

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 91584 / April 16, 2021

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2021-40

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In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

On Redacted, the Claims Review Staff (“CRS”) issued a Preliminary Redacted  
Determination recommending the denial of the whistleblower award claim submitted by Redacted  
Redacted (“Claimant”) in connection with the above-captioned covered action (the “Covered  
Action”). Claimant filed a timely response contesting the preliminary denial. For the reasons  
discussed below, Claimant’s award claim is denied.

**I. Background**

On Redacted, the Commission filed a complaint in federal court against Redacted  
Redacted (“Company”) Redacted  
Redacted  
Redacted  
Redacted  
Redacted

Redacted  
Claimant published a report on an investor website Redacted In Redacted,  
Redacted Redacted,  
against the Company Redacted on Redacted, the Commission obtained final judgments Redacted  
Redacted

Redacted, the Commission’s Office of the Whistleblower (“OWB”) posted a Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.<sup>2</sup> Claimant filed a timely whistleblower award application.

## II. The Preliminary Determination and Response

On Redacted, the CRS issued a Preliminary Determination<sup>3</sup> recommending that Claimant’s award claim be denied because (1) Claimant did not qualify as a whistleblower under Exchange Act Rules 21F-2(a)(1)-(2) since Claimant did not submit information about a possible securities law violation in the form and manner required by Exchange Act Rules 21F-9(a)-(b);<sup>4</sup> and (2) the information that Claimant later submitted to the Commission did not lead to the successful enforcement of the Covered Action under Exchange Act Rule 21F-4(c)(1)-(2).<sup>5</sup>

On Redacted, Claimant submitted a timely written request contesting the Preliminary Determination.<sup>6</sup> In the reconsideration request, Claimant contends that the article and report \*\*\* authored concerning Redacted, was the cause, in part, for the Commission’s decision to open its investigation of the Company Redacted. Claimant argues that it is of no legal consequence that Claimant filed \*\*\* tip with the Commission after the Commission filed its complaint in the Covered Action. The whistleblower rules only require, Claimant states, that a tip must be filed in one of the methods set forth under the applicable rule; the rule, however, is silent about when a tip must be filed, as long as it is filed prior to the filing of a whistleblower application. Claimant maintains that \*\*\* met those requirements. In addition, Claimant asserts, the information from \*\*\* article and from a more detailed report \*\*\* also published and later provided to the Commission constitutes “original information” because Claimant was the “original source” of this information, and that it is immaterial under the whistleblower rules that it was not new information to the Commission when Claimant filed \*\*\* tip in Redacted. Finally, Claimant asserts that given Claimant’s role in uncovering the Company’s \*\*\* and opening of the investigation, it would be inequitable to deny Claimant’s award claim.

## III. Analysis

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.”<sup>7</sup> Below, we analyze Claimant’s whistleblower award application and request for reconsideration by addressing: (1)

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

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

<sup>4</sup> See Exchange Act Sections 21F(a)(6) and 21F(b)(1), 15 U.S.C. §§ 78u-6(a)(6) and 78u(b)(1); Exchange Act Rules 21F-2(a)(1)-(2) & 8(a), 17 C.F.R. §§ 240.21F-3(a)(1)-(2) & 8(a).

<sup>5</sup> See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rules 21F-3(a) & 4(c), 17 C.F.R. §§ 240.21F-3(a) & 4(c).

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

<sup>7</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

whether Claimant provided information to the Commission; and (2) whether Claimant’s information led to the successful enforcement of the Covered Action.

**A. Claimant did not provide information to the Commission**

The Commission’s investigation that led to the Covered Action originated from the Division of Enforcement’s review of online news reports and a Redacted referral from the Division of Corporation Finance to the Division of Enforcement based upon an evaluation of certain Redacted publicly-filed notices by the Redacted Company. Redacted

Redacted Prior to the referral from the Division of Corporation Finance, the Commission had received a Redacted tip from an individual, who was not Claimant, alleging that a company Redacted

Redacted The allegation was based, in part, on several articles posted on an investing website from Redacted, including an anonymous Redacted report, titled Redacted published online, and authored by Claimant, which raised doubt as to whether Redacted

Redacted.<sup>8</sup> Around the time the investigative staff received the Division of Corporation Finance referral, it also learned of certain additional events concerning the Company, including that on a Redacted investor call, Redacted had publically confessed to Redacted, and on Redacted

Redacted. Enforcement staff then opened a formal investigation in Redacted

Section 21F of the Exchange Act directed that, in any covered action, “the Commission, *under regulations prescribed by the Commission and subject to subsection (c)*, shall pay an award or awards to 1 or more whistleblowers who voluntarily *provided* original information to the Commission that led to the successful enforcement of the covered action.”<sup>9</sup> The statute defines the term “whistleblower” to include “any individual who *provides*...information relating to a violation of the securities laws to the Commission, *in a manner established, by rule or regulation, by the Commission.*”<sup>10</sup> It also directs that “[n]o award under subsection (b) shall be made...to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.”<sup>11</sup> Further, Rule 21F-2(b) states that “[t]o be eligible for an award under Section 21F(b) of the Exchange Act (15 U.S.C. 78u-6(b)) based on any information you provide that relates to a possible violation of the federal securities laws, you must comply with the procedures and the conditions described in §§ 240.21F-4, 240.21F-8, and 21F-9.” Rule 21F-9 generally requires that information be submitted either online through a

<sup>8</sup> The article did not list an author but does indicate that it was written by the Redacted Claimant states in Claimant’s tip that Redacted was the author and that it was disseminated on Claimant’s website, Redacted and there is no evidence in the record contradicting Claimant’s assertion of authorship.

<sup>9</sup> Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1) (emphasis added).

<sup>10</sup> Exchange Act Section 21F(a)(6), 15 U.S.C. § 78u-6(a)(6) (emphasis added).

<sup>11</sup> Exchange Act Section 21F(c)(2)(D), 15 U.S.C. § 78u-6(c)(2)(A).

portal on the Commission’s website or by mailing or faxing a Form Tips, Complaints, and Referrals (“TCR”) to the Commission.<sup>12</sup> Further, the whistleblower “must declare under penalty of perjury at the time [he or she] submits [the] information . . . that [the] information is true and correct to the best of [the whistleblower’s] knowledge and belief.”<sup>13</sup> While Claimant authored a published report that raised legitimate concerns as to <sup>Redacted</sup>, Claimant did not provide this information to the Commission in the form and manner required under the whistleblower rules.

## B. Claimant’s information did not lead to the success of the Covered Action

On <sup>Redacted</sup>, three days after the Commission filed its complaint against the Company <sup>Redacted</sup>, Claimant submitted a tip through the Commission's online TCR System. The tip claimed authorship of the <sup>Redacted</sup> report that appeared on the investing website and included the report and the Commission's complaint as attachments. According to the investigative staff, when it reviewed Claimant’s tip soon after its submission, this was the first time the investigative staff became aware of Claimant's name in connection with the investigation and the Covered Action and the first time that staff learned that Claimant was the author of the <sup>Redacted</sup> report. The staff further noted that, by the time Claimant submitted <sup>\*\*\*</sup> tip, it had already completed its investigative work and had filed the Commission’s complaint for the Covered Action. Finally, the staff stated that Claimant’s tip did not provide the staff with any new or useful information that could assist the Commission in obtaining judgments against the defendants in the Covered Action and that, consequently, the staff had no communications with Claimant during the course of the investigation or the Covered Action.

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.”<sup>14</sup> Indeed, “[i]f individuals were motivated only to post information online—and not to provide that information directly to the Commission—then this core purpose of the whistleblower awards program [incentivizing individuals to come forward to assist the Government] would be undermined.”<sup>15</sup> Claimant did not submit <sup>\*\*\*</sup> tip to the Commission until <sup>Redacted</sup> after the Commission filed its complaint in the Covered Action, and more than two years after the Enforcement staff opened its investigation of the Company <sup>Redacted</sup>. Indeed, by the time Claimant filed <sup>\*\*\*</sup> tip on <sup>Redacted</sup>, the staff had already completed its investigative work, and the tip did not provide the staff with any new or useful information that assisted the Commission in obtaining judgments in the Covered Action. Claimant does not dispute that Claimant’s <sup>Redacted</sup> tip was not new information to the staff. Accordingly, Claimant did not provide information to the Commission that led to the

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<sup>12</sup> *Id.* § 240.21F-9(a).

<sup>13</sup> *Id.* § 240.21F-9(b).

<sup>14</sup> *In the Matter of the Claim for an Award in connection* <sup>Redacted</sup>

<sup>Redacted</sup>

, Exchange

Act Rel. 82955 at \*5 (March 27, 2018).

<sup>15</sup> *Id.* See also *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767, 773 (2018) (The Dodd-Frank Act “established ‘a new, robust whistleblower program designed to motivate people who know of securities law violations to tell the SEC.’”) (quoting S. Rep. No. 111-176, at 38 (2010)).

success of the Covered Action and, therefore, Claimant is not eligible to receive a whistleblower award.

**IV. Conclusion**

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

By the Commission.

Jill M. Peterson  
Assistant Secretary