

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 105792 / June 29, 2026

WHISTLEBLOWER AWARD PROCEEDING
File No. 2026-29

In the Matter of the Claim for an Award
in connection with
Notice of Covered Action ^{Redacted}
^{Redacted}

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

On September 20, 2022, the Claims Review Staff (“CRS”) issued Preliminary Determinations recommending the denial of the whistleblower award claims submitted by ^{Redacted} (“Claimant 1”) and ^{Redacted} (“Claimant 2”) in connection with the above-referenced covered action (the “Covered Action”). Claimants 1 and 2 each timely filed a response contesting the preliminary denial. For the reasons discussed below, Claimant 1’s and Claimant 2’s award claims are denied.¹

I. Background

A. The Covered Action

^{Redacted} (the “Company”) ^{Redacted}
^{Redacted}
^{Redacted}

¹ Claimants 1 and 2 also applied for related-action awards in connection with ^{Redacted} ^{Redacted}. Because Claimants 1 and 2 are not eligible for an award in the Covered Action, they are not eligible for an award in any related action. *See Meisel v. SEC*, 97 4th 755, 757 (11th Cir. 2024) (claimant “does not qualify for an award based on any ‘related actions’ brought against [defendant], because the statute and regulations require that [claimant] qualify under the Covered Action as a prerequisite to bringing in any related actions, which he does not”).

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Redacted the Commission instituted Redacted
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Redacted, the Company had falsely
reported and manipulated the Company's Redacted
performance metric relied on by management, investors, and analysts to assess the Company's Redacted
financial performance (hereafter, the "Fraud"). Redacted
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On Redacted, OWB posted a Notice for the Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days, with a posted Claims Due Date of Redacted. Claimant 1 timely filed a whistleblower award claim on Redacted. Claimant 2 timely filed a whistleblower award claim on Redacted.

B. The Preliminary Determinations

On September 20, 2022, the CRS issued Preliminary Determinations recommending that Claimant 1's and 2's claims be denied.

The CRS recommended denial of Claimant 1's claim because he/she did not satisfy the original information requirement for an award. Generally, information does not qualify as "original information" if the claimant "obtained the information because [he or she was a]n officer...of an entity and another person informed [him or her] of allegations of misconduct..."² Claimant 1 learned his/her information about the Fraud because another person, Claimant 2, informed him/her within days of Claimant 2's discovery of the Fraud. Claimant 1 identified himself/herself in his/her TCR as Redacted and as "Vice President" in interactions with Enforcement staff, and therefore qualified as an officer under the Whistleblower Rules. The CRS also preliminarily determined to recommend that none of the exceptions to the officer exclusion applied.

The CRS recommended denial of Claimant 2's claim because he/she did not satisfy the voluntariness requirement to be eligible for an award. To be eligible for an award, a putative whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement by the Commission of a federal court or administrative action in which the Commission obtains monetary sanctions totaling more than \$1,000,000.³ A submission is "voluntary" if it is provided "before a request, inquiry, or demand that relates to the subject matter of your [claimant's] submission is directed to you or anyone representing you

² Exchange Act Rule (hereafter "Rule") 21F-4(b)(4)(iii).

³ Rule 21F-3(a).

(such as an attorney)” by the Commission or other federal agencies.⁴ The CRS preliminarily recommended that the Commission find that Claimant 2 did not provide information to the Commission before being contacted by the Commission or another federal agency.⁵

C. Claimants’ Responses to the Preliminary Determinations

Claimant 1 timely submitted a response contesting his/her Preliminary Determination.⁶ On reconsideration, Claimant 1 principally argues: (1) he/she was not serving as an “officer” at the time he/she learned of the Fraud; (2) even if he/she was an officer, he/she did not learn about the Fraud *because* he/she was an officer; (3) he/she satisfied two exceptions to the officer exclusion; and (4) if Commission staff had not asked him/her about unidentified “hearsay” concerns he/she referred to in his/her TCR, “[p]erhaps I would have hired a lawyer earlier to discuss with the SEC if they believe I’m an officer... [and p]erhaps I would have waited the 120+ days” for the Rule 21F-4(b)(4)(v)(C) exception to the officer exclusion to apply.”

Claimant 2 timely submitted a response contesting his/her Preliminary Determination. Claimant 2 principally argues that he/she satisfied the standard for a voluntary submission because he/she “directed” Claimant 1 to provide Claimant 2’s information about the Fraud to the Commission, and that Claimant 1 did in fact report Claimant 2’s information to the Commission on Claimant 2’s behalf. Claimant 2 argues that if the Commission finds his/her submission to involuntary, it should waive the voluntariness requirement for him/her under Section 36(a) of the Exchange Act.

II. Analysis

A. Claimant 1’s Award Claim is Denied

1. Claimant 1 was an Officer for Purposes of the Whistleblower Rules

To be eligible for an award, a putative whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement by the Commission of a federal court or administrative action in which the Commission obtains monetary sanctions totaling more than \$1,000,000.”⁷ Generally, information does not qualify as “original information” if the claimant “obtained the information because [he or she was a]n

⁴ Rule 21F-4(a)(1).

⁵ The CRS also preliminarily determined to recommend that Claimant 2 be deemed ineligible for an award because he/she did not timely submit a Form TCR, as required by Rule 21F-9(a). The Commission does not rely on Claimant 2’s failure to timely submit a Form TCR as a ground for denial of his/her claim.

⁶ See Rule 21F-10(e).

⁷ Rule 21F-3(a).

officer...of an entity and another person informed [him or her] of allegations of misconduct....”⁸
The Whistleblower Rules follow the definition of an officer under Exchange Act Rule 3b-2, which defines an “officer” to be “a president, vice president, secretary, treasury or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions....” Courts interpreting this provision have focused on the functions that an individual actually performs rather than his or her title, and title or lack of a title is not dispositive as to whether one served as an officer.⁹

Claimant 1 argues that he/she did not perform the functions that an officer would typically perform, and that he/she was a “middle manager” who should not be considered an officer. On the contrary, Claimant 1, who was Vice President ^{Redacted} ¹⁰ when he/she learned about the Fraud, was the head of one of the Company’s ^{Redacted}

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Claimant 1 contends that his/her role was ^{Redacted}
^{Redacted} before Claimant 1 reported to the Commission. ^{Redacted}

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We observe that although an individual’s responsibilities relative to other employees of a company may have some bearing on the analysis of whether one is an officer, it is not dispositive. For example, the rules do not treat large and small entities differently. A high proportion of a small company’s employees may be considered officers under Rule 3b-2, even if

⁸ Rule 21F-4(b)(4)(iii).

⁹ See *SEC v. Brown*, 740 F.Supp.2d 148, 161 (D.D.C. 2010).

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those employees have no direct reports. In these facts and circumstances, Claimant 1's functions in the ^{Redacted} Company corresponded to those of an officer.

We would also observe that, although it may be a factor in our analysis, Rule 3b-2 does not require an employee to have corporation-wide ^{Redacted} responsibilities to be considered an officer. Notably, ^{Redacted} is provided as an example of an employee who would typically be considered an officer, and a ^{Redacted} may have responsibilities that do not extend to the company as a whole.¹¹

2. Claimant 2 Provided Information to Claimant 1 Because Claimant 1 Was an Officer

Rule 21F-4(b)(4)(iii) provides that information generally will not satisfy the original information requirement "if you [claimant] obtained the information because you were ... [a]n officer, director, trustee, or partner of an entity and another person informed you of allegations of misconduct." Here, it is undisputed that Claimant 2 informed Claimant 1 of the Fraud. However, Claimant 1 argues that even if he/she is considered an officer of the Company, Claimant 2 did not inform Claimant 1 of the Fraud *because* he/she was an officer.

Claimant 1 contends that Claimant 2 told him/her about the Fraud because of the close friendship the two had developed. Claimant 2 explained that Claimant 1 had invited him/her and his/her family to Claimant 1's house for dinner and had several outings together.

We do not discount that the strength of Claimant 2's personal bond with Claimant 1 may have encouraged him/her to provide information about the Fraud to Claimant 1. So much is clear from Claimant 2's submission, which explains how he/she admired Claimant 1's "moral compass" and reliability. However, we do not believe that this can easily be separated from the evidence that that relationship developed in part from Claimant 1's seniority and experience.

Claimant 1 and 2 ^{Redacted} Claimant 2 explained, "the combination of friendship and experience led me to view [Claimant 1] as a mentor," evidencing that Claimant 2's relationship with Claimant 1 had a strong professional component. The weight of the evidence in the record supports the conclusion that Claimant 2 told Claimant 1 of the Fraud because Claimant 1 was an officer of the Company.

¹¹ Claimant 1 also argues that the Company did not view him/her as an officer, ^{Redacted}

^{Redacted} . But whether a company would consider an individual an officer in other contexts raises different questions than whether one is an officer for purposes of Rule 3b-2.

It is consistent with the purpose of the Whistleblower Rules to read the “because you were [an] officer” language of Rule 21F-4(b)(4)(iii) in this way. The underlying purpose of the officer exclusion is to prevent “front running” of internal investigations by individuals who, because of their position, should be viewed as acting on behalf of the entity when others in the organization present them with allegations of misconduct.¹² We do not believe this purpose would be served by declining to apply the officer exclusion where an officer and another employee have developed a strong personal and professional relationship, as the same concerns the Rule was trying to address remain.

3. Claimant 1 Does Not Qualify for an Exception to the Officer Exclusion

An exception to the officer exclusion may apply if “[y]ou [claimant] have a reasonable basis to believe that disclosure of the information to the Commission is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors.”¹³ Claimant 1 contends that the Company’s last Form 10-Q filing with the Commission had included fraudulent financial metrics, and that he/she believed the same fraudulent metrics would be included in the Company’s next Form 10-Q filing.

We find Claimant 1’s argument about the Fraud continuing through the next Form 10-Q filing to be speculative. In light of record evidence of Redacted

Redacted, we do not credit Claimant’s argument that he/she had a reasonable basis to believe that disclosure of the information to the Commission was necessary to prevent the relevant entity from engaging in conduct that was likely to cause substantial injury to the financial interest or property of the entity or investors. Nor has the Commission previously applied the “substantial injury” exception in the context of a public company that had already filed fraudulent financial statements with the Commission. To do so would threaten to undermine the officer exclusion whenever periodic financial reporting by a public company is involved.¹⁴

¹² See Adopting Release to Whistleblower Rules (“Adopting Release”), at 64-65 (“We were concerned [in the Proposing Release] about creating incentives for company personnel to seek a personal financial benefit by ‘front running’ internal investigations and similar processes that are important components of effective company compliance programs.”).

¹³ Rule 21F-4(b)(4)(v)(B).

¹⁴ The Adopting Release explains that:

For purposes of Rule 21F-4(b)(4)(v), in order for a whistleblower to claim a reasonable belief that disclosure of information to the Commission is necessary to prevent the relevant entity from

Claimant 1 also argues that he/she qualifies for an exception to the officer exemption under Rule 21F-4(b)(4)(v)(B), which applies when a claimant had “a reasonable basis to believe that the relevant entity [wa]s engaging in conduct that will impede an investigation of the misconduct.” However, Claimant 1 knew that the Company

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Claimant 1 contends that he/she was aware of other securities-law violations by management and had reasonable suspicions about

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But knowledge of misconduct at an entity or concerns about Redacted do not by themselves give rise to a reasonable belief the entity would impede an investigation of that misconduct.

The only arguable evidence Claimant 1 points to about impeding an investigation was that no remedial action concerning the Fraud had been taken two weeks after

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two weeks does not appear to be an unreasonably long time to investigate Claimant 1’s allegations. Nor does Claimant 1 explain how he/she would have had visibility into Redacted to know whether his/her allegations were being addressed. We do not believe that the record contains sufficient support for a finding that Claimant 1 had a reasonable belief that the Company would impede investigation of the Fraud.

4. Claimant 1’s Argument that He/She Might Have Learned About the Officer Exclusion is Without Merit

In his/her TCR, Claimant 1 mainly provided information about other potential securities-law violations but mentioned that he/she knew about other “hearsay” items, which turned out to be the Fraud. After Commission staff asked him/her about these unconfirmed concerns, Claimant 1 told them what he/she knew about the Fraud. Claimant 1 argues that if staff had not asked him/her about the “unconfirmed concerns” Claimant 1 had conveyed to the Commission, Claimant 1 might have learned about the officer exclusion and its exceptions either through his/her own efforts or by hiring a lawyer. He/she reasons that had he/she learned about the exception to officer exclusion in Rule 21F-4(b)(4)(v)(C),¹⁵ he/she might have waited 120 days before submitting information about the Fraud to the Commission. This is highly speculative—

committing substantial harm, we expect that in most cases the whistleblower will need to demonstrate that responsible management or governance personnel at the entity were aware of the imminent violation and were not taking steps to prevent it.

Here, Claimant 1 has not shown that responsible management or governance personnel at the Company were aware of an imminent violation and not taking steps to prevent it.

¹⁵ Rule 21F-4(b)(4)(v)(C) provides an exception to the officer exclusion if:

At least 120 days have elapsed since you [claimant] provided the information to the relevant entity’s audit committee, chief legal officer, chief compliance officer (or their equivalents), or your supervisor, or since you received the information, if you received it under circumstances indicating that the entity’s audit committee, chief legal officer, chief compliance officer (or their equivalents), or your supervisor was already aware of the information.

even Claimant 1 says it is “doubtful” he/she would have done so. What matters is what Claimant 1 actually did, and he/she did not wait 120 days after learning about the Fraud to report it to the Commission.

B. Claimant 2’s Award Claim is Denied

1. Claimant 2 Did Not Submit His/Her Information to the Commission Voluntarily

To be eligible for an award, a whistleblower must, among other requirements, submit his/her information to the Commission voluntarily. As the Whistleblowers Rules explain,

Your [claimant’s] submission of information is made voluntarily within the meaning of [the Whistleblower Rules] if you provide your submission before a request, inquiry, or demand that relates to the subject matter of your submission is directed to you or anyone representing you (such as an attorney)...[b]y the Commission

and certain other authorities, including other federal agencies.¹⁶

In assessing whether Claimant 2 satisfied the voluntariness requirement, the sequence of events is significant. Within two days of learning about the Fraud, Claimant 2 told his/her supervisor, Claimant 1, about the Fraud. Claimant 2 personally witnessed aspects of the Fraud; Claimant 1 had no personal knowledge of the Fraud. About two months after Claimants 1 and 2 learned of the Fraud, Claimant 1 submitted a TCR to the Commission that alleged unrelated securities-law violations by the Company. The TCR referred to certain unidentified “hearsay” items pertaining to the Fraud and explained “[o]nly the concrete items that I can support are in this complaint.”

The record shows that around this time, Claimants 1 and 2 had many conversations about the Fraud and whether it would be discovered. When Commission staff reached out to Claimant 1 about the “hearsay” items in the days following his/her TCR submission, Claimant 1 told the Commission about the Fraud and pointed them to Claimant 2 as a witness. Shortly thereafter the Commission and another federal agency (the “Other Agency”) contacted Claimant 2, who had not at that point submitted a TCR or contacted the Commission.

The question here is whether Claimant 1’s provision of Claimant 2’s information to the Commission in these circumstances constitutes a submission of information to the Commission *by Claimant 2*. The record supports a finding that Claimant 1, not Claimant 2, first alerted the Commission to the Fraud, and that Claimant 1’s provision of that information was not a

¹⁶ Rule 21F-4(a)(1).

submission of information by Claimant 2. When the Commission and/or Other Agency requested information about the Fraud from Claimant 2, Claimant 2 had not submitted information about the Fraud to the Commission. Therefore, Claimant 2 did not submit information to the Commission before the Commission or another federal agency contacted him/her to provide information about the Fraud.

We do not think the goals of the Whistleblower Program would be served in most circumstances by finding the voluntariness requirement satisfied where a claimant claims to have provided information to the Commission through an intermediary. To do so would undermine some of the purposes of the TCR requirement—to memorialize the information a whistleblower provides the Commission and to identify who is entitled to protection from retaliation. More fundamentally, though, we want to encourage those with knowledge of potential securities-law violations to provide their information directly to the Commission themselves.

2. A Section 36(a) Waiver Is Not Warranted Here

Section 36(a) of the Exchange Act 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 an exemption is (i) necessary or appropriate in the public interest, and (ii) consistent with the protection of investors. In analyzing whether the standard for a Section 36(a) exemption has been met, the Commission has considered (1) whether the unique circumstances of a particular matter raise considerations and arguments substantially different from those which were carefully considered at the rulemaking proceeding, and (2) whether application of the rule in a particular matter would result in hardship, unfairness, or inequity.¹⁷ The Commission may, in its sole discretion, decline to entertain any application for an order of exemption.¹⁸

Claimant 2 argues that even if he/she did not submit his/her information voluntarily to the Commission, the Commission should use its Section 36(a) authority to waive that requirement and grant him/her an award. However, we do not believe that Claimant 2's claim presents unique circumstances that would warrant Section 36(a) relief. In light of the fact that Claimant 2 had personal knowledge of the Fraud but relied on another person to provide information about the Fraud to the Commission, there is no unfairness in applying the voluntariness requirement here.

Claimant 2 principally relies on a Commission order¹⁹ in which the claimant failed to satisfy Rule 21F-9(d)'s requirement that, to form the basis for an award, information must be

¹⁷ *Order Determining Whistleblower Award Claim*, Ex. Act Rel. No. 92086 (June 2, 2021).

¹⁸ Exchange Act Section 36(a)(2), 15 U.S.C. § 78mm(a)(2).

¹⁹ *Order Determining Whistleblower Award Claim*, Ex. Act Rel. No. 88687 (Apr. 20, 2020).

submitted to the Commission in writing. Claimant 2 argues that he/she resembles the claimant in the earlier matter in that he/she (1) was expeditious in alerting a co-worker of his/her concerns that a company was operating a fraudulent scheme; (2) understood that this co-worker, in turn, provided the information and documentation to the Commission; and (3) thereafter provided additional follow-up information to Enforcement staff in the form and manner staff requested. However, the Commission in that matter granted a Section 36(a) waiver of the Rule 21F-9(d) requirement that a claimant submit information in writing.²⁰

In contrast, Claimant 2 seeks a waiver of one of the core eligibility requirements for a whistleblower award—the voluntary submission of information.²¹ The Commission has rarely waived the voluntariness requirement, and never for a claimant who provided his/her information to another person who made a submission to the Commission.²² We do not believe that policy rationales underlying the voluntariness requirement would be served by a waiver here. A waiver here would not encourage future potential whistleblowers “to come forward early with information about possible violations of the securities laws rather than wait until Government or other official investigators ‘come knocking on the door.’”²³

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimants 1 and 2 in connection with the Covered Action be, and it hereby are, denied.

By the Commission.


Vanessa A. Countryman
Secretary

²⁰ Claimant 2 relies on other Commission orders in support of his/her request for Section 36(a) relief, but these all concern the “in writing” requirement and not the voluntariness requirement.

²¹ *Order Determining Whistleblower Award Claim*, Ex. Act Rel. 97529, at 7 (May 19, 2023).

²² *Order Determining Whistleblower Award Claim*, Ex. Act Rel. No. 72727 (July 31, 2014) (Section 36(a) waiver granted where self-regulatory organization inquiry originated from information third party provided to SRO that in part described claimant’s role in identifying the issue that gave rise to the violations and efforts to obtain corrective action; claimant made “persistent efforts in reporting to Commission once Claimant learned that the SRO inquiry had been closed and that would not protect investors from future harm.”); *Order Determining Whistleblower Award Claim*, Ex. Act Rel. No. 84046 (Sept. 6, 2018) (Section 36(a) waiver granted where claimant was interviewed by another agency, and at that time, the claimant did not know information that later supplied critical basis for claimant’s whistleblower tip to Commission); *Order Determining Whistleblower Award Claim*, Ex. Act Rel. No. 86010 (June 3, 2019) (Section 36(a) granted where claimants were unaware of request from another agency to their employer for information).

²³ Proposing Release for Whistleblower Rules, 75 Fed. Reg. at 70,490.