

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 103630 / August 5, 2025

WHISTLEBLOWER AWARD PROCEEDING

File No. 2025-43

In the Matter of the Claim for an Award
in connection with
Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim 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

On Redacted, the Commission announced Redacted Redacted (“Respondent”), alleging that the Respondent, through the actions of its senior managers, effected a fraudulent scheme to Redacted. The Respondent agreed to pay more than \$1 million in monetary sanctions to the Commission. The Commission also announced a settled administrative and cease-and-desist proceeding against Redacted individuals and a litigated administrative proceeding against a Redacted individual.

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

B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that Claimant's claim for award be denied because Claimant did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 21F-4(c) thereunder. The Covered Action investigation was not opened based on information provided by Claimant to the Commission. Rather, the record reflects that Commission staff opened the Covered Action investigation in ^{Redacted} based on civil action filings, including a publicly-available amended class action complaint ("Amended Complaint"). Furthermore, Commission staff did not review or receive any information from Claimant, or have any communications with Claimant, before the filing of the Covered Action or the filing of a settled administrative proceeding against ^{Redacted} individual defendants in ^{Redacted}. While Commission staff interviewed Claimant after the filing of the Covered Action in connection with a litigated proceeding against a ^{Redacted} individual, Claimant's information did not contribute to that proceeding because his/her information was already known to the Enforcement staff and did not contribute to the resolution of the litigated proceeding against the ^{Redacted} individual. Claimant provided no information or assistance that was used in, or otherwise contributed to, the Covered Action or enforcement proceedings brought by the Commission against the individual defendants. Additionally, the CRS addressed Claimant's contention that he/she was eligible for an award through operation of Exchange Act Rules 21F-4(b)(7) and 21F-4(c)(3) because of Claimant's submission of information to a ^{Redacted} ^{Redacted} professional at an exit interview in ^{Redacted} and during an interview with the Respondent's Audit Committee in ^{Redacted}. Claimant did not satisfy these rules, however, because Claimant did not provide the same information to the Commission within 120 days.

C. Claimant's Response to the Preliminary Determination

The Claimant filed a timely written response (the "Response") contesting the Preliminary Determination. Claimant principally argues: (1) that he/she satisfies the "led to" requirement by virtue of the fact that he/she was the original source of information provided in the Amended Complaint, which prompted staff to open the Commission's investigation; (2) at the time Claimant provided his/her information to counsel who filed the Amended Complaint the Commission's regulations requiring the provision of a Form TCR to the Commission had not been implemented; (3) regardless, Claimant satisfied the Form TCR requirement under Rule 21F-9(e) by filing a TCR with the Commission within 30 days of retaining counsel; (4) Claimant provided information to ^{Redacted} ("Other Government Authority") in ^{Redacted} which was then relayed by the Other Government Authority to the Commission and relied on by the Commission; and (5) the Commission should exercise its exemptive authority under Exchange Act Section 36(a) because, *inter alia*, reporting through a public medium raises considerations substantially different from those considered at the time the Commission's whistleblower rules were adopted and denying Claimant an award would result in undue hardship and unfairness.

II. Analysis

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must have “voluntarily provided original information *to the Commission* that *led to* the successful enforcement of the covered . . . action.” Exchange Act Section 21F(b)(1) (emphasis added).¹ Rules 21F-4(c)(1) and (c)(2) specify that this “led to” requirement is satisfied if either “*you gave* the Commission original information that cause[d] the staff to . . . open an investigation . . . or to inquire concerning different conduct as part of a current examination or investigation” or “[*y*]ou gave the Commission original information about conduct that was already under examination and investigation by the Commission . . . and your submission significantly contributed to the success of the action” (emphases added).² “[B]oth Rule 21F-4(c)(1) and Rule 21F-4(c)(2) require that a claimant’s *submission* of information to the Commission prove helpful to the Enforcement staff in the covered action.”³

According to declarations provided by Enforcement staff responsible for the Covered Action, which we credit, in ^{Redacted}, staff opened the Covered Action investigation based on the staff’s independent review of civil action filings, including the publicly-available Amended Complaint. Claimant did not provide the information contained in the Amended Complaint to the Commission, nor did staff receive or review any information from the Claimant prior to staff opening the Covered Action investigation. As such, Claimant did not provide information to the Commission that caused the opening of the investigation.

Nor did Claimant provide information to the Commission that caused staff to inquire into different conduct or that significantly contributed to the success of the Covered Action. It was not until ^{Redacted}, more than three-and-a-half years after Enforcement staff opened the investigation, and . . . after the filing of the Covered Action with the Respondent and the filing of the settled action against of the individual defendants, that Claimant provided information to the Commission for the first time. Enforcement staff met with Claimant in ^{Redacted} in connection with the litigated proceeding against the . . . individual defendant. However, the information provided by Claimant during the ^{Redacted} interview was already known to the Enforcement staff and was not used in the Covered Action or actions against the individual defendants. Claimant submitted a TCR to the Commission on ^{Redacted}, just two weeks before the contested proceeding against the . . . individual defendant was settled. None of the information in the TCR contributed to the charges brought against the . . .

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

² 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. 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. Order Determining Whistleblower Award Claims, Release No. 34-90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Release No. 34-85412 (Mar. 26, 2019) at 9 (same).

³ Order Determining Whistleblower Award Claims, Release No. 34-102987 (May 5, 2025) at 8 (emphasis in original).

individual defendant or the resolution of that action.⁴

Finally, Claimant's information does not satisfy the "led to" requirement under Exchange Act Rule 21F-4(c)(3). Exchange Act Rule 21F-4(c)(3) requires the following:

- (i) "You reported original information through an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law before or after the same time you reported them to the Commission;"
- (ii) "[T]he entity later provided your information to the Commission, or provided the results of an audit or investigation initiated in whole or in part in response to information you reported to the entity;"
- (iii) "[A]nd the information the entity provided to the Commission satisfies either paragraph (c)(1) or (c)(2) of this section;" and
- (iv) "[Y]ou must also submit the same information to the Commission in accordance with the procedures set forth in §240.21F-9 within 120 days of providing it to the entity."

In the Response, Claimant states that he/she revealed his/her suspicion about the improper ^{Redacted} to an examiner from the Other Government Authority in ^{...} and reiterated his/her suspicions during an exit interview later that year. Claimant also states that he/she was interviewed by investigators from multiple federal and state government agencies in ^{...} and ^{...}.

However, Claimant did not provide any information to the Commission until approximately two years later in ^{Redacted}, and thus did not provide the same information to the Commission within 120 days of providing the information to the Respondent or to the other government agencies.⁵

Turning to Claimant's arguments in the Response, we disagree that Claimant satisfies the "led to" requirement under Rule 21F-4(c)(1) because he/she was the "original source" of the information in the Amended Complaint that contributed to the opening of the staff's investigation.

Whether Claimant was the original source of the information in the Amended Complaint is a separate issue from whether he/she satisfies the statutory "led to" requirement. That requirement is embodied in Congress's directive that, to qualify for an award, a whistleblower must have "voluntarily provided original information *to the Commission that led to* the successful enforcement of the covered . . . action." Section 21F(b)(1) (emphasis added).⁶ In other words, putting aside the separate

⁴ Claimant submitted a second TCR to the Commission on ^{Redacted}, after all actions with respect to the Respondent and individual defendants were complete, and thus, had no impact on the Covered Action.

⁵ See Exchange Act Rule 21F-4(b)(7) (establishing a 120-day look-back provision where a claimant submits information through an entity's internal whistleblower procedures or to a federal government agency and then provides the same information to the Commission within 120 days).

⁶ See also *Kilgour v. SEC*, 942 F.3d 113, 122-23 (2d Cir. 2019) (reading the "led to" language in Section 21F(b)(1) as

requirement of whether the information was original, it must have been the information that was provided “to the Commission” that led to the successful enforcement of the Covered Action.⁷ Here, Claimant did not provide information *directly to the Commission* until three-and-a-half years after the opening of the investigation and after the filing of the Covered Action.⁸

The staff declarations affirm that Claimant’s belated submission of information to the Commission was not in any way helpful to the staff’s investigation, the Covered Action, or the proceedings against the individual defendants.

That a claimant must provide information *to the Commission* that “leads to” the success of the covered action is a statutory requirement. As the Commission has previously stated, “[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.”⁹ Despite Claimant’s argument to the contrary, the requirement that information be provided directly to the Commission for purposes of “led to” is not just reflected in the Commission’s regulations but embodied in the statute. As such, we reject Claimant’s argument that the Commission’s whistleblower program regulations had not been adopted at the time the Amended Complaint was filed, or that the regulations do not consider the reporting of information through a public medium, as the statute itself makes clear that to be eligible for an award a whistleblower must provide information to the Commission that leads to the success of the covered action.¹⁰

“seem[ing] to require that the information *as provided by the whistleblower* must have ‘led to the successful enforcement action.’”).

⁷ See Order Determining Whistleblower Award Claims, Release No. 34-102987 (May 5, 2025); Order Determining Whistleblower Award Claim, Release No. 34-102232 (Jan. 17, 2025).

⁸ In the Response, Claimant contends that one of the Enforcement staff declarations appears to be self-contradictory, as the declarant stated he was not aware of information the Claimant provided to the Commission prior to the interview, but also states that the Commission received a copy of the Claimant’s testimony transcript in ^{Redacted} from the Other Government Authority. We do not find this statement contradictory. Commission staff obtained the testimony transcript from the Other Government Authority, not from Claimant. Additionally, Claimant does not satisfy the “led to” requirement by virtue of the testimony provided by Claimant to the Other Government Authority in ^{Redacted} which was provided by the Other Government Authority to the Commission in ^{Redacted}. The Claimant did not directly provide the information to the Commission; nor did he/she provide the information to the Commission within 120 days of providing it to the Other Government Authority. See Exchange Act Rule 21F-4(b)(7).

⁹ Order Determining Whistleblower Award Claims, Release No. 34-82955 (Mar. 27, 2018) at 5.

¹⁰ Whether Claimant satisfies the Form TCR requirement under Rule 21F-9(e) because he/she submitted a TCR to the Commission within 30 days of retaining counsel does not address whether Claimant’s information to the Commission “led to” the success of the Covered Action. The information Claimant provided directly to the Commission in ^{Redacted} did not in any way advance the investigation or help resolve the litigated action against the ^{Redacted} individual defendant. Nor did Claimant’s ^{Redacted} TCR provide new information that contributed to the enforcement actions.

Finally, we reject Claimant’s request that we waive any applicable procedural bars to Claimant’s award eligibility. Section 36(a)(1) provides that “the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person . . . from any provision or provisions of [the Exchange Act] or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”¹¹ The Commission has not used its Section 36(a) exemptive authority to waive the “led to” requirement under Exchange Act Rule 21F-4(c) and we decline to do so here. The whistleblower program was designed to encourage persons with information about potential securities violations to report that information to the Commission.¹² Using Section 36(a) to excuse a claimant’s failure to report information to the Commission that leads to the success of the enforcement action would be contrary to the underlying purpose of the Commission’s whistleblower program.

Finally, applying the “led to” requirement to deny an award does not result in any unfair burden to Claimant. The “led to” requirement is not a mere technicality but rather helps ensure that award eligibility is limited to claimants whose submissions to the Commission actually prove to be helpful, consistent with Congress’s statutory design.

In short, based on the facts and circumstances of this case, we decline to exercise our discretionary exemptive authority under Section 36(a) to waive the “led to” requirement for Claimant’s award claim in the Covered Action.¹³

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award application of Claimant in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹¹ 15 U.S.C. § 78mm(a)(1).

¹² See *Digital Realty Trust, Inc. v. Somers*, 583 U.S. 149, 162 (2018).

¹³ Because Claimant is not eligible for an award in an SEC Covered Action, Claimant also is not eligible for an award in connection with any related action. See 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b); see also Order Determining Whistleblower Award Claims, Release No. 34-86902 (Sept. 9, 2019).