

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 93118 / September 24, 2021

WHISTLEBLOWER AWARD PROCEEDING

File No. 2021-96

In the Matter of the Claims for Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that Redacted (“Claimant 1”) receive a whistleblower award of approximately \$36 million, equal to *** percent (*** %) of the monetary sanctions collected in the above-referenced Covered Action and in Redacted actions brought by the Redacted (the “Other Agency”). The CRS recommended the denial of the award applications from Redacted (“Claimant 2”) and Redacted (“Claimant 3”). Claimant 1 provided written notice of Claimant 1’s decision not to contest the Preliminary Determinations, and Claimant 2 and Claimant 3 submitted timely notices contesting the preliminary denial of their award claims. For the reasons discussed below, the CRS’s recommendations are adopted with respect to Claimant 1, Claimant 2, and Claimant 3.

I. Background

A. The Covered Action

The Commission opened the investigation that culminated in the Covered Action in Redacted (the “Commission Investigation”) based upon information developed in a separate investigation and upon an anonymous tip related to potential misconduct by a financial institution not charged in the Covered Action (the “Financial Institution”). The Claimants did not provide the anonymous tip to the Commission. The Commission Investigation examined Redacted including employees of Redacted Redacted (the “Foreign Government Entity”), Redacted The Commission

Investigation focused on, among other things, Redacted
Redacted

Redacted

On Redacted, the Commission instituted settled Redacted in
the Covered Action, Redacted

Redacted

On Redacted, the Office of the Whistleblower posted the above-referenced
Notice of Covered Action on the Commission’s public website inviting claimants to submit
whistleblower award applications within 90 days.¹ Claimants 1, 2, and 3 all filed timely
whistleblower award claims.

B. The Other Agency Actions

On Redacted, the Other Agency resolved matters arising from substantially the same
facts underlying the Covered Action (collectively, the following actions are the “Other Agency
Actions”).² Redacted

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

² The Other Agency Actions are Redacted

Redacted

The Commission may pay an award based on amounts collected in a related action that is based on the same original information that the whistleblower voluntarily provided to the Commission and that led the Commission to obtain monetary sanctions totaling more than \$1 million.⁴

Redacted

Redacted The Commission finds that the Other Agency Actions constitute “related actions” within the meaning of Exchange Act Rules 21F-3(b) and 21F-4(d)(3).

C. The Preliminary Determinations

The CRS⁶ issued Preliminary Determinations⁷ recommending that: (1) Claimant 1 receive an award of *** % of the monetary sanctions collected in the Covered Action and the Other Agency Actions⁸; (2) the award claims of Claimant 2 and Claimant 3 be denied with regard to the Covered Action and the Other Agency Actions.

The CRS recommended that Claimant 2’s and Claimant 3’s award claims be denied on the grounds that they did not 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. The record showed that Claimant 2’s information was not a basis for opening the investigation nor did it assist the staff during the course of the investigation. Claimant 2’s information was already known to the staff and focused on an entity that was not charged in the Covered Action. In addition, the CRS recommended that

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⁴ Exchange Act Rule 21F-3(b), 17 C.F.R. § 240.21F-3(b).

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⁶ Rule 21F-10(d) under the Exchange Act provides that the CRS will “evaluate all timely whistleblower award claims submitted on Form WB-APP in accordance with the criteria set forth in the rules.” 17 C.F.R. § 240.21F-10(d); *see also* Rule 21F-11(d).

⁷ *See* Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d); Exchange Act Rule 21F-11(d), 17 C.F.R. § 240.21F-11(d).

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Claimant 2's award application be denied on the grounds that Claimant 2 was functioning as an employee or official of a foreign government or instrumentality of a foreign government, and therefore Claimant 2 was ineligible for an award pursuant to Rule 21F-8(c)(2) and Rule 21F-8(c)(6).

The record showed that Claimant 3's information was not a basis for opening the investigation and did not assist Enforcement staff. Claimant 3's whistleblower submission was provided to the Commission approximately six years after Enforcement staff began its investigation and approximately eight months before the Covered Action was filed. The CRS also recommended to deny Claimant 3's award application because Claimant 3 did not voluntarily provide information to the Commission as defined by Rule 21F-4(a) of the Exchange Act because the staff requested materials from Claimant 3 approximately five years before he/she provided the whistleblower submission to the Commission.

D. Claimant 2's Response to the Preliminary Determination

Claimant 2 submitted a timely written response contesting the CRS's Preliminary Determination that Claimant 2's award claim be denied.⁹ Among other things, Claimant 2 contends that the record relied upon by the CRS did not include a declaration from Claimant 2's primary Enforcement staff contact, who has since left the Commission. Claimant 2 also contends that he/she provided valuable information to the Commission beginning at the time of Claimant 2's first contact with the staff in ^{Redacted}, approximately eight months after the staff opened the Investigation, and through subsequent communications with the staff over the next several years. Claimant 2 also contends that he/she was not employed by the Foreign Government Entity, but was instead employed by another entity that ^{***} provided ^{Redacted} ^{Redacted} services to the Foreign Government Entity

^{Redacted}

E. Claimant 3's Response to the Preliminary Determination

Claimant 3 submitted a timely written response contesting the CRS's Preliminary Determination that Claimant 3's award claim be denied.¹⁰ Among other things, Claimant 3 contends that while Claimant 3 was ^{Redacted} of the Foreign Government Entity from ^{Redacted} Claimant 3 focused on ^{Redacted} Claimant 3 also contends that significant evidence of the misconduct committed ^{Redacted} emerged directly from the actions Claimant 3 took while ^{Redacted} While

⁹ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

¹⁰ *Id.*

Claimant 3 concedes that the information uncovered due to Claimant 3's actions ^{Redacted} ^{Redacted} was not included in Claimant 3's ^{***} whistleblower submission—and could not have been pursuant to Rule 21F-8(c)(2)—Claimant 3 argues that as a matter of equity and fairness the efforts Claimant 3 undertook as ^{Redacted} ^{Redacted} should be considered when evaluating the merits of Claimant 3's whistleblower application.

Claimant 3 further contends that Claimant 3's whistleblower information, provided to the Commission approximately eight months before the Covered Action was filed, showed that ^{Redacted} ^{Redacted} engaged in ^{Redacted} ^{Redacted} involving the ^{Redacted} ^{Redacted}

^{Redacted} Claimant 3 argues that Claimant's whistleblower submission was of high value in the context of the Commission Investigation and the investigation by the Other Agency.

II. Analysis

A. Claimant 1

The record demonstrates that Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action and the Other Agency Actions. Accordingly, Claimant 1 qualifies for a whistleblower award.

Applying the award criteria as specified in Rule 21F-6 of the Exchange Act based on the specific facts and circumstances here, we find that an award of ^{***} percent (^{***} %) is appropriate.¹¹ In reaching that determination with regard to Claimant 1, we considered that Claimant 1's information significantly contributed to the success of the Covered Action and the Other Agency Actions. Claimant 1 met with Enforcement staff on multiple occasions, provided information that allowed Enforcement and Other Agency staff to identify and request key documents, and provided crucial information regarding the illegal scheme. The award percentage also recognizes that Claimant 1 unreasonably delayed reporting to the Commission for over five years and that Claimant 1 was culpable in the underlying scheme. Based upon a review of the facts and circumstances in the record, we have determined that Exchange Act Rule 21F-16 does not apply because Claimant 1 did not “direct[], plan[], or initiate[]” the misconduct.¹² Accordingly, we believe that a ^{***} percent award strikes the appropriate balance

¹¹ In assessing the appropriate award amount, 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 by 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.

¹² Exchange Act Rule 21F-16, 17 C.F.R. § 240.21F-16.

between Claimant 1’s significant contributions to the success of the Covered Action and Claimant 1’s unreasonable reporting delay and level of culpability.

B. Claimant 2

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must have “voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action.”¹³ As relevant here, information will be deemed to have led to a successful enforcement action if it was “sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation . . . or to inquire concerning different conduct as part of a current . . . investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of [this] information.”¹⁴ Alternatively, information will be deemed to have led to a successful enforcement action where the information was “about conduct that was already under examination or investigation by the Commission” and the “submission significantly contributed to the success of the action.”¹⁵ 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.¹⁶ 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.¹⁷ As discussed below, Claimant 2’s information does not satisfy either prong of the “led to” requirement, as the information did not cause the staff to open the Commission Investigation, or to inquire concerning different conduct as part of a current investigation, nor did it significantly contribute to the success of the Covered Action.¹⁸

¹³ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

¹⁴ Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

¹⁵ Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

¹⁶ 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).

¹⁷ Exchange Act Rel. No. 85412 at 8-9.

¹⁸ Claimant 2’s response to the Preliminary Determinations also implied that some information might be missing from the record. Claimant 2 requested and was provided the record upon which the award determination as to Claimant 2’s claim was based. As such, any argument that the record was insufficient or incomplete under the law is contrary to the plain language of the Commission’s whistleblower rules. Claimants are not entitled to receive additional materials outside those enumerated in Exchange Act Rule 21F-12(a), as any such additional materials were not used as a basis for the award determination.

The record demonstrates that Claimant 2's information does not satisfy Exchange Act Rule 21F-4(c)(1) as the Commission Investigation was opened in ^{Redacted} approximately eight months before Claimant 2's tip was submitted to the Commission. Claimant 2 does not dispute this.¹⁹

Because the Commission Investigation had already been opened by the time Claimant 2 submitted a tip, Claimant 2's information can only be deemed to have led to the success of the Covered Action if it caused the staff to inquire concerning different conduct as part of a current investigation²⁰ or "significantly contributed to the success of the action."²¹ We find, based on the evidence in the record, including multiple declarations from the responsible investigative staff, which we credit, that Claimant 2's information did not cause the Enforcement staff to inquire into different conduct and did not make a substantial and important contribution to the success of the Covered Action.²² Instead, Enforcement staff, including the former Enforcement attorney whom Claimant 2 asserts was his/her primary contact, confirmed that Claimant 2's information focused on the Financial Institution (which was not charged in the Covered Action), was already known by the staff, or was not related to the Commission Investigation that resulted in the Covered Action. Accordingly, Claimant 2 did not provide information to the Commission that led to the success of the Covered Action and, therefore, Claimant is not eligible to receive a whistleblower award.²³

As stated above, Claimant 2 has put forth new information about his/her work as a ^{Redacted} In light of the new information, we decline to reach the merits of the applicability of

¹⁹ Claimant 2 admits in Claimant 2's response that he/she did not provide the anonymous tip that caused the staff to open the Commission Investigation. Claimant 2 claims that beginning in ^{***} Claimant 2 urged the Financial Institution to report what Claimant 2 viewed as potential violations ^{Redacted} to the authorities, and that the ^{***} anonymous tip may have resulted from those communications with the Financial Institution. We cannot credit such a claim because the record offers no evidence to support a link between Claimant 2's ^{***} communications and the anonymous tip.

²⁰ Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

²¹ Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

²² Claimant 2 also refers to materials that were provided directly to Enforcement staff and not included on Claimant 2's Form TCR submission. However, a declaration from the former Enforcement staff attorney confirmed Claimant 2's information, including Claimant 2's TCR submission and subsequent emails to the staff, did not significantly contribute to the Covered Action.

²³ Because Claimant 2 does not qualify for an award in the Covered Action, Claimant 2's request for a related action award is denied. 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); Rule 21F-4(g) and (f), and Rule 21F-11(a); Order Determining Whistleblower Award Claims, Release No. 34-84506 (Oct. 30, 2018); Order Determining Whistleblower Award Claims, Release No. 34-84503 (Oct. 30, 2018).

Rule 21F-8(c)(2). We need not reach this issue because Claimant 2’s information did not lead to a successful enforcement action and Claimant 2 is thus ineligible for an award on that ground.

C. Claimant 3

As an initial matter, the record demonstrates, and Claimant 3 does not dispute, that the staff first contacted Claimant 3 requesting materials while he/she was ^{Redacted} of the Foreign Government Entity in ^{Redacted}, approximately five years before Claimant 3 made a whistleblower submission. Accordingly, Claimant 3’s information is not voluntary pursuant to Exchange Act Rules 21F-3(a)(1) and 21F-4(a), and Claimant 3 is ineligible for an award.²⁴

The record further demonstrates that the Commission Investigation was opened in ^{***} approximately six years before Claimant 3’s whistleblower tip was submitted to the Commission. Accordingly, because the Commission Investigation had already been opened by the time Claimant 3 submitted a tip, Claimant 3’s information can only be deemed to have led to the success of the Covered Action if it caused the staff to inquire concerning different conduct as part of a current investigation or “significantly contributed to the success of the action.”²⁵

As an initial matter, pursuant to Rule 21F-8(c)(2), Claimant 3 cannot be credited with any information he/she may have provided or caused to be provided to the staff while Claimant 3 ^{Redacted} of the Foreign Government Entity in ^{Redacted} Individuals who are, or were at the time they acquired their information, employees, officers, or members of a foreign government or any political subdivision, department, agency or instrumentality thereof, are ineligible for whistleblower awards.²⁶ Claimant 3 does not dispute this, citing to Rule 21F-8(c)(2) in Claimant 3’s response to the Preliminary Determinations. Claimant 3 instead argues that “as a matter of equity and fairness” Claimant 3’s actions while ^{Redacted} of the Foreign Government Entity should weigh as a “strong positive” when evaluating whether Claimant 3 is entitled to an award based upon Claimant 3’s ^{***} whistleblower submission.

However, we ultimately need not consider Claimant 3’s request given that Claimant 3’s ^{***} whistleblower submission and the staff’s subsequent conversations with Claimant 3 and Claimant 3’s counsel did not cause the staff to inquire concerning different conduct and did not significantly contribute to the success of the Covered Action. Claimant 3’s information was submitted approximately six years after the staff opened the Commission Investigation and only about eight months before the Covered Action was issued. We find, based on the evidence in the record, including a declaration from Enforcement staff, that Claimant 3’s information did not

²⁴ Exchange Act Rule 21F-3(a)(1), 17 C.F.R. § 240.21F-3(a)(1); Exchange Act Rule 21F-4(a), 17 C.F.R. § 240.21F-4(a).

²⁵ Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

²⁶ See Exchange Act Rule 21F-8(c)(2), 17 C.F.R. § 240.21F-8(c)(2).

cause the staff to inquire concerning different conduct and did not make a substantial and important contribution to the success of the Covered Action. Instead, the record shows that at the time of Claimant 3's submission, the Commission Investigation was substantially complete and settlement negotiations were in progress. The declaration from Enforcement staff indicated that Claimant 3's information did not impact the settlement negotiations or otherwise contribute to the Covered Action.²⁷ Accordingly, Claimant 3 does not satisfy Exchange Act Rule 21F-4(c)(1) or 21F-4(c)(2) and is not eligible for a whistleblower award.

III. Conclusion

Accordingly, it is hereby ORDERED that (1) Claimant 1 shall receive an award equal to percent (%) of the monetary sanctions collected, or to be collected, in the Covered Action and the Other Agency Actions.

It is further ORDERED that Claimant 2's and Claimant 3's whistleblower award applications in the Covered Action and the Other Agency Actions be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary

²⁷ For the reasons discussed above regarding the denial of Claimant 2's application for a related action award, because Claimant 3 likewise does not qualify for an award in the Covered Action, Claimant 3's request for a related action award is denied.