UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96232 / November 4, 2022

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-14

In the Matter of the Claims for Awards

in connection with

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ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff ("CRS") issued a Preliminary Determination recommending the denial of the whistleblower award claims submitted by Redacted ("Claimant 1") for the seven above-referenced covered actions ("Covered Actions"). The Office of the Whistleblower ("OWB") issued a Preliminary Summary Disposition recommending the denial of the whistleblower award claim submitted by Redacted ("Claimant 2") for the Redacted Action. Claimant 1 and Claimant 2 filed timely responses contesting the preliminary denials. For the reasons discussed below, Claimant 1's and Claimant 2's award claims are denied.

I. Background

A. The Covered Actions

The Covered Actions emanated from an investigation ("Investigation") conducted by Division of Enforcement staff ("Staff") into Redacted As a result of the Investigation, the Commission brought the Covered Actions against Redacted The Commission charged the Redacted for willfully violating the Securities Exchange Act ("Exchange Act") and relevant rules thereunder by Redacted

Redacted

The Commission ordered that the Redacted

OWB posted notices of covered action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days for: Redacted

Redacted

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Action Redacted [2] Claimant 1 and Claimant 2 filed timely whistleblower award claims for the Covered Actions and the Redacted Action, respectively.

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

B. The Preliminary Determination as to Claimant 1

On December 20, 2021, the CRS issued a Preliminary Determination[3] recommending that Claimant 1's claims be denied on three grounds.[4] *First*, the CRS determined that as to (1) the Redacted Action, (2) the Redacted Action, and (3) the *** Action, Claimant 1 did not provide information that led to the successful enforcement of the three actions within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS concluded that with respect to these three actions, Claimant 1's information did not either (1) cause the Commission to (a) commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation, and (b) thereafter bring an action based, in whole or in part, on conduct that was the subject of Claimant 1's information pursuant to Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action pursuant to 21F-4(c)(2). The CRS determined that the Investigation that led to these actions was based on Staff's efforts and not Claimant 1's information.

Second, the CRS determined that as to (1) the Redacted Action, (2) the *** Action, (3) the *** Action, (4) the Redacted Action, and (5) the Redacted Action, the Commission could not consider Claimant 1's information to be derived from Claimant 1's independent knowledge or independent analysis, as required to be "original information," because Claimant 1 obtained the information as a result of his/her association with a firm retained to perform compliance or internal audit functions, as specified by Rule 21F-4(b)(4)(iii)(B). The CRS further concluded that Claimant 1 did not satisfy any of the exceptions set forth in Rule 21F-4(b)(4)(v).

Finally, the CRS determined that because Claimant 1 was not eligible for an award for any of the Covered Actions, he/she was not eligible for any related action award for Redacted Redacted Redacted ("Other Agency") Redacted

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[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 declarations of two Staff attorneys who were assigned to the Investigation ("Claimant 1 Staff Declarations").

C. Claimant 1's Response to the Preliminary Determination

Claimant 1 submitted a timely written response contesting the Preliminary Determination.[5] Claimant 1 alleges that the Preliminary Determination wrongly concluded that his/her information did not advance the Investigation or the Covered Actions and emphasizes the value of his/her information to the Staff. Claimant 1 also argues that he/she is not subject to Rule 21F-4(b)(4)(iii)(B) because he/she was not an employee whose principal duties involved compliance responsibilities, nor was Claimant 1 employed by or otherwise associated with a firm retained to perform compliance functions. Claimant 1 asserts that even if he/she is subject to Rule 21F-4(b)(4)(iii)(B), he/she nevertheless satisfies two of the exceptions set forth in Rule 21F-4(b)(4)(v)—the substantial injury exception and the impeding an investigation exception—which would make him/her eligible for awards.

D. The Preliminary Summary Disposition as to Claimant 2

On September 29, 2021, OWB issued a Preliminary Summary Disposition[6] recommending that Claimant 2's claim for the Redacted Action be denied.[7] OWB determined that Claimant 2 did not provide information that led to the successful enforcement of the Redacted Action because Staff responsible for the action never received any information from Claimant 2 or had any communications with Claimant 2.[8]

E. Claimant 2's Response to the Preliminary Summary Disposition

Claimant 2 submitted a timely written response.[9] Claimant 2 argues that he/she submitted information to the Other Agency Redacted concerning Redacted Redacted Redacted Claimant 2 also suggests that he/she informed Commission staff "firsthand" about these concerns. Claimant 2 believes that his/her information led to the Investigation and the Redacted Action. In support of his/her contentions, Claimant 2 points to purported

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

6 *See* Exchange Act Rule 21F-18(b), 17 C.F.R. § 240.21F-18(b).

7 The record supporting the Preliminary Summary Disposition included the declaration of one of the Staff attorneys who was assigned to the Investigation ("Claimant 2 Staff Declaration").

8 OWB also determined that because Claimant 2 was not eligible for an award in the Redacted Action, Claimant 2 was not eligible for an award in connection with any related action.

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

correspondence Claimant 2 had with the Other Agency.

II. Analysis

A. Claimant 1

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.[10] As relevant here, under Exchange Act Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered 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;[11] or (ii) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."[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.[13] 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.[14]

Claimant 1 does not qualify for an award in the Redacted Action, the Redacted Action, and the *** Action under either of the above-described provisions. We credit the Claimant 1 Staff Declarations, provided under penalty of perjury, which confirm that (1) the Investigation leading to the Redacted Action, the Redacted Action, and the *** Action was opened based on Staff's independent investigative efforts and not based on information provided by Claimant 1; and (2) while Staff communicated with and received information from Claimant 1, he/she did not

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

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

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

13 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.

14 Exchange Act Rel. No. 85412 at 8–9.

provide information that significantly contributed to the success of these three actions. The Preliminary Determination thus correctly concluded that as to the Redacted Action, the Redacted Action, and the *** Action, Claimant 1 did not provide information that led to the successful enforcement of any of those covered actions.

Further, to qualify as "original information", a submission must be, *inter alia*, (1) derived from the submitter's "independent knowledge" or "independent analysis"; and (2) not already known to the Commission from other sources. In addition, Rule 21F-4(b)(4)(iii)(B) provides that information will not be treated as "independent knowledge" or "independent analysis" if it is obtained by an individual "because" he or she was "employed by or otherwise associated with a firm retained to perform compliance or internal audit functions for an entity."

The record demonstrates that Claimant 1 obtained information about Redacted (collectively, the Redacted) as a result of his/her association with Redacted ("Company"), which was retained to perform compliance functions for the Redacted Redacted Redacted Redacted Redacted Since the exclusion pertains to anyone "associated" with a firm retained to perform compliance functions and Claimant 1 does not contend that he/she was not associated with the Company, Claimant 1's arguments that his/her "principal duties did not involve compliance or internal audit responsibilities" and that Claimant 1 obtained the relevant information in his/her capacity as an "independent contractor" rather than "employee," are unavailing.

Claimant 1 argues that the Company— Redacted —was never retained to, or represented that it would, perform compliance functions and that it did not supplant the compliance officer or department at the Redacted who retained all regulatory responsibilities despite outsourcing some of the functions to the Company. However, the record demonstrates that, even though the Company did not supplant the compliance departments at the Redacted engaged the Company to perform compliance functions Redacted Redacted Company's Redacted Redacted —as described by Claimant 1 and by the Company during the time that the Company and Claimant 1 interacted with the Redacted —was used by the Company to perform compliance functions for entities.

Additionally, Claimant 1 contends that certain of the Redacted had not formally engaged the Company at the times that Claimant 1 learned his/her information. Claimant 1 alleges that he/she only learned the information during pre-engagement activities, Redacted However, even if Claimant 1 learned his/her information this way, we consider such activities to be part of the process by which the Company was retained by the Redacted to perform compliance functions.

Finally, Claimant 1 alleges that some of his/her information was developed through Claimant 1's experiences working in the Redacted For example, Claimant 1 argues that through independent analysis he/she uncovered and reported to the Commission "a dangerous pattern of non-compliant conduct." However, the information that was helpful to Staff was the specific information that Claimant 1 provided about Redacted Redacted and which Claimant 1 learned while working for the Company.[15]

Because Claimant 1 obtained his/her information as a result of his/her association with the Company—which was retained to perform compliance functions—Claimant 1 must therefore satisfy at least one of Rule 21F-4(b)(4)(v)'s exceptions to receive an award. Claimant 1, however, has not done this.

First, Claimant 1 does not satisfy Rule 21F-4(b)(4)(v)(C), the 120-day exception.[16] Claimant 1 did not wait at least 120 days to report his/her information to the Commission since Claimant 1 provided his/her information to the Redacted audit committees, chief legal officers, or chief compliance officers (or their equivalents), or, since receiving Claimant 1's information under circumstances indicating that the Redacted audit committees, chief legal officers, or chief compliance officers (or their equivalents) were already aware of the information. Claimant 1's argument that the provision is inapplicable to his/her circumstances because the relevant Broker Dealers were aware of the misconduct "for months and/or years," is not supported by evidence in the record. We therefore find that there is insufficient evidence to support the 120-day exception. Claimant 1's argument that the provision is inapplicable because

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[15] Claimant 1 also takes issue with a sentence in a footnote from the Preliminary Determination, which states, in relevant part, that ". . . [the Company] represented Claimant [1] to clients and potential clients as [the Company's] Compliance Director." Claimant 1's title is ultimately not dispositive since, as noted above, the record indicates that, regardless of his/her title, Claimant 1 obtained the relevant information as a result of his/her association with a firm retained to perform compliance or internal audit functions.

[16] This exception applies if "[a]t least 120 days have elapsed since [the claimant] provided the information to the relevant entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or [the claimant's] supervisor," or, since receiving the information, if the claimant "received it under circumstances indicating that the entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or [the claimant's] supervisor was already aware of the information."

Claimant 1 was not acting in an "in-house role" and was not "involved in any audit of financial statements" is similarly unavailing because, as explained above, Claimant 1 obtained his/her information as a result of his/her association with the Company, which was retained to perform compliance functions.

Second, Claimant 1 does not satisfy Rule 21F-4(b)(4)(v)(A), the substantial injury exception.[17] Claimant 1 argues that failures by Redacted Redacted materially and negatively impacted the Commission's prior and ongoing investigations, which ultimately caused substantial harm to investors. However, Claimant 1 has not identified a specific, substantial injury to the Redacted or to investors that he/she believed was likely to result from the Redacted conduct if Claimant 1 did not report his/her information.

Third, Claimant 1 does not satisfy Rule 21F-4(b)(4)(v)(B), the impeding an investigation exception.[18] Claimant 1 alleges that each of the Redacted engaged in conduct to cover up their misconduct, declined to self-report known violations, and did not fully implement compliance policies to redress past misconduct and to ensure future compliance. Moreover, Claimant 1 has alleged that in Redacted Claimant 1 believed that if he/she did not submit his/her information to the Commission, the Commission would never have learned of the Redacted Redacted Claimant 1 has argued that without his/her information, the Commission would not be able to comprehend the magnitude and severity of the Redacted and supervisory failures spanning numerous Redacted

However, in the Commission's 2011 adopting release for the whistleblower program rules ("2011 Adopting Release"), we explained that this exception may apply if a whistleblower had a reasonable basis to believe, for example, that "the entity is destroying documents, improperly influencing witnesses, or engaging in other improper conduct that may hinder our investigation."[19] Here, Claimant 1 did not allege that he/she believed that misconduct of this nature was taking place. Instead, Claimant 1 has only expressed concerns that the Redacted Redacted: (1) were delaying in investigating and/or reporting their Redacted issues to the Commission; (2) desired to refrain from investigating, self-reporting, or correcting their *** *** issues; or (3) were seeking to prevent the creation of paper trails regarding when Redacted

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[17] This exception applies if a claimant has a "reasonable basis to believe that disclosure of the information to the Commission is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors".

[18] This exception applies if a claimant has a "reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the misconduct".

[19] Securities Whistleblower Incentives and Protections, 76 FR 34299, 34319 (June 13, 2011).

issues were discovered. Such concerns, however, are not comparable to those specifically identified in the 2011 Adopting Release—"destroying documents, improperly influencing witnesses, or engaging in other improper conduct that may hinder a Commission investigation."

Finally, as to the Redacted Action, the Redacted Action, and the *** Action, prior to Redacted receiving Claimant 1's information, Staff was already investigating as well as issues related to their Redacted [20] As such, Claimant 1's information was not used in, nor had any impact on, the success of these Actions.

B. Claimant 2

We deny an award to Claimant 2. The Claimant 2 Staff Declaration, which we credit, confirmed under penalty of perjury that Staff did not receive any information from Claimant 2 or communicate with Claimant 2. Instead, the Investigation that led to the Redacted Action was opened as a result of Staff's own efforts. Although the Other Agency brought its own action—the Redacted Action—against Redacted for the same conduct that the Commission charged, the Commission was not involved in the bringing of the Redacted Redacted Action. The Commission and the Other Agency each conducted separate investigations into the conduct that was charged in the Redacted Action and the Redacted Redacted Action.

We therefore conclude that Claimant 2 did not provide information that caused Staff to commence an examination, open or reopen an investigation, inquire concerning different conduct as part of a current examination or investigation that then resulted in the Commission bringing the Redacted Action, or significantly contribute to the success of the Redacted Action. Therefore, Claimant 2 is not eligible to receive a whistleblower award for the Redacted Action or the Redacted Action.

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[20] As discussed above, under Rule 21F-4(b)(4)(iii)(B), Claimant 1's information regarding Redacted Redacted will not be treated as "independent knowledge" or "independent analysis." In light of the application of this rule, Claimant 1's argument on reconsideration that the Staff did not sufficiently acknowledge the usefulness of Claimant 1's information is unavailing with respect to the *** Action, the *** Action, the Redacted Action, and the Redacted Action.

III. Conclusion

Accordingly, it is hereby ORDERED that: (1) the whistleblower award applications of Claimant 1 in connection with the Covered Actions be, and hereby are, denied; and (2) the whistleblower award application of Claimant 2 in connection with the Redacted Action be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary