

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 105050 / March 19, 2026

WHISTLEBLOWER AWARD

PROCEEDING File No. 2026-6

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 Redacted (“Claimant”) in connection with the above-referenced covered action (the “Covered Action”). Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant’s award claim is denied.

I. BACKGROUND

A. The Covered Action

On Redacted, the Commission instituted settled administrative and cease-and-desist proceedings against Redacted (“the Firm”) and Redacted (“Individual Respondent”). The Commission’s Order found that the Firm and Individual Respondent Redacted associated with a multimillion-dollar Redacted (“the Offering”). In particular, the Commission’s Order found that the Firm and Individual Respondent Redacted

Redacted in order to Redacted. The Firm, however, did not Redacted.

Redacted. As a result, the Firm’s statements that were incorporated in the Redacted

Redacted . The Commission's Order imposed monetary sanctions of more than \$1 million against the Firm and Individual Respondent.

B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that the award claim of Claimant in connection with the Covered Action be denied. Claimant did not provide "original information" that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 21F-3(a)(2) and 21F-4(b) thereunder because Rule 21F-4(b)(4)(vi) (the "derivative use rule") precludes crediting a whistleblower with "original information" if the information was obtained from an excluded person, "unless the information is not excluded from that person's use . . . or you are providing the Commission with information about possible violations involving that person." In making this determination, the CRS considered that Claimant obtained the information from persons subject to the officer/director exclusion and the record did not support the application of an exception to the officer/director exclusion.¹ Specifically, after Claimant left the Firm, he/she obtained the information about the securities law violation from the Firm's Redacted ("Officer"), who had acquired the information from a subordinate.

While Claimant contended that the Officer satisfied the 120-day exception to the officer/director exclusion, the record did not support the conclusion that the Officer had reported the information to the company's audit committee, chief legal officer, chief compliance officer, or to his supervisor, or that the Officer "received the information . . . under circumstances indicating that the entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or [his/her] supervisor was already aware of the information."²

After submitting his/her award claim, Claimant also claimed, for the first time, that Claimant had obtained the information from three additional sources, whose titles included Associate Vice President/Regional Director; Regional Vice President of Sales; and Senior Vice President (collectively, "Other Three Sources"). The CRS preliminarily determined that the Other Three Sources also fell within the officer/director exclusion and that the record did not

¹ Exchange Act Rule 21F-4(b)(4)(iii)(A) states that "[t]he Commission will not consider information to be derived from your independent knowledge or independent analysis" if you obtained the information because you were an "officer, director, trustee, or partner of an entity and another person informed you of allegations of misconduct, or you learned the information in connection with the entity's processes for identifying, reporting, and addressing possible violations of law." The Adopting Release for Implementation ("Adopting Release") defines an "officer" by reference to Rule 3b-2 under the Exchange Act, 17 C.F.R. § 240.3b-2. *See* Securities Whistleblower Incentives and Protections, Release No. 34-64545, 76 Fed. Reg. 34300, 34318 (June 13, 2011). Rule 3b-2 provides that the term "officer" means "a president, vice president, secretary, treasurer or principal financial officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated." 76 Fed. Reg. at 34318.

² Exchange Act Rule 21F-4(b)(4)(v)(C) provides that at least 120 days have elapsed since the individual reported the information internally to the company's audit committee, chief legal officer, chief compliance officer, or to his supervisor, or since the whistleblower received the information, if he received it under circumstances indicating that the audit committee, chief legal officer, chief compliance officer, or his supervisor was already aware of the information.

support the conclusion that the Other Three Sources satisfied the 120-day exception or any other exception to the officer/director exclusion. Nor did Claimant’s tip involve allegations of wrongdoing by the persons from whom he/she allegedly obtained the information. Thus, under the derivative use rule (Rule 21F-4(b)(4)(vi)), Claimant’s information did not satisfy the “original information” requirement for award eligibility.

C. Claimant’s Response to the Preliminary Determination

Claimant provided a timely request for reconsideration (“Response”). In the Response, Claimant principally argues that: (1) only the ^{Redacted} of the Firm, ^{Redacted} (“Founder 1”) and ^{Redacted} (“Founder 2”), could have authorized the ^{Redacted} scheme,” and as such, must have been aware of the misconduct; (2) Claimant’s supplemental declaration, submitted with the Response, provides un rebutted evidence that Founder 1 and Founder 2 were aware of the misconduct by virtue of the fact that they had to be the ones to authorize the ^{Redacted} scheme;” (3) Claimant’s supplemental declaration is not rebutted by the Enforcement staff declaration which only states that the Officer said during his interview that he did not know if Founder 2 was aware of the misconduct (and did not address Founder 1); (4) the sources of his/her information – the Officer and the Other Three Sources – satisfy the 120-day exception to the officer/director exclusion because Founder 1 and Founder 2 knew of the misconduct;³ and (5) the CRS interpreted the term “officer” too broadly in finding that the Other Three Sources fell within the officer/director exclusion.

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.⁴ To qualify as “original information,” a claimant’s information must be “[d]erived from [his/her] independent knowledge or independent analysis,” among other requirements.⁵

Exchange Act Rule 21F-4(b)(4)(iii)(A) states that “[t]he Commission will not consider information to be derived from your independent knowledge or independent analysis” if you obtained the information because you were an “officer, director, trustee, or partner of an entity and another person informed you of allegations of misconduct, or you learned the information in connection with the entity’s processes for identifying, reporting, and addressing possible violations of law[.]” An individual falling within the officer/director exclusion may still be eligible for an award, however, if at least 120 days have elapsed since the individual reported the information internally to the Firm’s audit committee, chief legal officer, chief compliance officer, or to his supervisor, or since the whistleblower received the information, if he received it under

³ While there are additional exceptions to the officer/director exclusion, including the “substantial injury” and “impede an investigation” exceptions, Claimant does not rely on these other exceptions, and we note that the record does not support the conclusion that either of these exceptions would apply based on the facts and circumstances of this case.

⁴ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁵ See Exchange Act Rule 21F-4(b)(1)(i).

circumstances indicating that the audit committee, chief legal officer, chief compliance officer, or his supervisor was already aware of the information.⁶ Further, Exchange Act Rule 21F-4(b)(4)(vi) (the “derivative use rule”) precludes crediting a whistleblower with “original information” if the information was obtained from an excluded person, “unless the information is not excluded from that person’s use . . . or you are providing the Commission with information about possible violations involving that person.”

As an initial matter, we note that the record includes two declarations (an initial declaration and a supplemental declaration) from Enforcement staff responsible for the Covered Action, which we credit, that support the conclusion that Claimant received his/her information from an excluded person. During the investigation, Enforcement staff specifically asked Claimant for the source of his/her information that the Firm was ^{Redacted} in connection with the Offering, and Claimant identified the Officer. The record further supports the conclusion that the Officer learned of the information from a subordinate, meaning that the Officer falls within the officer/director exclusion. Claimant does not dispute that the Officer falls within the officer/director exclusion.

In the Response, Claimant asserts that the Officer satisfies the 120-day exception under Exchange Act Rule 21F-4(b)(4)(v)(C), because only Founder 1 and Founder 2 could have authorized the ^{Redacted} scheme,” and therefore they clearly knew about the scheme from its inception because only they could have authorized it. Claimant contends that because he/she provided a sworn declaration saying that Founder 1 and Founder 2 were the only ones who could have authorized the ^{Redacted} scheme,” his/her evidence stands unrebutted in the record.

We disagree with Claimant’s argument. *First*, Claimant appears to conflate the fact of the Offering, which was not unlawful itself, with the Firm’s ^{Redacted} in order to ^{Redacted} with respect to the Offering, which was the conduct found in the Commission’s Order. That Founder 1 and Founder 2 were aware of and/or authorized the Offering does not mean that they were also aware of and/or authorized the ^{Redacted}. *Second*, neither in his/her tip nor in his/her communications with Enforcement staff, did Claimant allege that Founder 1 or Founder 2 had authorized and/or was aware of the ^{Redacted}. Claimant is making this contention for the first time in connection with his/her award claim application. *Third*, Claimant states generally that Founder 1 and Founder 2 were aware of the ^{Redacted} scheme” but offers no facts or evidence supporting that they were aware of the violative conduct. Claimant does not provide any information as to *what* specific conduct they were aware of and *when* they learned of it. Simply saying that they must have known does not make it so.

Contrary to Claimant’s speculation that Founder 1 and Founder 2 must have been aware of the ^{Redacted} scheme,” the record supports the conclusion that the Officer did not obtain the information regarding the misconduct at issue under circumstances indicating that the Firm’s audit committee, chief legal officer, chief compliance officer, or his supervisor was already aware of the information. According to the Enforcement staff declaration, Enforcement staff did

⁶ See Exchange Act Rule 21F-4(b)(4)(v)(C).

not have information that Founder 1 or Founder 2 were aware of the Firm's ^{Redacted}
^{Redacted} in order to ^{Redacted} with respect to the Offering. The Officer told
Enforcement staff that he did not know whether Founder 2 was aware of the misconduct, and the
Commission did not make any findings regarding Founder 1 or Founder 2's involvement in the
Covered Action. These are all aspects of the record that undermine Claimant's assertions.⁷

Thus, the record evidence is insufficient to support the conclusion that the Officer
received the information regarding the Firm's ^{Redacted}
^{Redacted} in connection with the Offering under circumstances
indicating that the Officer's supervisors were already aware of this information as required under
Exchange Act Rule 21F-4(b)(4)(v)(C). The record also does not reflect that the Firm's audit
committee, chief legal officer, or chief compliance officer were aware of the ^{Redacted}
^{Redacted} in connection with the Offering. Furthermore,
while the "derivative use rule" does not apply where a whistleblower provides information about
possible violations involving the person who is subject to the exclusion, Claimant did not allege
that the Officer was involved in the misconduct.

Turning to Claimant's next argument that he/she learned his/her information from the
Other Three Sources and that they do not fall within the officer/director exclusion, we do not
find this argument to have merit. *First*, we do not find Claimant's claim that he/she had
additional sources for his/her information – the Other Three Sources – to be credible, considering
Claimant did not identify these individuals as the sources of his/her information for the ^{Redacted}
^{***} scheme" when asked directly by Enforcement staff during the investigation. Claimant stated
for the first time in response to questions from Office of the Whistleblower ("OWB") staff
regarding his/her application that, in addition to the Officer, Claimant obtained the information
that became the basis for his/her tip from the Other Three Sources.⁸ We find it particularly telling
that when Enforcement staff asked Claimant in writing for the source of his/her information that
the Firm had ^{Redacted} in connection with
the Offering, the Claimant replied in writing identifying only the Officer as the source of his/her
information. *Second*, even assuming that Claimant learned the violative conduct from the Other
Three Sources, and forgot to inform Enforcement staff when asked, the Other Three Sources also

⁷ Claimant also states that he/she did not approach the Officer for a declaration because of concerns that he/she would risk "outing" him/herself as a whistleblower, but suggests that Commission staff should obtain the Officer's testimony to address the points Claimant makes in his/her Response – namely, that only Founder 1 and Founder 2 could have authorized the ^{Redacted} scheme." We find this request disingenuous. First, as Claimant is aware, Commission staff are statutorily prohibited from disclosing information which could reasonably be expected to reveal the identity of a whistleblower unless certain exceptions apply. *See* Exchange Act Section 21F(h)(2). It is difficult to imagine a situation where Commission staff could contact the Officer and raise the points addressed in Claimant's response without revealing Claimant's identity as a whistleblower. Second, considering the dearth of evidence Claimant has brought forth supporting his/her speculations, coupled with the evidence in the record that undermines his/her arguments, we do not believe obtaining testimony from the Officer would be a fruitful or necessary exercise.

⁸ Claimant also referred to a fourth individual in a supplemental response to OWB's request for additional information, but the Claimant did not identify what information, if any, he/she obtained from the fourth individual and does not reference the fourth individual in his/her Response.

fall within the officer/director exclusion and do not satisfy the 120-day exception or any other exception to the exclusion.

In the Response, Claimant asserts that the information he/she obtained from the Other Three Sources is not excluded and would satisfy the 120-day exception under Exchange Act Rule 21F-4(b)(4)(v)(C) as the Other Three Sources “received the information . . . under circumstances indicating that the entity’s audit committee, chief legal officer, chief compliance officer (or their equivalents), or [his/her] supervisor was already aware of the information.” However, Claimant did not provide information about how the Other Three Sources obtained their information other than noting, in a supplemental declaration in response to questions from OWB, that one of them had a discussion with ^{Redacted} at the Firm. In another supplemental declaration, Claimant stated that the supervisors of the Other Three Sources “would have been aware of the ^{Redacted} ^{***} scheme” more than 120 days before the Claimant submitted his/her TCR to the Commission, and that the ^{Redacted} scheme” “was so well known within the firm that it would be hard to imagine that these persons” (the supervisors of the Other Three Sources) “were not aware of it.” However, the Claimant also acknowledged that he/she “has no direct knowledge of conversations on the subject” that the Other Three Sources had with their supervisors. As a result, there is not enough evidence in the record to conclude that any of the Other Three Sources “received the information . . . under circumstances indicating that the entity’s audit committee, chief legal officer, chief compliance officer (or their equivalents), or [their] supervisor was already aware of the information.” Thus, there is not enough evidence in the record to support the conclusion that the Other Three Sources satisfy the 120-day exception, or any other exception, to the officer/director exclusion.

Lastly, Claimant asserts that the CRS applied too expansive an interpretation of the term “officer,” and that it would be contrary to the SEC’s regulatory framework and intent to treat broad swaths of personnel – such as all individuals with a “Vice President” title – as officers, when only those with actual, enterprise-level policy-making authority are intended to be captured.⁹ Claimant contends that the Other Three Sources were not “core” persons at the Firm and did not have any real policy-making authority to qualify as “officers” under Exchange Act Rule 21F-4(b)(4)(iii) and therefore, it was improper to consider the Other Three Sources as excluded persons. Claimant further asserts that the CRS’s interpretation of “officer”, encompassing anyone with the term “Vice President” in their title, would automatically preclude large swaths of people from being whistleblowers.

The Commission’s adopting release for the whistleblower program rules makes clear that the term “officer” encompasses “vice presidents.”¹⁰ We agree, however, that title alone as well as

⁹ Claimant asserts that the Commission has recognized that titles alone are not determinative of officer status and that only those vice presidents who are in charge of a principal business unit, division, or function—and who have real policy-making authority—qualify as “officers” under the rule and cites to SEC Release No. 34-28869, 56 Fed. Reg. 7242, 7245 (Feb. 21, 1991) (“[T]he term ‘executive officer’ is intended to refer only to those officers who are in charge of principal business units, divisions or functions.”). However, SEC Release No. 34-28869 pertains to disclosure requirements for issuers regarding the filing of ownership reports by officers, directors, and principal security holders and pre-dates the whistleblower rules that discuss the “original information” requirement and the officer/director exclusion and derivative use rules.

¹⁰ See note 1 *supra*.

the lack of any title – is not determinative. Rather, the question turns on a facts-and-circumstances analysis of the individual’s role and responsibilities within the organization and determination as to whether treating the individual as an “officer” is consistent with the intent behind the particular statutory or regulatory regime at issue.¹¹ Accordingly, in the context of the whistleblower rules, the Commission’s evaluation of whether an individual is an “officer” includes consideration of the individual’s functional role and responsibilities in the context of the organization, as well as the animating purpose of the officer/director exclusion (and of the other exclusions in Exchange Act Rule 21F-4(b)(4)(iii)) to “ensur[e] that the persons most responsible for an entity’s conduct and compliance with law are not incentivized to promote their own self-interest at the possible expense of the entity’s ability to detect, address, and self-report violations.”¹² Claimant, however, has not provided sufficient information for the Commission to evaluate whether the Other Three Sources are officers by taking into account their functional roles and responsibilities in the context of the Firm.¹³ Part of the challenge in assessing the roles and responsibilities of the Other Three Sources stems from the fact that Claimant did not identify these other individuals as the source of his/her information during the investigation, and as such, Enforcement staff cannot speak to their job responsibilities, or how they obtained their information or whether they reported their information to their supervisors. Thus, there is insufficient evidence in the record for the Commission to conclude that the Other Three Sources are not officers and would not fall within the officer/director exclusion despite their titles; and as noted above, there is insufficient evidence in the record to conclude that the Other Three Sources satisfied an exception to the officer/director exclusion. Like with the Officer, Claimant also did not allege that the Other Three Sources were involved in the securities law violation.

In short, we find that Claimant obtained the information relevant to the findings in the Covered Action from persons who are subject to the officer/director exclusion for original information and the record does not support the application of an exception to those sources of information; nor does the record support the conclusion that Claimant alleged that the Officer or Other Three Sources were involved in the underlying securities violations. Thus, under the derivative use rule, Claimant’s information does not satisfy the “original information” requirement.

¹¹ See Ownership Reports and Trading by Officers, Directors and Principal Stockholders, Release Nos. 34-26333 and 35-24768, 53 Fed. Reg. 49997, 50000 (Dec. 13, 1988) (noting, in proposing new definition of officer for purposes of section 16, that “If applied literally, the Rule 3b-2 definition of ‘officer’ can be too broad in the context of Section 16; of particular concern is the inclusion of all vice presidents in the definition.”).

¹² See Adopting Release, 76 Fed. Reg. at 34314.

¹³ In the Response, Claimant cross-references the Firm’s website with its current listing of employees and dedicated page for its Executive Team; however, Claimant does not provide information regarding the functional roles and responsibilities of the Other Three Sources when they provided information to Claimant.

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary