

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 34-80871 / June 7, 2017

WHISTLEBLOWER AWARD PROCEEDING
File No. 2017-11

In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD

Redacted (“Claimant”) seeks a whistleblower award in connection with the Commission’s successful resolution of the above-referenced enforcement action (the “Covered Action”). The Claims Review Staff (“CRS”) reviewed the Claimant’s application and issued a Preliminary Determination recommending that the Commission deny it. The CRS explained that the information that Claimant provided does not qualify as “original information” within the meaning of the Securities Exchange Act of 1934 and Rule 21F-4(b)(1)(iv), which requires that the information must have been “[p]rovided to the Commission for the first time after July 21, 2010 (the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act [which established the Commission’s whistleblower program]).” It is uncontested that any information that the Claimant provided to the Commission that *may* have been used by the Commission in connection with the Covered Action was provided in 2007.

As the Commission has previously explained in a final order (“*Stryker* Final Order”)¹ that was subsequently affirmed by the U.S. Court of Appeals for the Second Circuit in *Stryker v. SEC*,² information submitted to the Commission for the first time prior to July 21, 2010 may not serve as the basis for a whistleblower award. Although the Claimant asks us to reject our prior determination, we decline to do so.³ We have carefully considered the Claimant’s arguments and conclude that, for

¹ See Securities Exchange Act Release No. 70772 (October 30, 2013).

² 780 F.3d 163 (2d Cir. 2015).

³ Claimant has requested that the “full record before the U.S. Court of Appeals [for the Second Circuit]” in the *Stryker* matter be “incorporated by reference” into the record in this matter. We find it

the reasons set forth in the *Stryker* Final Order (and subsequently elaborated upon in the Commission's brief filed at the Second Circuit Court of Appeals in support of that Order), Rule 21F-4(b)(1)(iv) provides an appropriate interpretation of Section 21F that is supported by the statutory text and legislative history, grounded on sound policy considerations, and that reflects a permissible exercise of our rulemaking authority.⁴

Conclusion

Claimant's information does not meet the definition of "original information" as required by Rule 21F-4(b)(1)(iv), and having considered the entire record, including Claimant's Response to the Preliminary Determination, Claimant's award claim is denied.⁵

unnecessary to do so because we are familiar with the straightforward questions of law and policy presented in this matter, and thus incorporation of the full record in *Stryker* would not aid our resolution of the Claimant's award application. We also note that the Claimant's response in opposition to the Preliminary Determination substantially restates the same arguments that were raised by the claimant in the *Stryker* matter before the Second Circuit.

⁴ Although most of the arguments that the Claimant advances in asking us to reconsider our interpretation are similar to (and in certain cases identical to) the arguments that were considered and litigated in connection with the *Stryker* matter, Claimant does appear to raise two new arguments that warrant brief responses. *First*, Claimant argues that it is significant that Congress did not include a specific date in the statutory provision for qualifying whistleblowers in the same manner that Congress did in 2006 when it established the IRS's whistleblower program. We do not find this argument persuasive, however, because as we have previously discussed both in our *Stryker* Final Order and in our appellate brief in support thereof, certain language in the Dodd-Frank Act (including Section 924(b) of the Act) and the relevant legislative history suggest to us a Congressional intention not to provide awards for information first submitted before Dodd-Frank's enactment. Thus, the fact that Congress did not include the identical language from the IRS whistleblower program in the Dodd-Frank Act does not support Claimant's contention that Congress expressed an unambiguous intention for the Commission to pay awards to individuals for information submitted prior to the Act. *Second*, the Claimant argues that Congress's action in simultaneously repealing the Commission's former discretionary award program for insider trading matters somehow demonstrates a "clear Congressional intent" to ensure that individuals could recover for information submitted to the Commission prior to the Dodd-Frank Act. Critically, the Claimant does not cite to anything from the statutory language or the Congressional history that specifically supports this argument; moreover, we find the Claimant's argument unpersuasive because, as we discussed in the *Stryker* Final Order, Congress considered but ultimately failed to include statutory language that would have allowed the Commission to pay awards for information that the Commission had received prior to the enactment of Dodd-Frank if that information could have been the basis for an award under the repealed award program. *See Wall Street Reform and Consumer Protection Act of 2009*, H.R. 4173, 111th Cong. § 7205(b) (as passed by House Dec. 11, 2009) (information deemed original information "provided such information was submitted after the date of enactment of this subtitle, or related to insider trading violations for which a bounty could have been paid at the time such information was submitted.") (emphasis added).

⁵ Finally, we decline the Claimant's invitation that we hold its award application in abeyance and initiate a new rulemaking to permit the Commission to pay awards based on information submitted before

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

By the Commission.

Brent J. Fields

Secretary

the Dodd-Frank Act. A response to a preliminary determination is not an appropriate vehicle to petition for a rulemaking change and to the extent that the Claimant wishes to make such a request, Claimant must follow the established procedures. *See* 17 C.F.R. §201.192. Further, we decline to delay the final resolution of this award application to allow the Claimant to belatedly file such a rulemaking petition given that the Commission's position has been clear since our final rules were adopted in May 2011 and Claimant could therefore have years earlier filed a rulemaking petition but did not do so.