UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102987 / May 5, 2025

WHISTLEBLOWER AWARD PROCEEDING
File No. 2025-27

In the Matter of the Claim for an Award in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff ("CRS") issued a Preliminary Determination recommending the denial of the whistleblower award claim submitted by joint claimants Redacted (the "Joint Claimants") in connection with the above-referenced covered action (the "Covered Action"). Joint Claimants filed a timely response contesting the preliminary denial. For the reasons discussed below, Joint Claimants' award claim is denied.[1]

I. Background

A. The Covered Action

On Redacted, the Commission filed an Redacted action charging Redacted with fraud for siphoning and misusing investor funds. The Commission's complaint alleged that Redacted represented to investors that their money would be used Redacted, and based on these representations, raised more than Redacted. Instead, Redacted diverted investor funds to facilitate Ponzi-like payments to earlier investors. In addition, the complaint alleged Redacted improper use of more than Redacted in investor funds to Redacted. The Commission obtained a temporary restraining order and preliminary injunction against Redacted. In *** the court-appointed Receiver returned nearly Redacted to harmed investors pursuant to court orders. On Redacted, the Commission obtained a final judgment against Redacted that imposed a permanent injunction against future violations of the antifraud provisions of the federal securities laws but no further monetary relief.

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[1] *See* Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

On Redacted, the Office of the Whistleblower ("OWB") posted the Notice for the Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days. Joint Claimants filed a timely whistleblower award claim.

B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that Joint Claimants' claim be denied because their information did not lead to the success of the Covered Action as required under Exchange Act Section 21F(b)(1) and Exchange Act Rule 21F-4(c). Division of Enforcement staff responsible for the Covered Action ("Enforcement staff") opened the investigation in Redacted based on press reports. While Joint Claimants submitted information to the Commission beginning in Redacted, and staff met with them, none of their information caused staff to inquire into different conduct or was used in or significantly contributed to the success of the Covered Action.

C. Joint Claimants' Response to the Preliminary Determination

Joint Claimants submitted a timely written response (the "Response") contesting the Preliminary Determination.[1] In the Response, Joint Claimants principally argue (1) that they were the original source of news articles that prompted the opening of the Commission's investigation; (2) contrary to the position set forth in the Preliminary Determination, Rule 21F-4(b)(7) should not deprive Joint Claimants of original-source status; (3) the Commission should waive any procedural noncompliance by Joint Claimants that could otherwise bar their award eligibility, specifically because they were told by staff of the Redacted (the "Other Agency") that they should leave any coordination with the Commission to the Other Agency and that denying them an award would undermine the goals of the Commission's whistleblower program.

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) (emphasis added).[2] 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 success of the action" (emphases added).[3]

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[2] Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

[3] 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).

The record shows that Joint Claimants' submission of information to the Commission did not lead to the successful enforcement of the Covered Action. The information did not cause Enforcement staff to open the investigation or to open new lines of inquiry under Rule 21F-4(c)(1). According to a declaration provided by Enforcement staff responsible for the Covered Action, which we credit, the Commission's investigation was opened in Redacted based on press reports, prior to any information provided by Joint Claimants to the Commission. Joint Claimants did not give any information to the Commission until nearly a year after the Commission opened its investigation. Moreover, at the time Enforcement staff opened the investigation, Joint Claimants were not "whistleblowers" as defined within the meaning of Rule 21F-2(a) under the Exchange Act, because they had not provided information in writing *to the Commission*.

As for Rule 21F-4(c)(2), Joint Claimants do not dispute in their Response that the information they provided to the Commission in Redacted and thereafter did not significantly contribute to the success of the Covered Action itself. According to a declaration provided by Enforcement staff responsible for the Covered Action, which we credit, the information Joint Claimants provided to the Commission beginning in Redacted did not substantially advance the investigation because the information was duplicative of information already known to Enforcement staff or concerned different conduct that did not become part of the Covered Action.

A. Original Source Rule

Joint Claimants resist these conclusions by contending that they were the original source of the information in the news reports that prompted the staff's opening of the investigation, because those news reports contained information that Joint Claimants previously had given to reporters both directly as well as indirectly through the Other Agency. In other words, Joint Claimants argue that they satisfy Rule 21F-4(c)(1) by virtue of the "original source" rule in Rule 21F-4(b), because it was their "original information" in the relevant news reports that prompted the Enforcement staff to open the investigation that culminated in the Covered Action.

But whether or not Joint Claimants were the original source of the relevant news reports is a separate issue from whether they satisfy the statutory "led to" requirement. That requirement is embodied in Congress's directive that, to qualify for an award, a whistleblower must have "voluntarily provided original information *to the Commission led to* the successful enforcement of the covered . . . action." Section 21F(b)(1) (emphasis added). In other words, putting aside the separate requirement of whether the information was original, it must have been the information that was provided "to the Commission" that led to the successful enforcement of the Covered Action. Here, Joint Claimants do not dispute that the information they provided *to the Commission* did not do so; instead, they contend that they provided information to the press and that those news reports led to the successful enforcement of the covered action. Because Joint Claimants do not meet the statutory "led to" requirement, they are ineligible for an award.

Joint Claimants' interpretation also misunderstands how the statutory "led to" requirement and the Commission's original source rule were designed to interact. The Commission's "led to" rule implements Congress's decision to condition award eligibility on whether a whistleblower gave the Commission original information that "led to the successful enforcement of" a covered action. Section 21F(b)(1). As already quoted, and in relevant part, the "led to" rule conditions award eligibility on whether the whistleblower's "original information . . . cause[d] the staff to open . . . an investigation"

under Rule 21F-4(c)(1) or, for later submissions, whether the whistleblower's "submission significantly contributed to the success of the action" under Rule 21F-4(c)(2).[4] To paraphrase, these first two paragraphs of the "led to" rule focus on causation: Did the whistleblower's submission to the Commission of original information cause the Enforcement staff to open the investigation or else significantly contribute to the success of the covered action?[5]

Joint Claimants' proposed interpretation of Rule 21F-4(c)(1) would sever that chain of causation by granting award eligibility whenever the Enforcement staff opens an investigation based on publicly available information for which an individual was the "original source," even if that individual's submission to the Commission at a later date bore no causal connection to the opening of the investigation. Joint Claimants' reading would reduce the statutory requirement that the information be provided "to the Commission" to a ministerial step, one that had no independent substantive (causal) connection between the whistleblower's information and the success of the Commission's action. We do not believe that this is what Congress intended when Congress enacted the "led to" requirement in Section 21F(b)(1), nor does it seem the better reading of the statute.

On the present record, for example, Joint Claimants delayed for nearly a year before submitting information directly to the Commission, at which point their submission no longer had any useful value to the Enforcement staff. That behavior by Joint Claimants is not of the sort that the whistleblower program was designed to reward. As the U.S. Supreme Court has recognized, Congress's "'core objective'" in enacting Exchange Act Section 21F was "'to motivate people who know of securities law violations to *tell the SEC*.'" *Digital Realty Trust, Inc. v. Somers*, 583 U.S. 149, 162 (2018) (quoting S. Rep. No. 111-176, at 38 (2010)). Extending our whistleblower rules to reward Joint Claimants would do little, if anything, to effectuate that purpose.

Satisfying the Commission's original source rule goes to Congress's statutory requirement that a whistleblower submit original information, and it is not a substitute for satisfying Congress's separate led-to requirement. Indeed, this result was implicit in the illustrative example in our 2011 adopting release of how the "original source" rule and the "led to" rule were designed to interact:

> As the language of our rule indicates, if B makes a whistleblower submission based upon information obtained from A, and A later makes his or her own submission of that information, then A will be considered the "original source" of the information (assuming that A establishes his or her status as the original source and that the information otherwise qualifies as "original information"). However, A's status as the

[4] By contrast, the Commission adopted the "original source" rule in 2011 to implement Congress's directive that awards be paid only to whistleblowers who submit "original information," Section 21F(b)(1), which is defined to mean information that, in addition to other conditions, "is not known to the Commission from any other source, unless the whistleblower is the original source of the information," Section 21F(a)(3). The "original source" rule repeats those statutory directives and elaborates, "The Commission will consider you to be an *original source* of the same information that we obtain from another source if the information satisfies the definition of original information and the other source obtained the information from you or your representative." Exchange Act Rule 21F-4(b)(1)(ii), (b)(5). As discussed below, the "original source" rule was not designed to implement the "led to" statutory requirement.

[5] The third and last paragraph of the "led to" rule embraces a chain of indirect causation for an individual who first reports internally through an employer's internal compliance system and within 120 days reports the same information directly to the Commission. *See* Rule 21F-4(c)(3), discussed *infra* in Analysis I.B and footnote 7.

> "original source" of the information does not exclude B from award eligibility. In this example, because B obtained the facts underlying his or her submission from A, and those facts were not derived from publicly available sources, B would also be deemed to have submitted information derived from his or her "independent knowledge." Thus, both submissions could qualify as "original information;" B's because he or she was first to bring the Commission information derived from "independent knowledge," and A's because he or she was the "original source" of information that, as of B's submission, was already known to the Commission.
>
> Further, by virtue of being first-in-time, B may have an advantage over A. If B's submission were sufficiently specific, credible, and timely that it caused us to open an investigation, and if a successful enforcement action resulted, then we would consider whether B's submission "led to" our successful action under the lower standard set forth in Rule 21F-4(c)(1). Correspondingly, if A made his or her submission after we were already investigating the matter that B brought to us, then A's information would be evaluated under Rule 21F-4(c)(2), and A would have to meet the additional requirement that his or her information "significantly contributed" to the success of the action. In this regard, we note that A would also be considered the "original source" of any additional information he or she provided that materially added to our base of knowledge.

Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,300, 34,321-22 (June 3, 2011). In this illustration, both A and B could qualify as having provided original information, with A taking advantage of the "original source" rule, but each would be evaluated under a different prong of the "led to" rule depending on the timing of their respective submissions to the Commission. By contrast, on Joint Claimants' reading, even if A made his or her submission to the Commission long after the Enforcement staff opened the investigation, both A and B could satisfy Rule 21F-4(c)(1) based solely on B's earlier submission to the Commission of information for which A was an "original source." Moreover, A would no longer have to meet the "significantly contributed" standard under Rule 21F-4(c)(2). That is not how Rule 21F-4(c)(1) and Rule 21F-4(c)(2) were designed to operate.

Accordingly, we reject Joint Claimants' proposed interpretation of our whistleblower rules. Their belated submission of information to the Commission bore no causal connection to the Enforcement staff's opening of the investigation and therefore did not satisfy Rule 21F-4(c)(1).[6]

B. Precedent

Joint Claimants further argue that denying their award claim would create inconsistencies with two prior whistleblower orders. The first such order concluded that the claimant satisfied the "led to" requirement of Section 21F(b)(1) based on neither Rule 21F-4(c)(1) nor Rule 21F-4(c)(2), however, but

[6] Joint Claimants' argument concerning Rule 21F-4(b)(7) with respect to the Joint Claimants' submission of information to the news media need not be addressed since news media is not one of the entities enumerated in Rule 21F-4(b)(7). Joint Claimants' argument requesting a waiver of the 120-day requirement in Rule 21F-4(b)(7) with respect to the Joint Claimants' submission to the Other Agency is addressed in Section C below.

rather on Rule 21F-4(c)(3). *See Order Determining Whistleblower Award Claim*, Release No. 34-88687, 2020 WL 1922151 (Apr. 20, 2020) (the "2020 Order"). In brief, Rule 21F-4(c)(3) states that when an individual reports possible misconduct through an employer's internal compliance program, and the employer then submits information concerning the same possible misconduct to the Commission, the employee will receive credit for the employer's submission as long as the individual also submits directly to the Commission within 120 days of the internal report.[7] In such a case, the employer's submission to the Commission must still satisfy one of those first two prongs of the "led to" rule, either Rule 21F-4(c)(1) or Rule 21F-4(c)(2), but it is the employee who receives credit for that assistance with the successful enforcement of the covered action. As our 2011 adopting release explained, Rule 21F-4(c)(3) was designed to "increase the likelihood that individuals will report misconduct to effective internal reporting programs, allowing such programs to continue to play an important role in facilitating compliance with the securities laws." *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. at 34,325.

In the 2020 Order, we applied Rule 21F-4(c)(3) to grant an award to a whistleblower who first reported internally to a compliance officer, where the compliance officer's subsequent report to the Commission prompted the Enforcement staff to open its successful investigation. 2020 Order, 2020 WL 1922151, at *1. That is, under Rule 21F-4(c)(3) the whistleblower received credit for the fact that the compliance officer's submission to the Commission satisfied Rule 21F-4(c)(1). But nothing in the 2020 Order purported to change the causation requirement in Rule 21F-4(c)(1) and Rule 21F-4(c)(2) or to extend Rule 21F-4(c)(3) beyond the narrow context of reporting to an internal compliance program. Joint Claimants do not contend that they ever made such an internal report, and therefore Rule 21F-4(c)(3) has no bearing here.

In the second order cited by Joint Claimants, we granted an award to a claimant who emailed his report to the Enforcement staff three days after posting it online, even though it was the staff's discovery of the online report and not its receipt of the email that prompted the opening of the successful investigation. *See Order Determining Whistleblower Award Claims*, Release No. 34-94398, 2022 WL 768309, at *3 (Mar. 11, 2022) (the "2022 Order"). We reasoned that the whistleblower was the "original source" of the information in the online report and that this information had caused the Enforcement staff to open its investigation under Rule 21F-4(c)(1). *See id.* On appeal of the 2022 Order by a second, unsuccessful claimant, the U.S. Court of Appeals for the Third Circuit sustained the denial but expressed concern about the award to the first claimant:

> We acknowledge that the SEC's proffered justification for awarding Claimant 1 $14 million and Doe [that is, the second claimant] nothing—hinging primarily on a single

[7] In full, Rule 21F-4(c)(3) states that the "led to" requirement is satisfied in the following circumstances:

> You reported original information through an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time you reported them to the Commission; the entity later provided your information to the Commission, or provided results of an audit or investigation initiated in whole or in part in response to information you reported to the entity; and the information the entity provided to the Commission satisfies either paragraph (c)(1) or (c)(2) of this section. Under this paragraph (c)(3), you must also submit the same information to the Commission in accordance with the procedures set forth in § 240.21F–9 within 120 days of providing it to the entity.

Exchange Act Rule 21F-4(c)(3), 17 C.F.R. § 240.21F-4(c)(3).

> email that Claimant 1 sent to an SEC enforcement attorney—leaves something to be desired. The SEC has elsewhere argued that awards should only be granted where the tip itself "significantly contribute[d] to the success of the [SEC] action." *Kilgour v. SEC*, 942 F.3d 113, 123 (2d Cir. 2019). Yet Claimant 1's email had no ostensible impact on the investigation; SEC investigators found the Report on their own. . . . But these potential issues are beyond the scope of this appeal and, moreover, serve only to call Claimant 1's award into question while doing nothing to undermine the SEC's reasoning as to Doe.

Doe (Claimant #2) v. SEC, No. 22-1652, 2023 WL 3562977, at *3 n.3 (3d Cir. Mar. 23, 2023).[8]

Given the Third Circuit's concern, we turn to the *Kilgour* matter referenced by the Third Circuit. There, it was undisputed that certain joint claimants had delayed their submission until the Enforcement staff's investigation was nearly complete. *See Order Determining Whistleblower Award Claims*, Release No. 34-82181, 2017 WL 596236, at *7 (Nov. 30, 2017) (the "2017 Order"). We therefore reasoned that, to satisfy the second paragraph of the "led to" rule, "they must demonstrate that *their* 'submission significantly contributed to the success of the action.'" *Id.* (quoting Rule 21F-4(c)(2)). Because those joint claimants' submission was duplicative of an earlier submission by another claimant, we concluded that their award claim must fail. *See id.*

On appeal of the 2017 Order, the U.S. Court of Appeals for the Second Circuit sustained our submission-focused interpretation of Rule 21F-4(c)(2). *Kilgour v. SEC*, 942 F.3d 113, 122-23 (2d Cir. 2019). That court read 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.'" *Id.* at 122. In reaching that conclusion, the Second Circuit observed that our submission-focused interpretation encourages whistleblowers to "curat[e] their submissions" to maximize utility and therefore "strikes a sensible balance between care and timeliness" in the provision of original information. *Id.* at 123.

As the Third Circuit recognized, our submission-focused interpretation of Rule 21F-4(c)(2) in the 2017 Order contrasts with how we applied Rule 21F-4(c)(1) in the 2022 Order to focus on the information rather than the submission. While an argument might be made for that distinction based on the use of the word "information" rather than "submission" in Rule 21F-4(c)(1), we reject that reading in favor of a more natural reading which harmonizes Rule 21F-4(c)(1) with the "led to" language of Section 21F(b)(1). As the Second Circuit observed, Section 21F(b)(1) "seems to require that the information *as provided by the whistleblower* must have 'led to the successful enforcement action.'" 942 F.3d at 122-23; *see also Decker v. N.W. Env't Def. Ctr.*, 568 U.S. 597, 609 (2013) (observing that a "permissible reading of the regulation … bring[s] it into harmony with … the statute" (omissions in original) (internal quotation omitted)).

[8] The Third Circuit also stated that the "Second Circuit opinion in *Kilgour* similarly casts some doubt on the SEC's invocation of 17 C.F.R § 240.21F-4(b)(5)'s 'original source' exception as justifying Claimant 1's award here." *Doe (Claimant #2)*, 2023 WL 3562977, at *3 (citing 942 F.3d at 125). But the referenced passage in the *Kilgour* opinion simply rejected certain claimants' argument that the Commission's interpretation of Rule 21F-4(c)(2) "would . . . have the effect of nullifying the original-source definition in Rule 21F-4(b)(5)." 942 F.3d at 125. Joint Claimants have not raised that argument, and we do not understand the referenced passage to have any bearing here.

Moreover, Joint Claimants' contrary interpretation of Section 21F(b)(1) and Rule 21F-4(c) would reward behavior inconsistent with the statute's design. Under an information-focused interpretation, for example, an individual could self-publish online or give information to the press, indirectly prompting the Enforcement staff to open an investigation upon finding the information in the public realm, while the individual could wait months or even years to provide that same information directly to the Commission.[9] Not only would that outcome subvert the statutory design, but it would also open the door to abusive tactics if, for example, an individual were permitted to wait until the Commission publicly filed its enforcement action before coming forward as the alleged "original source" for a news story that long ago prompted the staff's investigation.

Accordingly, we disavow the information-focused approach followed in our 2022 Order and clarify that the submission-focused interpretation in our 2017 Order applies to both Rule 21F-4(c)(1) and Rule 21F-4(c)(2). In other words, both 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. We credit the staff declaration that Joint Claimants' belated submission of information to the Commission was not in any way helpful to the staff's investigation or the Covered Action. As a result, even if we assume that Joint Claimants' submission contained original information, that submission did not lead to the successful enforcement of the Covered Action as required by Section 21F(b)(1) and Rule 21F-4(c).

C. Waiver

Finally, Joint Claimants argue that the Commission should waive any applicable procedural bars to Joint Claimants' award eligibility, including the requirement under Rule 21F-4(b)(7) to submit information to the Commission within 120 days of reporting it to an entity enumerated in the rule. They claim that they urged the Other Agency to bring the Commission into the investigation, but that the Other Agency assured them that the Other Agency would do so eventually and that Joint Claimants should leave it to the Other Agency to handle. They also claim that denying their award claim would undermine the goals of the Commission's whistleblower program and be inconsistent with prior Commission precedent.

First, the record does not support a conclusion that Joint Claimants were prohibited or impeded from reporting their allegations to the Commission. To the contrary, the record reflects that Joint Claimants contacted numerous private entities, several government agencies, including the U.S. Congress, and multiple news media outlets regarding their concerns. Joint Claimants assert that due to communications with the Other Agency in *** they relied on the Other Agency to pass on Joint Claimants' information to the Commission. Even if we credit these assertions, they do not explain why Joint Claimants waited for over a year, until Redacted , to submit information to the Commission, despite receiving no confirmation that the Other Agency communicated the information to the Commission.

[9] As we previously noted, "[t]he plain language of Section 21F . . . requires that information be 'provided' directly to the Commission in order to support an award—and makes no allowance for the online publication of information that, by happenstance, indirectly makes its way into the hands of Commission staff." *See* Order Determining Whistleblower Award Claims, Exchange Act Rel. 82955 at *5 (March 27, 2018).

Second, declining to exercise its exemptive authority to waive aspects of Rule 21F-4(b)(7) and denying Joint Claimants an award does not undermine the goals of the Commission's whistleblower program. The whistleblower program was designed to encourage persons with information about potential securities violations to report that information to the Commission. *See Digital Realty Trust*, 583 U.S. at 162. Here, Joint Claimants had concerns about the defendants beginning in ***, and yet they provided information to several other persons and entities long before reporting to the Commission for the first time in late ***, more than five years later.

Third, applying the "led to" requirement to deny an award does not result in any unfair burden to Joint Claimants. The "led to" requirement is not a mere technicality but rather helps ensure that award eligibility is limited to claimants whose submissions to the Commission actually prove to be helpful, consistent with Congress's statutory design. We see no unfairness in concluding that claimants who self-publish online or report to the press before submitting information to the Commission should generally bear the risk that the Enforcement staff may learn that information via those other sources before the staff receives the claimants' submission itself.[10]

In short, based on the facts and circumstances of this case, we decline to exercise our discretionary exemptive authority under Section 36(a) to waive the "led to" requirement as to Joint Claimants' award claim in the Covered Action.

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary

[10] This analysis is limited to the facts and circumstances presented in this record.