered Action and Staff did not rely on any of Claimant’s information for purposes of either the Investigation or the Covered Action. Rather, as explained in the Supplemental Declaration, with respect to the <sup>Redacted</sup> that were the subject of Claimant’s tips, Staff relied on evidence obtained from statements made by <sup>Redacted</sup> other than Claimant <sup>Redacted</sup>, and no other source of evidence meaningfully informed the Staff’s investigation of that subject matter. Thus, we do not find persuasive Claimant’s arguments that the Commission obtained helpful information from Claimant <sup>Redacted</sup> indirectly from public news reports, the Other Agency, <sup>Redacted</sup>, or otherwise from <sup>Redacted</sup> authorities. The Supplemental Declaration also confirms that neither of Claimant’s tips assisted Staff in drafting document requests or subpoenas or in questioning any witnesses and that Other Agency’s <sup>Redacted</sup> with <sup>Redacted</sup> had no meaningful impact on the Investigation or Covered Action. We therefore conclude that Claimant did not provide information that led to the successful enforcement of the above-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.

Furthermore, Claimant’s failure to submit his/her award claim by the applicable deadline provides an additional basis for denying Claimant’s award application. The requirement that claimants file whistleblower award claims within ninety days of the posting of a

---

<sup>13</sup> See Securities Whistleblower Incentives and Protections, Exchange Act Release No. 64545 at n.187-188 and accompanying text (May 25, 2011) (original source of information “must still satisfy all of the other requirements of Section 21F and of [the whistleblower] rules, including that the information was submitted voluntarily, it led to a successful Commission enforcement action or related action, and [the claimant] is not ineligible for an award”).

Notice of Covered Action<sup>14</sup> serves important programmatic functions.<sup>15</sup> The deadline ensures fairness to potential claimants by giving all an equal opportunity to have their competing claims evaluated at the same time and also brings finality to the claims process so that the Commission can make timely awards to meritorious whistleblowers.<sup>16</sup>

Claimant does not dispute that the first of his/her two award claims with respect to the Covered Action was submitted approximately five months after the deadline specified in the Notice of Covered Action. Claimant asserts, however, that the award claim was timely filed because it pertained to a claim for a covered action that “was effectuated as an accepted ‘offer of settlement,’”<sup>17</sup> in addition to related action claims based on <sup>Redacted</sup>

<sup>Redacted</sup> The Response contends that the 90-day deadline for submitting all of these claims should be measured from the December 7, 2020 effective date of the 2020 Amendments, which would make Claimant’s second award application, submitted on <sup>Redacted</sup>, timely.

We reject Claimant’s argument. The 2020 Amendments added Rule 21F-4(d)(3) in order to allow related action awards based on DPAs and NPAs entered into by the U.S. Department of Justice and covered action awards based on “similar settlement agreement[s] entered into by the Commission *outside of the context of a judicial or administrative proceeding* to address violations of the securities laws.”<sup>17</sup> Revisions to Rules 21F-10 and 21F-11 adopted at that time provide that the 90-day deadline for filing an award claim with respect to a “Commission settlement agreement covered by [Rule 21F-4(d)]” that was entered into after July 21, 2010 but before the December 7, 2020 effective date of the 2020 Amendments would be measured from that effective date.<sup>18</sup> Because the Covered Action <sup>Redacted</sup> it does not qualify as a “Commission settlement agreement covered by” Rule 21F-4(d). We consider only those Commission settlement agreements referred to in Rule 21F-4(d)(3), and not settled Commission actions brought as judicial or administrative proceedings, to be “Commission settlement agreements covered by” Rule 21F-4(d), as that phrase is used in Rule 21F-10.<sup>19</sup> Thus, the deadline specified in the Notice of Covered Action posting applies to award claims for the Covered Action. As Claimant’s award claims for the Covered Action were

---

<sup>14</sup> See Exchange Act Rules 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.”) and 21F-10(b)(1), 17 C.F.R. § 240.21F-10(b)(1) (“All claim forms, including any attachments, must be received by the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award.”).

<sup>15</sup> See Order Determining Whistleblower Award Claim, Exchange Act Release No. 77368 at 2-3 (Mar. 14, 2016), *pet. for rev. denied sub nom. Cerny v. SEC*, 707 F. App’x 29 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 2005 (2018).

<sup>16</sup> See Securities Whistleblower Incentives and Protections, Exchange Act Release No. 64545 (May 25, 2011). See also, e.g., Order Determining Whistleblower Award Claims, Exchange Act Release No. 97285 at 4 (Apr. 11, 2023).

<sup>17</sup> See Exchange Act Rule 21F-4(d)(3), 17 C.F.R. § 240.21F-4(d)(3) (emphasis added).

<sup>18</sup> As explained in the Adopting Release, revisions to these rules provide that “the effective date of the amended rules will serve as the trigger date that begins a 90-day period for a whistleblower to submit an application” for a “Commission settlement agreement entered after July 21, 2010 but prior to the effective date of the amended rules . . .” See Adopting Release, *supra* note 3, at n.25.

<sup>19</sup> The Adopting Release explains that the language added to Rules 21F-10(b) and 21F-11(b) that would measure submission deadlines from the effective date of the 2020 Amendments was included to effectuate our decision to apply newly adopted Rule 21F-4(d)(3) to “any DPA, NPA, or Commission settlement agreement that would otherwise fall within the terms of the rule.” See Adopting Release, *supra* note 3, at n.25 and accompanying text.

submitted after that deadline, they were both untimely. Accordingly, we find, as an additional grounds for denial, that Claimant is not eligible to receive an award for the Covered Action because Claimant failed to submit his/her award claim for the Covered Action within ninety days of the posting date of the Notice of Covered Action.

The Response requests, in the event the award claims are deemed untimely, that the Commission waive the timely filing requirement under either Rule 21F-8(a)<sup>20</sup> or Exchange Act Section 36(a).<sup>21</sup> We decline to grant such a waiver. Because Claimant's information did not contribute to the success of the Covered Action, the exercise of our discretionary waiver authority is not warranted.<sup>22</sup>

### III. Conclusion

For the reasons discussed above, we conclude that Claimant is not eligible for an award with respect to the Covered Action. As a result, Claimant is also not eligible for any related action award.<sup>23</sup> Accordingly, it is hereby ORDERED that Claimant's whistleblower award applications be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman  
Secretary

---

<sup>20</sup> Exchange Act Rule 21F-8(a), 17 C.F.R. § 240.21F-8(a), affords us discretionary authority to "waive any of [the] procedures [for submitting information or making a claim for an award] based upon a showing of extraordinary circumstances."

<sup>21</sup> Section 36(a) provides the Commission with broad authority to exempt any person from any provision of the Exchange Act or any rule or regulation thereunder to the extent that such exemption is "necessary or appropriate in the public interest" and "consistent with the protection of investors."

<sup>22</sup> We also have explained, with respect to Rule 21F-8(a), that the "extraordinary circumstances" exception is to be "narrowly construed" and, in the context of a late filing, requires an untimely claimant to show that "the reason for the failure to timely file was beyond the claimant's control." *See* Exchange Act Release No. 77368 at 3. According to the Response, Claimant missed the submission deadline due to "extraordinary retaliation" by Redacted in addition to the "significant time" Claimant was "devoting then to aiding investigations" Redacted

Redacted The Response indicates that Claimant was "under the care of medical professionals and was being medicated for anxiety and depression." A declaration accompanying the Response also explains that Claimant "was unaware of the NoCa, and submitted it as soon as [Claimant] became aware of it and after re-engaging [Claimant's] whistleblower counsel." Having considered these facts, we find the record insufficient to show extraordinary circumstances preventing a timely application.

<sup>23</sup> A related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable covered action in the first instance. *See* 15 U.S.C. § 78u-6(a)(5); Exchange Act Rules 21F-3(b)(1) and 21F-11(a), 17 C.F.R. § 240.21F-3(b)(1) and 17 C.F.R. § 240.21F-11(a); *see also* Order Determining Whistleblower Award Claims, Exchange Act Release No. 84506 at n.5 (Oct. 30, 2018) ("The Commission may make an award to a whistleblower in connection with a related action *only if* the Commission has determined that the whistleblower is entitled to an award for a Commission covered action.") (emphasis in original).