

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 92065 / May 28, 2021

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2021-52

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In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award application submitted by Redacted (“Claimant”) in connection with the above referenced 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**

**A. The Covered Action**

In Redacted, staff in the United States Securities and Exchange Commission’s (“Commission”) Division of Enforcement (“Enforcement”) opened a matter under inquiry to review Redacted. The matter was converted to a formal investigation in Redacted. Early in the investigation, the Enforcement staff began focusing its efforts on investigating possible Redacted. The staff took significant investigative steps, including reviewing Redacted, phone records and other documents, taking testimony from witnesses, and coordinating its investigation with Redacted (“Other Agency”). The Commission filed its first enforcement action related to the investigation in Redacted.<sup>1</sup>

In Redacted, Claimant submitted information to the Commission regarding \*\*\* involving individuals who were implicated in the

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<sup>1</sup> See Redacted

Enforcement staff's ongoing investigation. Claimant later provided answers to follow-up questions from the staff and met with members of the Enforcement staff and representatives from the Other Agency.

On <sup>Redacted</sup> <sup>\*\*\*</sup>, the Commission filed a civil action in federal district court charging <sup>Redacted</sup> individuals with

The Commission's Complaint alleged <sup>Redacted</sup>. According to the Enforcement staff, the information submitted by Claimant was either already known to the staff based on more than four years of investigative work, or, to the extent any information was new to the staff, that information did not help substantially advance the ongoing investigation, help the Commission bring additional charges or charges against additional individuals or entities, or serve as the basis for any charges included in the Complaint. While Claimant's information related to the same individuals charged in the Commission's action, it did not relate to any of the <sup>Redacted</sup> alleged by the Commission.

On <sup>Redacted</sup> the district court entered a final judgment in favor of the Commission that ordered <sup>Redacted</sup>.

On <sup>Redacted</sup>, the Office of the Whistleblower posted a Notice of Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within ninety days. Claimant submitted a timely award claim on Form WB-APP.

## **B. The Related Action**

On <sup>Redacted</sup>, the Other Agency filed <sup>Redacted</sup> in a case arising out of the same facts as the Covered Action ("Related Action"). <sup>Redacted</sup>

## **C. The Preliminary Determination**

The CRS issued a Preliminary Determination<sup>2</sup> recommending that Claimant's application be denied because Claimant did not submit 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. In reaching the preliminary determination, the CRS noted that the Enforcement staff opened the underlying investigation more than four years before Claimant submitted Claimant's tip to the Commission and that Claimant's information either was already known to the Enforcement staff or did not form the basis of the Commission's charges in the Covered Action.

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

The CRS also noted that because Claimant is not eligible for an award in the Covered Action, Claimant cannot be eligible for an award in connection with the Related Action.

#### **D. Claimant’s Response to the Preliminary Determination**

Claimant submitted a timely written response contesting the Preliminary Determination.<sup>3</sup> Specifically, Claimant appears to argue that Claimant is entitled to an award because (1) the information Claimant provided to the Commission “parallels the underlying information utilized by the SEC in its enforcement actions,” and (2) Claimant’s substantial contributions to the Other Agency’s investigation and resulting <sup>Redacted</sup> had to expedite a favorable resolution of the SEC’s action.

### **III. Analysis**

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.<sup>4</sup> For the reasons that follow, and based on our review of the entire record, we find that Claimant’s information did not lead to the success of the Covered Action.

Under the whistleblower rules, an individual’s original information leads to the success of an action where it causes staff to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation, and the Commission brings a successful action “based in whole or in part on conduct that was the subject of [the individual’s] original information.”<sup>5</sup> Alternatively, an individual’s original information may lead to the success of a covered action where it significantly contributes to the success of a Commission judicial or administrative enforcement action.<sup>6</sup> In determining whether an individual’s information significantly contributed to an action, we consider factors such as whether the information allowed the Commission to bring the action in significantly less time or with significantly fewer resources; additional successful claims; or successful claims against additional individuals or entities.<sup>7</sup> The individual’s information must have been “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.<sup>8</sup>

Claimant does not satisfy Rule 21F-4(c)(1) as the investigation underlying the Covered Action was opened in <sup>Redacted</sup>, more than four years before Claimant first submitted information to the Enforcement staff in <sup>Redacted</sup>. Further, Claimant’s information did not cause the Enforcement staff to inquire into different conduct.

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

<sup>4</sup> See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

<sup>5</sup> Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

<sup>6</sup> Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

<sup>7</sup> See *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34,300, 34,325 (June 13, 2011).

<sup>8</sup> Order Determining Whistleblower Award Claim, Release No. 34-86902, at 4 (Sept. 9, 2019); Order Determining Whistleblower Claim, Release No. 34-77833, at 3 (May 13, 2016).

Claimant also does not satisfy Rule 21F-4(c)(2) as none of Claimant’s information significantly contributed to the Covered Action. A member of the Enforcement staff who was assigned to the investigation prepared a detailed declaration regarding the matter, and we credit the statements made in that declaration. Claimant provided information about <sup>Redacted</sup>

. The information provided by Claimant was either already known to the staff or did not serve as the basis for any charges included in the Covered Action. The Commission’s Complaint in the Covered Action alleged <sup>Redacted</sup> Claimant’s information did not relate to any of those <sup>Redacted</sup>. Even if there is some factual resemblance between Claimant’s information and the allegations in the Covered Action, a member of the Enforcement staff who investigated and prosecuted the action attested that the Enforcement staff did not use Claimant’s information, including the information Claimant provided in response to follow-up questions and in a meeting with the Enforcement staff and representatives from the Other Agency. As such, Claimant’s information did not make a substantial and important contribution to the success of the action.

Claimant further argues that because Claimant provided information and assistance to the Other Agency, including in multiple <sup>Redacted</sup>, and because the Other Agency and the Commission conducted parallel investigations, Claimant is therefore eligible for an award. Claimant’s argument fails for the simple reason that information provided to a different government entity is not information provided to the Commission. As we have explained, “our whistleblower rules require that the individual must provide his or her tip *directly* to the Commission.”<sup>9</sup> Assisting a different enforcement action brought by another agency does not demonstrate that the claimant assisted in the Commission’s Covered Action.<sup>10</sup> As discussed above, the information Claimant directly provided to the Commission was not used by Commission staff in the Covered Action, and to the extent Claimant provided additional information to the Other Agency, that information cannot support an award claim for the Covered Action. Finally, Claimant cannot qualify for an award with respect to the Related Action because Claimant is not eligible for an award in connection with the Covered Action.<sup>11</sup>

We therefore conclude that Claimant did not submit 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, and that, as a result, Claimant is ineligible for an award with respect to the Covered Action.

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<sup>9</sup> *In the Matter of the Claims for Award in Connection with Redacted*, Release No. 80596, 2017 WL 1738015, n.9 (May 4, 2017).

<sup>10</sup> *See* Order Determining Whistleblower Award Claims, Release No. 87662, at 13-14 (Dec. 5, 2019), *aff’d per curiam*, *John Doe v. SEC*, No. 20-1001 (D.C. Cir. Feb. 16, 2021).

<sup>11</sup> *See* Exchange Act Section 21F(a)(5), 15 U.S.C. § 78u-6(a)(5) (defining a “related action” as based upon the same original information provided by the whistleblower that led to the successful enforcement of the Commission action); Exchange Act Rules 21F-3(b) & 11(a), 17 C.F.R. §§ 240.21F-3(b) & 240.21F-11(a); Order Determining Whistleblower Award Claim, Rel. No. 34-84503 at n.4 (Oct. 30, 2018) (“The Commission may make an award to a whistleblower in connection with a related action *only if* the Commission has determined that the whistleblower is entitled to an award for a Commission covered action.”).

#### **IV. Conclusion**

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

By the Commission.

Jill M. Peterson  
Assistant Secretary