

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102232 / January 17, 2025

WHISTLEBLOWER AWARD PROCEEDING
File No. 2025-15

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”) and Redacted Redacted (“Other Action”). Claimant filed a timely response contesting the preliminary denial.¹ For the reasons discussed below, Claimant’s award claim is denied.

I. Background

A. The Covered Action

On Redacted, the Commission instituted a settled cease-and-desist proceeding against Redacted (the “Company”) for violations of Redacted arising out of Redacted by the Company to obtain Redacted contract (Redacted, hereinafter “Contract”) in ***

¹ See Exchange Act Rule 21F-10(e); 17 C.F.R. § 240.21F-10(e).

(“Relevant Country”). The Order Instituting Proceedings (“OIP”) alleged that during ^{***}
^{***}, the Company made ^{Redacted} to Relevant Country officials in connection with
the Contract with ^{Redacted}, a Relevant Country ^{Redacted}. The Commission
alleged ^{Redacted}, including one agent who ^{Redacted}
^{Redacted}

continue working on the Contract. In addition, the Commission alleged the agent introduced the
Company’s Relevant Country Manager to another agent, ^{Redacted} (“Relevant Country
Agent”), which also ^{Redacted} on the Contract. In all, the Company, ^{Redacted}
^{Redacted} in connection with the Contract.

The Company consented to entry of the SEC’s order finding that the Company violated
^{Redacted} As
part of the settled enforcement action, the Company was ordered to pay more than \$1 million in
monetary sanctions.

The Office of the Whistleblower (“OWB”) posted the Notice of Covered Action on the
Commission’s public website inviting claimants to submit whistleblower award applications
within 90 days.² Claimant filed a timely whistleblower claim.

B. The Preliminary Determination

The CRS issued a Preliminary Determination³ recommending that Claimant’s claim be
denied because Claimant failed to provide information to the Commission 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). The investigation that led to the Covered
Action was not opened based on information provided by Claimant to the Commission.⁴
Additionally, none of the information provided by Claimant to the Commission caused the staff
to inquire into different conduct as part of the ongoing investigation. Instead, information
contained in news articles, communications with the ^{Redacted} (“Other Agency”),
and subsequent research and communications with the Company caused the staff to inquire into
different conduct at the Company in ^{Redacted}. The staff’s broadening of its investigation in
^{Redacted} cannot be credited to the Claimant under Exchange Act Rules 21F-4(b)(7) or 21F-
4(c)(1) because Claimant had not directly provided any information to any government agency

² See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

³ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁴ The record supporting the Preliminary Determination included the declaration (“Declaration”) of one of the
Division of Enforcement (“Enforcement”) attorneys who was assigned to the investigation that led to the Covered
Action (“Investigation”). See Exchange Act Rule 21F-12(a); 17 C.F.R. § 240.21F-12(a).

by that point. Furthermore, Claimant's TCR submission also does not satisfy Exchange Act Rule 21F-4(b)(7) as it was submitted eight months after the Commission had expanded its investigation to include different conduct at the Company. Additionally, even if Claimant was the original source for the news articles, the Covered Action was not based on the conduct reported in the articles, which did not relate to the Company or its conduct in the Relevant Country. Instead, the information that formed the basis of the Covered Action was disclosed by the Company in ^{Redacted} and related exclusively to its conduct in the Relevant Country.

The CRS also preliminarily determined that none of Claimant's information significantly contributed to the success of the action. Claimant's tip and subsequent interview with the staff contained limited information about the Company and did not relate to the Company's conduct in the Relevant Country. Consequently, the CRS preliminarily determined that Claimant's information did not impact or otherwise advance the investigation, did not save the staff significant time or resources, and did not impact the charges brought by the Commission in the Covered Action.

The Preliminary Determination further recommended that Claimant's request for a related action award be denied because Claimant did not qualify for an award in connection with the Covered Action.⁵

C. Claimant's Response to the Preliminary Determination

Claimant submitted a timely written response (the "Response") contesting the Preliminary Determination.⁶ In the Response, Claimant principally argues that the Preliminary Determination improperly adopted a narrow interpretation of the "led to" requirement under the Commission's Rules. According to Claimant, where a whistleblower is an original source reporting fraud to another agency before reporting to the Commission, his/her award must be determined in accordance with Rule 21F-4(c)(1) rather than Rule 21F-4(c)(2).⁷ Notwithstanding Claimant's failure to satisfy Rule 21F-4(b)(7) because his/her submission of the TCR to the Commission was more than 120 days after the news reporter provided information to the Other

⁵ See 15 U.S.C. §78u-6(b) Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f), and Rule 21F-11(a); *Order Determining Whistleblower Award Claims*, Release No. 34-4506 (Oct. 30, 201); *Order Determining Whistleblower Award Claims*, Release No. 34-84503 (Oct. 30, 2018).

⁶ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

⁷ The Response cites the Commentary to Rule 21F-4(c)(2) which states that "The proposed rule also makes clear that paragraph (2) of Proposed Rule 21F-4(c) does not apply when a whistleblower provides information to the Commission about a matter that is already under investigation by another authority if the whistleblower is the 'original source' for that investigation under Proposed Rule 21F-4(b)(4). In those circumstances, paragraph (1) of Proposed Rule 21F-4(c) would govern the Commission's analysis." 75 Fed. Reg. 70497 n.42 (Nov. 17, 2020).

Agency on Claimant's behalf, Claimant argues that 21F-4(c)(1) is satisfied because the Other Agency passed the information along to the Commission, and Claimant subsequently filed a TCR to perfect his/her claim.

The Response also argues that the Preliminary Determination included erroneous or irrelevant findings with respect to finding that Claimant did not satisfy Rule 21F-4(c)(1). First, Claimant asserts that even if his/her submission included few details about the Company's conduct in the Relevant Country, Claimant's original information was the first link in a direct causal chain leading to the Covered Action and therefore satisfied Rule 21F-4(c)(1). According to Claimant, his/her information which was provided to the news media and Other Agency "caused" the staff to expand its investigation of the Company's ties to Redacted ("Other Entity") in Redacted. Claimant argues that the Covered Action was based in part on conduct (Redacted *** by the Other Entity on behalf of its corporate clients) that was the subject of Claimant's original information.⁸ Second, Claimant asserts that the Company's self-disclosure to the Commission in *** concerning the Company's conduct in Redacted countries unrelated to Other Entity is irrelevant because Claimant's information caused the staff to expand the investigation. Third, Claimant asserts that he/she was not required to report to the Other Agency directly and qualifies as an original source because Claimant's representative, the news reporter, funneled Claimant's information to the Other Agency on Claimant's behalf. According to Claimant, the Commission's Rules do not require that "representative" as used in Rule 21F-4(b)(5) be interpreted to mean an attorney.

Finally, Claimant argues that even if the Commission determines that Claimant does not satisfy the requirements of Rule 21F-4(c)(1), it should exercise its discretion to extend the relation back period of Rule 21F-4(b)(7) under Section 36(a) of the Exchange Act. Claimant asserts that the 120-day deadline had passed only months before Claimant retained counsel and Claimant only seeks an extension of months, not years.⁹ Additionally, Claimant asserts that there are no competing claimants who would be prejudiced by relating back Claimant's submission. According to Claimant, his/her delay in submitting a TCR should be excused because: (1) Claimant is a "quintessential whistleblower" who Redacted, did not know which U.S. agency would have jurisdiction over the violations and should not be blamed

⁸ More specifically, Claimant argues that he/she further satisfies this prong of 21F-4(c)(1) because the Commission's Order stated that the Company used an Other Entity Redacted and Claimant had identified the Company as one of the Other Entity's Redacted and Claimant identified *** Redacted.

⁹ The Response states that Claimant's TCR was submitted to the Commission on Redacted, not Redacted Redacted as stated in the Declaration. According to a supplemental sworn declaration from an attorney in the Office of the Whistleblower, the Claimant's hard copy TCR was submitted to the Commission on Redacted, was uploaded to the Commission's TCR System on Redacted, and was forwarded to Enforcement staff assigned to the investigation on Redacted. For purposes of this Order, we use the Redacted date that Claimant submitted the hard copy TCR.

for approaching the “wrong” agency; and (2) Claimant took considerable personal risk in revealing the violations.

II. Analysis

A. Claimant’s Information Did Not Lead to The Successful Enforcement of the Covered Action

Claimant’s information did not lead to the successful enforcement of the Covered Action. Because Claimant does not qualify for an award for the Covered Action, Claimant is not eligible for a related action award.¹⁰

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).¹¹ 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).¹²

The record supports the conclusion that Claimant does not satisfy Rule 21F-4(c)(1) because Claimant did not provide information *to the Commission* that caused the opening of the investigation. An Enforcement staff declaration (“Declaration”), provided under penalty of perjury, which we credit, confirmed that Enforcement staff opened the investigation that resulted in the Covered Action in ^{Redacted} based on a report by the Company to the Commission

¹⁰ A related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable covered action in the first instance. See 15 U.S.C. §78u-6(b) Exchange Act Rule 21F-3(b), (b)(1); Exchange Act Rule 21F-4(g) and (f), and Exchange Act Rule 21F-11(a); *Order Determining Whistleblower Award Claims*, Rel. No. 34-4506 (Oct. 30, 2018); *Order Determining Whistleblower Award Claims*, Rel. No. 34-84503 (Oct. 30, 2018).

¹¹ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

¹² 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).

concerning potential misconduct ^{Redacted}. Claimant did not submit any information to the Commission until ^{Redacted}, more than a year after the opening of the investigation. Moreover, at the time Enforcement staff opened the investigation, Claimant was not a “whistleblower” as defined within the meaning of Rule 21F-2(a) under the Exchange Act, because Claimant had not provided information in writing *to the Commission*.

Nor did Claimant provide information to the Commission that caused staff to inquire into different conduct under Rule 21F-4(c)(1). The Declaration, which we credit, confirms that in ^{Redacted}, Enforcement staff began investigating potential ties between the Company and the Other Entity based on information in the media, obtained from the Other Agency, and through its own investigative work. Enforcement staff did not inquire into the potential ties between the Company and Other Entity because of any information Claimant provided to the Commission.

As for Rule 21F-4(c)(2), neither the information contained in Claimant’s TCR provided in ^{Redacted}, nor the information provided in connection with the interview with Enforcement staff in ^{Redacted} significantly contributed to the success of the Covered Action. Claimant’s TCR and interview contained little information about the Company and did not pertain to its conduct in the Relevant Country. According to the Declaration, which we credit, Claimant’s information was not relevant or useful to the investigation, which had been ongoing for over a year before Claimant’s interview with Enforcement staff. While Claimant’s TCR references ^{Redacted} used by the Other Entity and Claimant made general comments about this individual during the interview, Claimant did not provide information about this individual’s activities in the Relevant Country.¹³ Claimant’s information did not advance the investigation, did not save the staff significant time or resources, and did not impact the charges brought by the Commission in the Covered Action.

Claimant resists these conclusions by arguing that he/she is the “original source”¹⁴ of the information that was reported in the news media in ^{Redacted} concerning the Other Entity, and that this information in the news media caused Enforcement staff to inquire into the potential ties between the Company and the Other Entity. But whether or not Claimant was the original source of the relevant news reports is a separate issue from whether Claimant satisfies 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*

¹³ The Company had also provided information about the individual’s activities in the Relevant Country to the Commission in ^{Redacted}.

¹⁴ Rule 21F-4(b)(5) provides that “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)(5); 17 C.F.R. § 240.21F-4(b)(5) (emphasis added).

the Commission that led to the successful enforcement of the covered . . . action.” Exchange Act 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, Claimant does not dispute that the information Claimant provided *to the Commission* did not do so; instead, Claimant contends that he/she provided information to the press and that those news reports led to the successful enforcement of the Covered Action.¹⁵

Claimant’s submission of information to the Commission in ^{Redacted} bore no causal connection to the Enforcement staff’s opening of the investigation in ^{***} or decision to inquire into the Company’s connections with the Other Entity in ^{Redacted} and therefore did not satisfy Rule 21F-4(c)(1).¹⁶ We credit the Declaration that Claimant’s 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 Claimant’s 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).

Turning to Claimant’s argument that Rule 21F-4(b)(7) saves his/her claim, we do not find that argument persuasive. The rule states that “[i]f **you** provide information to . . . any other authority of the Federal government . . . and **you**, within 120 days, submit[s] the same information to the Commission pursuant to [Rule 21F-9], as **you** must do in order for you to be eligible to be considered for an award, then, for purposes of evaluating your claim to an award . . . the Commission will consider that **you** provided information as of the date of your original disclosure, report or submission to one of these other authorities or persons.”¹⁷ Claimant claims to satisfy this rule because Claimant provided information to a news reporter, who Claimant argues acted as his/her representative, and the news reporter in turn provided the information to the Other Agency beginning in ^{Redacted} and the bulk of it in ^{Redacted}. *First*, the rule requires the whistleblower to have provided the information to the other authority of the Federal

¹⁵ 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.” *Order Determining Whistleblower Award Claim*, Rel. No. 82955 at *5 (Mar. 27, 2018).

¹⁶ *Kilgour v. SEC*, 942 F.3d 113, 122 (2d Cir. 2019) (reading 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.’”); *see also* *Order Determining Whistleblower Award Claims*, Rel. No. 96669 (Jan. 17, 2023) (denying award claims as investigation was opened based on press reports and not because of information provided by claimants to the Commission).

¹⁷ Exchange Act Rule 21F-4(b)(7); 17 C.F.R. § 240.21F-4(b)(7) (emphasis added).

government, not a news reporter who was acting as an intermediary for the whistleblower.¹⁸ *Second*, assuming without deciding that the news reporter provided useful information about the Company to the Other Agency,¹⁹ the first time Claimant provided information to the Commission was in ^{Redacted}, which was more than 120 days after the news reporter provided the information to the Other Agency.

B. Waiver

Finally, Claimant argues that the Commission should waive any applicable procedural bars to Claimant's award eligibility pursuant to Exchange Act Section 36(a), including the requirement under Rule 21F-4(c)(1) and 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. Section 36(a)(1) provides that "the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person... from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."²⁰

The Response acknowledges that Claimant provided his/her TCR to the Commission more than 120 days after Claimant provided it to the Other Agency but argues that the 120-day deadline passed months before Claimant retained counsel and he/she seeks an extension of approximately seven months rather than an extension of years. Claimant also notes that there are no competing claimants who would be prejudiced by relating back Claimant's submission.²¹ According to Claimant, he/she should not be blamed for approaching the wrong agency and his/her delay in submitting the TCR should be excused for the following reasons: (1) Claimant

¹⁸ While the "original source" rule under Rule 21F-4(b)(5) uses the term "representative," the look-back provision of Rule 21F-4(b)(7) does not. Regardless, we are skeptical that "representative" would include an independent news reporter that has no fiduciary relationship with the claimant.

¹⁹ While the Response asserts that the news reporter provided information about the Company to the Other Agency, the Commission need not reach a decision about whether the news reporter in fact provided this information.

²⁰ 15 U.S.C. § 78mm(a)(1).

²¹ The Response argues that Claimant need not satisfy Rule 21F-4(b)(7) if his/her original information led to the Covered Action under Rule 21F-4(c)(1) because the purpose of the relation back rule is to preserve a whistleblower's "place in line" relative to other whistleblowers. Response at n. 5 (citing 75 Fed. Reg. at 70495-96 (Sept. 15, 2010)). Because the Preliminary Determination did not indicate that another whistleblower provided original information to the Commission before Claimant submitted his/her TCR, the Response argues that relation back only comes into play if the Commission finds that Claimant cannot satisfy Rule 21F-4(c)(1) without it. The Response's interpretation of Rule 21F-4(b)(7) is misguided as the Adopting Release explained that the Commission chose the 120-day lookback period "[b]ecause of our strong law enforcement interest in receiving high quality information about misconduct quickly" *Securities Whistleblower Incentives & Protections Adopting Release* ("Adopting Release"), 76 Fed. Reg. 34300, 34323 (June 13, 2011). Thus, the actual purpose behind the rule is ensuring the submission of information to the Commission in a timely manner.

was ^{Redacted} and did not know which agency would have jurisdiction over the matter; (2) Claimant relied on the news reporter to bring the information to the Other Agency; and (3) Claimant was unrepresented at the time and was not focused on a possible reward.

The Commission has not used its Section 36(a) exemptive authority to waive the “led to” requirement under Exchange Act Rule 21F-4(c), and we decline to do so here. 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, Inc. v. Somers*, 583 U.S. 149, 162 (2018). Using Section 36(a) to excuse a claimant’s failure to report information to the Commission that leads to the success of the enforcement action would be contrary to the underlying purpose of the Commission’s whistleblower program.

We also decline to use our Section 36(a) exemptive authority to waive the 120-day requirement in Rule 21F-4(b)(7). Rule 21F-4(b)(7) is merely a look-back provision and does not obviate the need to satisfy the “led to” requirement. To be eligible for an award, the claimant must still provide to the Commission information that leads to the success of the enforcement action.

In short, based on the facts and circumstances of this case, we decline to exercise our discretionary exemptive authority under Section 36(a) for Claimant’s award claim in the Covered Action.

III. Conclusion

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

By the Commission.

Stephanie Fouse
Assistant Secretary