

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 95384 / July 28, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2022-68

In the Matter of the Claims for Award

in connection with

Redacted

Redacted

Notice of Covered Action ^{Redacted}

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of whistleblower award claims submitted by ^{Redacted} (“Claimant 1”), ^{Redacted} (“Claimant 2”), and ^{Redacted} (“Claimant 3”) (collectively, “Claimants”) in connection with the above-referenced Covered Action (the “Covered Action”). Claimants filed timely responses contesting the preliminary denial. Subsequent to issuing the Preliminary Determination, the Commission adopted Securities Exchange Act of 1934 (“Exchange Act”) Rule 21F-9(e), which provides for an automatic waiver of the Form TCR filing requirements under Rules 21F-9(a) and (b) where the claimant submits a Form TCR within 30 days of learning of the TCR filing requirement and the record unambiguously shows that the claimant would otherwise qualify for a whistleblower award. As such, the CRS now recommends that Claimant 1 receive an award of ^{Redacted} percent ^{Redacted} which will equal a payment of more than \$5 million. The CRS continues to recommend that the award claims of Claimants 2 and 3 be denied.¹ For the reasons stated below, we agree with the CRS’s recommendations.

¹ The CRS also preliminarily denied the claim submitted by a fourth claimant, who did not seek reconsideration, which became final through operation of law.

I. Background

A. The Covered Action

On ^{Redacted} the Commission instituted a settled enforcement action, ^{Redacted}
^{Redacted} The
Commission found that ^{Redacted} (“Respondents”) violated
the federal securities laws through ^{Redacted}
^{Redacted}
^{Redacted}
^{Redacted}

The Respondents agreed to pay disgorgement of ^{Redacted} prejudgment interest of ^{Redacted}
and a civil money penalty in the amount of ^{Redacted} which has been fully collected.

On ^{Redacted} the Office of the Whistleblower posted Notice of Covered Action
^{Redacted} for the Covered Action. The Claimants each submitted a timely award application for the
Covered Action.

II. Claimant 1’s Award Claim

The recommendation of the CRS is adopted. The record demonstrates that Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.²

Exchange Act Rule 21F-9(e) sets forth certain procedural requirements that claimants must comply with including, among other things, filing a tip on a Form TCR within 30 days of supplying the information to the Commission, in order to be eligible for a whistleblower award. Exchange Act Rule 21F-9(e) provides for a waiver of this procedural requirement in certain circumstances where: (1) a claimant can demonstrate to the satisfaction of the Commission that he or she complied with the Form TCR requirements within 30 days of first obtaining actual or constructive notice about these requirements (or 30 days from the date a claimant retains counsel to represent him or her in connection with the submission of original information to the Commission, whichever occurs first); and (2) the Commission can readily develop an administrative record that unambiguously demonstrates that claimant would otherwise qualify for an award. Here, although Claimant 1 did not file a Form TCR within 30 days of first contacting the Commission, Claimant 1 satisfies Exchange Act Rule 21F-9(e) and is entitled to a waiver of this procedural requirement because the record reflects that Claimant 1 submitted a Form TCR within 30 days of learning of the TCR filing requirement and Claimant 1 otherwise unambiguously qualifies for an award.

² See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

Applying the award criteria in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find the proposed amount is appropriate.³ In reaching that determination, we considered that Claimant 1 alerted Commission staff to the conduct and provided additional assistance by meeting with staff in-person and identifying potential witnesses. Claimant 1 also waited approximately two and a half years after learning of the conduct to report it to the Commission. On balance, we find that a ^{Redacted} percent (^{***}) award appropriately recognizes Claimant 1's level of contribution to the Covered Action while also considering Claimant 1's unreasonable reporting delay.

III. Claimant 2's Award Claim Is Denied

A. CRS's Preliminary Denial

The CRS preliminarily determined to deny Claimant 2's award claim because Claimant 2 failed to provide information that led to the successful enforcement of the 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. Claimant 2's information did not: cause the Commission to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Exchange Act; or significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act⁴.

Claimant 2's information did not cause Enforcement staff to open the investigation. Staff had already opened the investigation a year prior to receiving Claimant 2's information.

Claimant 2's information also did not significantly contribute to the success of the action. Enforcement staff conducted significant investigative steps between when the investigation was opened and when Claimant 2 submitted the information. While Enforcement staff received Claimant 2's information and met with Claimant 2, Enforcement staff were already aware of the allegations raised by Claimant 2, and none of the information provided by Claimant 2 (or by the employee identified by Claimant 2) was used to advance the investigation. Furthermore, certain of Claimant 2's allegations were investigated further by staff but could not be substantiated and did not become part of the Covered Action.

³ Exchange Act Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) law enforcement interest in deterring violations in granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems. 17 C.F.R. §240.21F-6.

⁴ In determining whether an individual's information significantly contributed to an action, we may consider factors such as "whether the information allowed us to bring the action in significantly less time or with significantly fewer resources; additional successful claims; or successful claims against additional individuals or entities. The individual's information must have been 'meaningful' in that it 'made a substantial and important contribution' to the success of the covered action." *Order Determining Whistleblower Award*, Release No. 34-85412 (Mar. 26, 2019).

B. Claimant 2's Response and Analysis

In Claimant 2's Response, Claimant 2 primarily argues that Claimant 2 provided relevant information that Enforcement staff used in the Covered Action, including the following information:

Redacted statements and that
Redacted (b) regarding the circumstances of Redacted
creation (including the identification of Redacted (c) regarding ***
Redacted and (d) concerning Redacted
Redacted

Redacted Claimant 2 also argues that the witness Claimant 2 identified to staff, and whom the staff interviewed twice, provided valuable information concerning Redacted and identified key witnesses who were involved Redacted 5

Based on the record, including an initial declaration ("Initial Declaration") and supplemental declaration ("Supplemental Declaration") from the Enforcement staff, we conclude that Claimant 2's information did not lead to the success of the Covered Action.

The timeline of investigative developments and events—which Claimant 2 does not dispute—is highly relevant to our consideration of Claimant 2's award claim. The investigation that resulted in the Covered Action was opened in Redacted In the ensuing year before Claimant 2 submitted Claimant 2's TCR (in Redacted the staff engaged in significant investigative activities, including reviewing a voluminous number of documents and taking investigative testimony of numerous individuals. Against this backdrop, the Supplemental Declaration makes clear that Enforcement staff, prior to Claimant 2's provision of information, already had a thorough understanding of the Redacted and were aware of which employees were responsible for Redacted As such, Claimant 2's information was duplicative of information Enforcement staff had already obtained from Claimant 1 and through their own investigative efforts and did not help advance the investigation.

Furthermore, the Supplemental Declaration demonstrates that the witness identified by Claimant 2 did not supply any new information that contributed to the matter. When Enforcement staff spoke to this witness, the investigation had been ongoing for approximately 18 months. Moreover, the Enforcement staff were already aware of the individuals identified by the witness prior to speaking with the witness. Staff took testimony from the individuals involved in the Redacted

⁵ Claimant 2 made other allegations, which Enforcement staff investigated but which did not become part of the Covered Action, which Claimant 2 does not dispute in the Response.

Redacted including one of the individuals later identified by the witness. All of this occurred before the witness was interviewed in Redacted

In sum, Claimant 2's information did not lead to the success of the Covered Action because it was duplicative of information that staff had already learned prior to Claimant 2's submissions. None of the information provided by Claimant 2 helped the Enforcement staff (1) save time and resources, (2) recommend bringing additional charges, or (3) recommend bringing charges against any additional parties.

IV. Claimant 3's Award Claim Is Denied

A. CRS's Preliminary Denial

The CRS recommended that Claimant 3's award claim be denied on two grounds. *First*, Claimant 3 did not submit information that led to the success of the Covered Action. Enforcement staff responsible for the investigation had no communications with Claimant 3 and received no information from Claimant 3. Claimant 3's tip was closed by staff in the Commission's Office of Market Intelligence with a disposition of "no further action" and not forwarded to Enforcement staff in connection with any matter. For the same reason, additional submissions from Claimant 3 were also not forwarded to the Enforcement staff. *Second*, Claimant 3 failed to submit the information on Form TCR or through the Commission's on-line portal and did not sign the whistleblower declaration, as required by Rules 21F-9(a) and (b).

B. Claimant 3's Response and Analysis

In Claimant 3's Response, Claimant 3 argues that Claimant 3 "submitted credible & original evidence to the SEC Whistleblower Office." Claimant 3 also contends Claimant 3 sent evidence of fraud to the Federal Reserve, which in turn reported the information to the Financial Industry Regulatory Authority ("FINRA"), which then relayed the information to the Commission.

With respect to information that Claimant 3 submitted directly to the Commission, the record is clear that Claimant 3's information did not lead to the success of the Covered Action, as none of Claimant 3's information was ever forwarded to the Enforcement staff responsible for the investigation that resulted in the Covered Action. Enforcement staff responsible for the investigation confirmed in the Supplemental Declaration, which we credit, that they did not review any information from Claimant 3. We interpret Claimant 3's assertion that information Claimant 3 provided to the Federal Reserve was subsequently referred to the Commission (through FINRA) as a request that we apply Rule 21F-4(b)(7) to Claimant 3's claim. Under Rule 21F-4(b)(7), if an individual submits his or her tip to another federal agency, then in considering an award application from that individual, the Commission will treat the information as though it had been submitted to the Commission directly from the individual at the same time that it was submitted to the other agency, provided that the individual submitted that same information to the Commission pursuant to the procedures required under Rule 21F-9 no later than 120 days after the individual first went to the other government agency.⁶ In this way, Rule 21F-4(b)(7) operates as a 120-day look-back provision, assuring an individual who voluntarily reports misconduct to another agency first that he or she will be deemed for award purposes to have reported directly to the Commission at the same time that the individual reported to the other federal agency. However, Claimant 3 has not

established any of the pre-requisites for applying Rule 21F- 4(b)(7) to Claimant 3's claim.

Claimant 3 has not shown what information (if any) Claimant 3 provided to the Federal Reserve, when Claimant 3 provided it, that it was the same information that Claimant 3 provided to the Commission and that Claimant 3 provided the information to the Commission within 120 days of providing it to the Federal Reserve.

Moreover, as noted, Claimant 3 did not comply with the procedural requirements of Rule 21F-9 in Claimant 3's submissions of information to the Commission. Claimant 3 does not qualify for an automatic waiver of the TCR filing requirements under Rule 21F-9(e) because the record does not unambiguously demonstrate that Claimant 3 otherwise qualifies for an award. For all of these reasons, Rule 21F-4(b)(7) is not applicable to Claimant 3's award claim.⁷

Accordingly, it is ORDERED that Claimant 1 receive an award of ^{Redacted} percent (^{***}) of amounts collected in connection with the Covered Action, and that the whistleblower award claims of Claimants 2 and 3 are denied.

By the Commission.

Vanessa A. Countryman
Secretary

⁶ See Order Determining Whistleblower Award Claim, Release No. 34-82996 (Apr. 5, 2018) at 1-2.

⁷ Claimant 3 also contends in his/her request for reconsideration that Claimant 3 did not receive a Preliminary Determination in connection with *another* matter for which he/she applied. While this contention has no bearing on Claimant 3's award claim for this Covered Action, we observe that Claimant 3 was provided with a Preliminary Determination as well as a Final Order in connection with that other matter.