

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 97826 / June 30, 2023

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2023-71

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

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination in connection with the above-referenced Covered Action (the “Covered Action”) recommending that the whistleblower award application submitted by Redacted (“Claimant”) be denied. Claimant filed a timely response contesting the Preliminary Determination. For the reasons discussed below, the Claimant’s award claim is denied.

**I. Background**

**A. The Covered Action**

On Redacted the Commission filed settled administrative and cease-and-desist proceedings against Redacted (“Company”) alleging that the Company had violated the federal securities laws Redacted

Redacted In settlement, Redacted was ordered to pay Redacted in disgorgement, prejudgment interest, and civil penalties.

On Redacted the Office of the Whistleblower posted the Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.<sup>1</sup> Claimant filed a timely whistleblower award claim.

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<sup>1</sup> See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

## B. The Preliminary Determination

The CRS issued a Preliminary Determination<sup>2</sup> recommending that Claimant's claim for an award in the Covered Action be denied. The Preliminary Determination stated that Claimant did not provide information that led to the success of the Covered Action because Claimant'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, and thereafter bring an action based, in whole or in part, on, conduct that was the subject of the claimant's information 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 Act.

Claimant based the award claim on a tip that he/she had submitted to the Commission in <sup>Redacted</sup> ("Other Entity"), which was closed by the Commission's Office of Market Intelligence with a disposition of "No Further Action" or "NFA", and was not provided to investigative staff responsible for the Covered Action. Enforcement staff responsible for the Covered Action affirmed that they had not received any information from Claimant or had any communications with Claimant during the course of the Covered Action investigation.

## C. Claimant's Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination.<sup>3</sup> Claimant principally argues: (1) that he/she provided information to the <sup>Redacted</sup> and that the Commission's action against the Company was based on an action brought by <sup>Redacted</sup> (2) that he/she provided information to staff in the Commission's Office of the Whistleblower ("OWB") also in <sup>\*\*\*</sup> (3) that the information he/she provided should have triggered a Commission investigation; (4) that he/she provided several tips to the Commission that were relevant to the allegations in the Covered Action; (5) that it is irrelevant that he/she did not have communications with the relevant investigative staff responsible for the Covered Action; and (6) he/she deserves a whistleblower award even if the investigative team responsible for the Covered Action did not receive his/her information.

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<sup>2</sup> See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

<sup>3</sup> See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

<sup>4</sup> <sup>Redacted</sup>

<sup>Redacted</sup>

## 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.<sup>5</sup> Additionally, and as relevant here, original information will be deemed to lead to a successful enforcement action if either: (i) the original information caused the staff to open an investigation “or to inquire concerning different conduct as part of a current . . . investigation,” and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information;<sup>6</sup> or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”<sup>7</sup> In determining whether the information “significantly contributed” to the success of the action, the Commission will consider whether the information was “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.<sup>8</sup> 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.<sup>9</sup>

Claimant’s information did not cause the Enforcement staff to open the Covered Action investigation. The record reflects that the investigation was opened in <sup>Redacted</sup> based on information from a source other than Claimant.

Claimant’s information also did not cause the Enforcement staff to inquire into different conduct, and did not significantly contribute to the success of the Covered Action. Enforcement staff responsible for the Covered Action provided a supplemental declaration, which we credit, confirming that they did not receive or review any information from Claimant and had no communications with him/her. Enforcement staff also clarified that they did not receive Claimant’s information from <sup>Redacted</sup> nor did they receive any referrals or information from <sup>Redacted</sup> that were used in the Covered Action. Similarly, Enforcement staff responsible for the

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<sup>5</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>6</sup> See Exchange Act Rule 21F-4(c)(1); 17 C.F.R. § 240.21F-4(c)(1).

<sup>7</sup> See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

<sup>8</sup> Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 at 4 (Jan. 14, 2021); see also Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 at 9 (Mar. 26, 2019).

<sup>9</sup> Exchange Act Rel. No. 85412 at 8-9.

Covered Action did not receive Claimant's information from OWB staff. The supplemental declaration also confirms that Enforcement staff did not receive or review the various tips referenced by Claimant in his/her response, as they were either closed with an NFA disposition or referred to other Enforcement staff in connection with other matters. As such, none of Claimant's information was used in or otherwise contributed to the success of the Covered Action.

Finally, we consider Claimant's argument that he/she should receive an award even if the investigative team never received his/her information or had any communications with him/her, and that his/her tips should have triggered an investigation. As we have stated, "the standard for award eligibility is not what the staff would have, or could have done in hypothetical circumstances but, rather, what impact the whistleblower's information actually had on the investigation."<sup>10</sup>

### **III. Conclusion**

Accordingly, it is ORDERED that Claimant's whistleblower award claim be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>10</sup> Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 92542 at 4 (Aug. 2, 2021) (quoting Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90872 at 4 (Jan. 7, 2021)) (internal quotation marks omitted).