



its fiscal year <sup>\*\*\*</sup>, the Company

Redacted

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Redacted

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Commission ordered monetary sanctions of more than \$1 million.

## **B. The Preliminary Determination**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that Claimant 2’s award claim in the Covered Action be denied because Claimant 2 did not provide information to the Commission that led to the success of the Covered Action. In making this determination, the CRS noted that the staff did not recall receiving, reviewing, or using any information provided by Claimant 2, and had no communications with Claimant 2 prior to or during the investigation. Additionally, the CRS noted that, while Claimant 2 states that he/she spoke with a member of the Commission’s Division of Examinations (“EXAMS”), the record supports the conclusion that there were no communications between EXAMS staff and Covered Action investigative staff about Claimant 2’s information.

## **C. Claimant 2’s Response to the Preliminary Determination**

Claimant 2 provided a timely request for reconsideration (“Response”). In the Response, Claimant 2 principally argues: (1) that he/she submitted multiple tips before the opening of the investigation and the EXAMS staff he/she spoke with also submitted a tip based on his/her information; (2) that it is not credible that SEC enforcement staff opened an investigation and recommended enforcement action on the very grounds that Claimant 2 raised in his/her TCRs, and the TCR submitted by EXAMS staff, without reviewing the TCRs; (3) it was a violation of the Commission’s Enforcement Manual not to search the TCR system before the opening of and during the Covered Action investigation; (4) the Enforcement staff declaration makes vague assertions and only says that staff could not “recall” reviewing his/her tips; and (5) that the overlap between the TCRs and the subject matter of the Commission’s enforcement action further reinforce that Claimant 2’s information was used and relied upon to open the investigation or otherwise significantly contributed to the investigation and enforcement action.

## **II. Analysis**

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must have “voluntarily provided original information to the Commission that led to the successful enforcement of the covered . . . action.” Exchange Act Section 21F(b)(1).<sup>2</sup> Rules 21F-4(c)(1) and (c)(2) specify that this “led to” requirement is satisfied if either “you gave the Commission original information that cause[d] the staff to . . . open an investigation . . . or to inquire concerning different conduct as part of a current examination or investigation” or “[y]ou gave the Commission original information about conduct that was already under examination and investigation by the Commission . . . and your submission significantly contributed to the

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<sup>2</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1). *See also Kilgour v. SEC*, 942 F.3d 113, 122-23 (2d Cir. 2019) (reading the “led to” language in Section 21F(b)(1) as “seem[ing] to require that the information as provided by the whistleblower must have ‘led to the successful enforcement action.’”).

success of the action”.<sup>3</sup> “[B]oth Rule 21F-4(c)(1) and Rule 21F-4(c)(2) require that a claimant’s *submission* of information to the Commission prove helpful to the Enforcement staff in the covered action.”<sup>4</sup>

Claimant 2’s information did not cause Enforcement staff to open the Covered Action investigation. According to declarations provided by Enforcement staff responsible for the Covered Action, including a Supplemental Declaration prepared in response to the Response, which we credit, staff opened the Covered Action investigation in <sup>Redacted</sup> based on the staff’s independent review of the Company’s public filings, earnings releases, and other public statements about the Company’s <sup>Redacted</sup>

<sup>Redacted</sup> The impetus for the staff’s review was news reports about market-related events involving the Company, and not information from Claimant 2.

Nor did Claimant 2 provide information to the Commission that caused Enforcement staff to inquire into different conduct or that significantly contributed to the success of the Covered Action. The record supports the conclusion that Enforcement staff responsible for the Covered Action did not receive or review information from Claimant 2, or have communications with Claimant 2, before or during the investigation.<sup>5</sup> In addition to not recalling receiving or reviewing Claimant 2’s TCRs, Enforcement staff searched their records and confirmed that they did not receive Claimant 2’s TCRs. Furthermore, the record supports the conclusion that all of Claimant 2’s TCRs were closed with an “NFA” or “No Further Action” disposition and not forwarded to Enforcement staff responsible for the Covered Action.<sup>6</sup>

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<sup>3</sup> In determining whether the 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. For example, the 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, or to bring additional successful claims or successful claims against additional individuals or entities. Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 (Mar. 26, 2019) at 9 (same).

<sup>4</sup> Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 102987 (May 5, 2025) at 8 (emphasis in original). A claimant may also satisfy the “led to” requirement where he/she reports information through an entity’s internal whistleblower, legal or compliance procedures, the entity provides the information or the results of an investigation initiated in response to the information to the Commission, the information satisfies Rule 21F-4(c)(1) or (c)(2), and the claimant provides the same information to the Commission on Form TCR within 120 days of providing it to the entity. Exchange Act Rule 21F-4(c)(3). While Claimant 2 states in the Response that he/she reported his/her concerns internally, the record supports the conclusion that the Enforcement staff did not receive Claimant 2’s information from the Company or that any internal reports from the Company were based on Claimant 2’s information.

<sup>5</sup> Claimant 2 also states that he/she filed a retaliation complaint with another agency in <sup>\*\*\*</sup>, and that the other agency was required to forward such complaints to the Commission, and as such, Enforcement staff would also have seen his/her retaliation complaint in addition to the TCRs prior to opening the investigation. However, according to a Supplemental Declaration from Enforcement staff responsible for the Covered Action, they did not receive or review Claimant 2’s retaliation complaint and it was not used in and had no impact on the Covered Action.

<sup>6</sup> Claimant 2’s TCRs primarily alleged that <sup>Redacted</sup> and that Claimant 2 was retaliated against after internally raising concerns. These allegations are different from the subject matter of the

Turning to Claimant 2’s arguments in the Response, that Claimant 2 submitted information to the Commission regarding the Company before the opening of the investigation does not mean that the information contributed to or was otherwise used in the Covered Action. As the Commission has stated, award eligibility is not based on what the staff would have or could have done in hypothetical circumstances, but rather on what actual impact a claimant’s information had on the investigation.<sup>7</sup> Even assuming that Claimant 2’s information bears some factual nexus to the charges in the Covered Action, this does not mean that his/her information “led to” the success of the Covered Action. Rather, the record supports the conclusion that Claimant 2 did not provide information to the Commission that caused Enforcement staff to open the investigation or inquire into the conduct underlying the Covered Action or that significantly contributed to the success of the Covered Action. The majority of Claimant 2’s TCRs were submitted between June and August <sup>\*\*\*</sup>, more than two years before Enforcement staff opened an inquiry into the Company based on publicly-available information, further undercutting Claimant 2’s argument that his/her TCRs played a role in the opening of the investigation.<sup>8</sup> Furthermore, the record, which includes two declarations from the Enforcement staff responsible for the Covered Action, supports the conclusion that they did not review or receive Claimant 2’s information, including his/her TCRs and retaliation complaint, and as such, Claimant 2’s information could not have “led to” the success of the Covered Action.<sup>9</sup>

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Covered Action, which concerned the Company’s <sup>Redacted</sup> <sup>Redacted</sup>. Additionally, all but one of Claimant 2’s TCRs were submitted in <sup>\*\*\*</sup>, which was prior to the relevant time period identified in the Covered Action (end of <sup>Redacted</sup> through third quarter of <sup>Redacted</sup>).

<sup>7</sup> See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 34-99670 (Mar. 5, 2024); Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 34-98655 (Sept. 29, 2023); Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 34-97408 (May 1, 2023); Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 34-96657 (Jan. 13, 2023).

<sup>8</sup> Claimant 2 also submitted a TCR in <sup>Redacted</sup>, after the staff’s inquiry into the Company had commenced; however, the record supports the conclusion that all of Claimant 2’s TCRs were closed with an “NFA” or “No Further Action” disposition and not forwarded to Enforcement staff responsible for the Covered Action.

<sup>9</sup> Claimant 2’s contention that staff must have used the information in Claimant 2’s TCRs because the Enforcement Manual requires investigative staff to periodically search the TCR system is not relevant in light of staff’s declarations that they neither received nor reviewed Claimant 2’s information. See Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 97600, at n.10 (May 26, 2023).

### **III. Conclusion**

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant 2 in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

J. Matthew DeLesDernier  
Deputy Secretary