UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 104136 / September 29, 2025

WHISTLEBLOWER AWARD PROCEEDING
File No. 2025-55

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

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff ("CRS") issued a Preliminary Determination recommending the denial of the whistleblower award claims submitted by joint claimants Redacted ("Claimant 1") and Redacted ("Claimant 2") (collectively, the "Joint Claimants") in connection with the above-referenced covered action (the "Covered Action") and the criminal action, Redacted Redacted ("Criminal Action"). Joint Claimants filed a timely response contesting the preliminary denial. For the reasons discussed below, Joint Claimants' award claims are denied.

I. Background

A. The Covered Action

On Redacted Redacted, the Commission instituted settled cease-and-desist proceedings against Redacted (the "Company") and *** former executives for Redacted. The Commission found that, while the Company executives used Redacted ("Other Company"), Redacted Redacted, as Redacted, the Company repeatedly concealed material information about its sales to and relationship with the Other Company and how the Other Company significantly contributed to Redacted. Even in its investor presentation devoted to its relationship with the Other Company on Redacted, the Company failed to explain how the Other Company sales had impacted Redacted

Redacted in prior quarters. In Redacted, the Company restated its *** financial statements to Redacted from the Other Company sales in the second half of ***. The Commission also separately alleged that the Company had failed to disclose the material impact of certain Redacted it received from Redacted.

Final Judgments were entered against the Company and its executives ordering monetary sanctions of more than $1 million.

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. Joint Claimants filed timely whistleblower award claims.

B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that Joint Claimants' claims be denied. While not a basis for denial, the CRS noted that the Joint Claimants were not "whistleblowers" within the meaning of Exchange Act Rule 21F-2(a) prior to Redacted – the date on which Joint Claimants first submitted a Form TCR pursuant to Rule 21F-9(a) – weeks after the investigation that led to the Covered Action was opened. Additionally, Joint Claimants' submission of information did not lead to the success of the Covered Action as required under Exchange Act Section 21F(b)(1) and Exchange Act Rule 21F-4(c). The Joint Claimants did not give information to the Commission until after the Commission staff opened the investigation that led to the Covered Action. The Joint Claimants did not alert Commission staff to the information contained in their Redacted published reports and Enforcement staff found the publicly available reports on their own initiative. Joint Claimants cannot satisfy Rule 21F-4(c)(1) because their submissions of information to the Commission did not cause the staff to open the investigation that led to the Covered Action or identify the undisclosed relationship with the Other Company or any other conduct that became part of the Covered Action. Further, the information provided in their Redacted TCR (hereinafter, "November TCR"), which attached their public reports, and their submissions of information after the November TCR did not significantly contribute to the success of the Covered Action. Finally, the Joint Claimants did not satisfy "led to" through Exchange Act Rule 21F-4(c)(3) because contacting Company personnel, including the then-General Counsel, and informing them of and seeking comment about their upcoming publications does not satisfy 21F-4(c)(3)'s requirement that "[y]ou reported original information through an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law . . ."

C. Joint Claimants' Response to the Preliminary Determination

Joint Claimants submitted a timely written response (the "Response") contesting the Preliminary Determination.[1] In the Response, the Joint Claimants make the following principal arguments.

First, Joint Claimants argue that they are whistleblowers and that nothing in the Exchange Act or Commission's regulations require a claimant to have submitted information to the Commission on a TCR before staff opens the investigation to be eligible for an award. That Joint Claimants submitted their TCR after staff opened the investigation does not mean that an individual cannot be a "whistleblower," as evidenced by Rule 21F-4(c)(3) (satisfying "led to" through internal reporting) and Rule 21F-4(b)(7) (the 120-day look back provision).

Second, Joint Claimants contend that they satisfy "led to" through Rule 21F-4(c)(1) because they provided "original information" to the Commission in their Form TCRs, which included a copy of their reports exposing the Company, and they were the original source of the information in the reports that caused the Commission staff to open an investigation into the Company. According to Joint Claimants, Exchange Act Rule 21F-4(c)(1) has only three requirements: (1) the whistleblower "gave the Commission original information"; (2) the "information" that the whistleblower gave "was sufficiently specific, credible, and timely to cause the staff to . . . open an investigation"; and (3) the Commission's successful enforcement concerned the "conduct that was the subject of [the] original information." According to Joint Claimants, while Rule 21F-4(c)(2) speaks to a claimant's "submission," Rule 21F-4(c)(1) concerns a claimant's information, indicating that Rule 21F-4(c)(1) has no Form TCR timing requirement. For further support, Joint Claimants point to the Commission's prior decision in *Order Determining Whistleblower Award Claim*, Release No. 34-94398 (Mar. 11, 2022) ("2022 Order"), where the Commission made a $14 million award to a claimant who was the original source of an on-line report that prompted the investigation and then submitted an email to the Commission three days later. And even if Joint Claimants were required to "give" their information to the Commission, the term "give" does not require a direct transfer but means simply "[t]o cause to have."[2] According to Joint Claimants, their reports were widely disseminated, among other means, by email to mailing lists that included some Commission staff and they intended that the Commission staff would receive their on-line reports.[3]

Third, Joint Claimants argue that they satisfy the "led to" requirement pursuant to Rule 21F-4(c)(3) because they reported their information through the Company's "lega[l] or compliance

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

[2] Response at 16 (citing to Webster's II New College Dictionary (2001)).

[3] In connection with the Response, Joint Claimants submitted a sworn declaration by a public relations expert to evaluate the reasonableness of the Joint Claimants' "whistleblower reporting strategy" and concluded that he is "confident" that the Company monitored media stories in the Fall of *** *** and that the Commission staff regularly monitored financial media stories in the Fall of *** ***.

procedures," and the Company responded by conducting an internal investigation and reporting the results to the Commission. Specifically, on Redacted, Claimant 1 called and left messages for the Company's head of investor relations, whose staff directed Claimant 1 to the Company's outside PR agency. On Redacted, Claimant 1 reached a member of the PR agency and explained to him/her over the phone "the nature of [his/her] upcoming story." Claimant 1 then sent him/her an email with a list of questions about the Other Company. Also on Redacted Claimant 1 called the cell phone of the Company's then-General Counsel and left a detailed message that he/she wanted to talk about why the Company had failed to disclose its relationship with the Other Company. According to Joint Claimants, the CRS erred by concluding that Claimant 1 was not internally reporting information but merely seeking comment on an upcoming news publication. Nothing in the rules says that an individual does not report original information just because he/she is also seeking comment about a forthcoming story.

Fourth, Exchange Act Section 21F(b)(1) directs the Commission to pay whistleblower awards to those who voluntarily provided original information to the Commission that led to the successful enforcement of the Commission judicial or administrative action. The statute speaks to "original information," not "submission," and to the extent the Commission's rule on "led to" conflicts with the Exchange Act's requirements, it is arbitrary and capricious.

Finally, they contend that the Commission should waive any bars to their award eligibility because Joint Claimants spent significant resources and time in uncovering the Company's wrongdoing, and a denial does not serve the purposes of the whistleblower program. The Joint Claimants further argue that Commission precedent supports a waiver, including the 2022 Order. However, none of the precedents cited in the Response involved waiver of the statutory "led to" requirement.

II. Analysis

A. Joint Claimants Do Not Satisfy "Led to" Under Exchange Act Rule 21F-4(c)(1)

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).[4] The record shows that the Joint Claimants' submission of information to the Commission did not lead to the successful enforcement of the Covered Action.

[4] Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1). *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 "seem[ing] to require that the information *as provided by the whistleblower* must have 'led to the successful enforcement action.'").

Rule 21F-4(c)(1) specifies that this "led to" requirement is satisfied if "*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" and the "Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of your original information."

Joint Claimants' submission of information to the Commission did not cause Enforcement staff to open the investigation or to open new lines of inquiry under Rule 21F-4(c)(1). According to a declaration provided by Enforcement staff responsible for the Covered Action, which we credit, the Commission's investigation was opened on Redacted based on publicly available information, which included published reports by one of the Joint Claimants, prior to any information being provided by the Joint Claimants to the Commission. The Joint Claimants did not give any information to the Commission until weeks *after* the Commission opened its investigation.[5]

Joint Claimants argue that Rule 21F-4(c)(1) does not have any TCR timing requirement, that it is irrelevant whether a claimant provides his information on Form TCR to the Commission before or after the opening of the investigation. But the information that Joint Claimants *gave to the Commission*, as required under Section 21F of the Exchange Act, did not cause Enforcement staff to open the investigation or to inquire into the Company's undisclosed relationship with the Other Company.

The Commission recently reaffirmed that, as reflected in Section 21F, the information a claimant provides *to the Commission* must lead to the success of the covered action in order for a claimant to qualify for an award. In *Order Determining Whistleblower Award Claim*, Release No. 34-102987 (May 5, 2025) ("2025 Order"), the Commission denied the award claim of joint claimants whose information contributed to news publications that caused staff to open the investigation, but did not provide any information to the Commission until approximately a year later. In denying the joint award claim, the Commission stated:

> Joint Claimants' proposed interpretation of Rule 21F-4(c)(1) would sever that chain of causation by granting award eligibility whenever the Enforcement staff opens an investigation based on

[5] While not a basis for the denial, in order to address Joint Claimants' arguments in the Response, we note that at the time Enforcement staff opened the investigation, the Joint Claimants were not "whistleblowers" as defined within the meaning of Rule 21F-2(a) under the Exchange Act, because they had not provided information in writing *to the Commission*. Joint Claimants also contend their counsel contacted a former Assistant Director on Redacted to orally report Claimant 1's findings in his/her Redacted published reports. The Joint Claimants then submitted their Form TCRs on Redacted. Joint Claimants were not "whistleblowers" until they provided information about a possible violation of the securities laws in writing to the Commission. *See* Exchange Act Rule 21F-2(a)(1). While Joint Claimants provided sworn declarations along with their Response from former Enforcement staff indicating that whistleblower counsel would contact them orally about possible securities law violations, for purposes of the Commission's whistleblower program, an individual does not become a "whistleblower" until his information is provided in writing to the Commission. Regardless, the record demonstrates that Enforcement staff opened the MUI weeks prior to Joint Claimants' oral report or submission of Form TCRs.

publicly available information for which an individual was the "original source," even if that individual's submission to the Commission at a later date bore no causal connection to the opening of the investigation. Joint Claimants' reading would reduce the statutory requirement that the information be provided "to the Commission" to a ministerial step, one that had no independent substantive (causal) connection between the whistleblower's information and the success of the Commission's action. We do not believe that this is what Congress intended when Congress enacted the "led to" requirement in Section 21F(b)(1), nor does it seem the better reading of the statute.[6]

Joint Claimants resist these conclusions by contending that they were the "original source" of the information in the online reports that prompted the staff's opening of the investigation. In other words, Joint Claimants argue that they satisfy Rule 21F-4(c)(1) by virtue of the "original source" rule in Rule 21F-4(b), because it was their "original information" in the relevant news reports that prompted the Enforcement staff to open the investigation that culminated in the Covered Action.

But whether or not Joint Claimants were the original source of the relevant online reports is a separate issue from whether they satisfy 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). In other words, putting aside the separate 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.

Joint Claimants' interpretation also misunderstands how the statutory "led to" requirement and the Commission's original source rule were designed to interact. The Commission's "led to" rule implements Congress's decision to condition award eligibility on whether a whistleblower gave the Commission original information that "led to the successful enforcement of" a covered action. Section 21F(b)(1). As already quoted, and in relevant part, the "led to" rule conditions award eligibility on whether the whistleblower's "original information . . . cause[d] the staff to open . . . an investigation" under Rule 21F-4(c)(1) or, for later submissions, whether the whistleblower's "submission significantly contributed to the success of the action" under Rule 21F-4(c)(2).[7] To paraphrase, these first two paragraphs of the "led to" rule focus on causation: Did the whistleblower's submission to the

[6] 2025 Order at 4.

[7] By contrast, the Commission adopted the "original source" rule in 2011 to implement Congress's directive that awards be paid only to whistleblowers who submit "original information," Section 21F(b)(1), which is defined to mean information that, in addition to other conditions, "is not known to the Commission from any other source, unless the whistleblower is the original source of the information," Section 21F(a)(3). The "original source" rule repeats those statutory directives and elaborates, "The Commission will consider you to be an *original source* of the same information that we obtain from another source if the information satisfies the definition of original information, and the other source obtained the information from you or your representative." Exchange Act Rule 21F-4(b)(1)(ii), (b)(5). The "original source" rule was not designed to implement the "led to" statutory requirement.

Commission of original information cause the Enforcement staff to open the investigation or else significantly contribute to the success of the covered action?[8] Joint Claimants' proposed interpretation of Rule 21F-4(c)(1) would sever that chain of causation by granting award eligibility whenever the Enforcement staff opens an investigation based on publicly available information for which an individual was the "original source," even if that individual's submission to the Commission at a later date bore no causal connection to the opening of the investigation.

On the present record, for example, Joint Claimants delayed for several weeks before submitting information directly to the Commission, at which point their submission no longer had any useful value to the Enforcement staff. That behavior by Joint Claimants is not of the sort that the whistleblower program was designed to reward. As the U.S. Supreme Court has recognized, Congress's "'core objective'" in enacting Exchange Act Section 21F was "'to motivate people who know of securities law violations to *tell the SEC*.'" *Digital Realty Trust, Inc. v. Somers*, 583 U.S. 149, 162 (2018) (quoting S. Rep. No. 111-176, at 38 (2010)). Extending the Commission's whistleblower rules to reward Joint Claimants would do little, if anything, to effectuate that purpose.

Satisfying the Commission's original source rule goes to Congress's statutory requirement that a whistleblower submit original information, and it is not a substitute for satisfying Congress's separate led-to requirement. Indeed, this result was implicit in the illustrative example in the Commission's 2011 adopting release of how the "original source" rule and the "led to" rule were designed to interact:

> As the language of our rule indicates, if B makes a whistleblower submission based upon information obtained from A, and A later makes his or her own submission of that information, then A will be considered the "original source" of the information (assuming that A establishes his or her status as the original source and that the information otherwise qualifies as "original information"). However, A's status as the "original source" of the information does not exclude B from award eligibility. In this example, because B obtained the facts underlying his or her submission from A, and those facts were not derived from publicly available sources, B would also be deemed to have submitted information derived from his or her "independent knowledge." Thus, both submissions could qualify as "original information;" B's because he or she was first to bring the Commission information derived from "independent knowledge," and A's because he or she was the "original source" of information that, as of B's submission, was already known to the Commission.
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> Further, by virtue of being first-in-time, B may have an advantage over A. If B's submission were sufficiently specific, credible, and timely that it caused us to open an investigation, and if a successful enforcement action resulted, then we would consider whether B's submission "led to" our successful action under the lower standard set forth in Rule 21F-4(c)(1). Correspondingly, if A made his or her submission after we were already investigating the matter that B brought to us,

[8] The third and last paragraph of the "led to" rule embraces a chain of indirect causation for an individual who first reports internally through an employer's internal compliance system and within 120 days reports the same information directly to the Commission. *See* Rule 21F-4(c)(3).

> then A's information would be evaluated under Rule 21F-4(c)(2), and A would have to meet the additional requirement that his or her information "significantly contributed" to the success of the action. In this regard, we note that A would also be considered the "original source" of any additional information he or she provided that materially added to our base of knowledge.

Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,300, 34,321-22 (June 3, 2011). In this illustration, both A and B could qualify as having provided original information, with A taking advantage of the "original source" rule, but each would be evaluated under a different prong of the "led to" rule depending on the timing of their respective submissions to the Commission. By contrast, on Joint Claimants' reading, even if A made his or her submission to the Commission long after the Enforcement staff opened the investigation, both A and B could satisfy Rule 21F-4(c)(1) based solely on B's earlier submission to the Commission of information for which A was an "original source." Moreover, A would no longer have to meet the "significantly contributed" standard under Rule 21F-4(c)(2). That is not how Rule 21F-4(c)(1) and Rule 21F-4(c)(2) were designed to operate.

Accordingly, Joint Claimants' proposed interpretation of the Commission's whistleblower rules should be rejected. Their belated submission of information to the Commission bore no causal connection to the Enforcement staff's opening of the investigation and therefore did not satisfy Rule 21F-4(c)(1).

Joint Claimants argue that denying their award claim would create inconsistencies with the 2022 Order, in which we granted an award to a claimant who emailed his report to the Enforcement staff three days after posting it online, even though it was the staff's discovery of the online report and not its receipt of the email that prompted the opening of the successful investigation.[9] We reasoned that the whistleblower was the "original source" of the information in the online report and that this information had caused the Enforcement staff to open its investigation under Rule 21F-4(c)(1). *See id.* On appeal of the 2022 Order by a second, unsuccessful claimant, the U.S. Court of Appeals for the Third Circuit sustained the denial but expressed concern about the award to the first claimant:

> We acknowledge that the SEC's proffered justification for awarding Claimant 1 $14 million and Doe [that is, the second claimant] nothing—hinging primarily on a single email that Claimant 1 sent to an SEC enforcement attorney—leaves something to be desired. The SEC has elsewhere argued that awards should only be granted where the tip itself "significantly contribute[d] to the success of the [SEC] action." *Kilgour v. SEC*, 942 F.3d 113, 123 (2d Cir. 2019). Yet Claimant 1's email had no ostensible impact on the investigation; SEC investigators found the Report on their own. . . . But these potential issues are beyond the scope of this appeal and, moreover, serve only to call Claimant 1's award into question while doing nothing to undermine the SEC's reasoning as to Doe.

Doe (Claimant #2) v. SEC, No. 22-1652, 2023 WL 3562977, at *3 n.3 (3d Cir. Mar. 23, 2023).

[9] 2022 Order at 3.

Given the Third Circuit's concern, we turn to the *Kilgour* matter referenced by the Third Circuit. There, it was undisputed that certain joint claimants had delayed their submission until the Enforcement staff's investigation was nearly complete. *See Order Determining Whistleblower Award Claims*, Release No. 34-82181, 2017 WL 596236, at *7 (Nov. 30, 2017) (the "2017 Order"). We therefore reasoned that, to satisfy the second paragraph of the "led to" rule, "they must demonstrate that *their* 'submission significantly contributed to the success of the action.'" *Id.* (quoting Rule 21F-4(c)(2)). Because those joint claimants' submission was duplicative of an earlier submission by another claimant, we concluded that their award claim must fail. *See id.*

On appeal of the 2017 Order, the U.S. Court of Appeals for the Second Circuit sustained our submission-focused interpretation of Rule 21F-4(c)(2). *Kilgour v. SEC*, 942 F.3d 113, 122-23 (2d Cir. 2019). That court read the "led to" language in Section 21F(b)(1) as "seem[ing] to require that the information *as provided by the whistleblower* must have 'led to the successful enforcement action.'" *Id.* at 122. In reaching that conclusion, the Second Circuit observed that our submission-focused interpretation encourages whistleblowers to "curat[e] their submissions" to maximize utility and therefore "strikes a sensible balance between care and timeliness" in the provision of original information. *Id.* at 123.

As the Third Circuit recognized, our submission-focused interpretation of Rule 21F-4(c)(2) in the 2017 Order contrasts with how we applied Rule 21F-4(c)(1) in the 2022 Order to focus on the information rather than the submission. While an argument might be made for that distinction based on the use of the word "information" rather than "submission" in Rule 21F-4(c)(1), we reject that reading in favor of a more natural reading which harmonizes Rule 21F-4(c)(1) with the "led to" language of Section 21F(b)(1). As the Second Circuit observed, Section 21F(b)(1) "seems to require that the information *as provided by the whistleblower* must have 'led to the successful enforcement action.'" 942 F.3d at 122-23; *see also Decker v. N.W. Env't Def. Ctr.*, 568 U.S. 597, 609 (2013) (observing that a "permissible reading of the regulation … bring[s] it into harmony with … the statute" (omissions in original) (internal quotation omitted)).

Moreover, Joint Claimants' contrary interpretation of Section 21F(b)(1) and Rule 21F-4(c) would reward behavior inconsistent with the statute's design. Under an information-focused interpretation, for example, an individual could self-publish online or give information to the press, indirectly prompting the Enforcement staff to open an investigation upon finding the information in the public realm, while the individual could wait months or even years to provide that same information directly to the Commission. Not only would that outcome subvert the statutory design, but it would also open the door to abusive tactics if, for example, an individual were permitted to wait until the Commission publicly filed its enforcement action before coming forward as the alleged "original source" for a news story that long ago prompted the staff's investigation.

Accordingly, as we recently stated in the 2025 Order, we disavow the information-focused approach followed in our 2022 Order and clarify that the submission-focused interpretation in our 2017 Order applies to both Rule 21F-4(c)(1) and Rule 21F-4(c)(2). In other words, both 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.

We credit the staff declaration that Joint Claimants' belated submission of information to the Commission did not cause staff to open the investigation or inquire into the Company's undisclosed relationship with the Other Company.

Finally, we reject the Joint Claimants' contention that widely disseminating information on the Internet with the expectation that someone from the Commission will see the information and act on it is the same as "giv[ing]" the information to the Commission. As the Commission 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."[10] Furthermore, that Joint Claimants circulated their news reports by sending a mass email which may have included Commission staff does not save Joint Claimants' award claim, as the record does not support the conclusion that Enforcement staff opened the investigation or began inquiring into the Company's undisclosed relationship with the Other Company because of the mass email, but because of publicly available news articles they themselves identified.

In sum, Joint Claimants' belated submission of information to the Commission bore no causal connection to the Enforcement staff's opening of the investigation and therefore did not satisfy Rule 21F-4(c)(1).

B. Joint Claimants Do Not Satisfy "Led To" Under Exchange Act Rule 21F-4(c)(2)

Exchange Act Rule 21F-4(c)(2) is satisfied if "[*y]ou gave* the Commission original information about conduct that was already under examination or investigation by the Commission . . . and your submission significantly contributed to the success of the action" (emphases added).[11]

[10] *Order Determining Whistleblower Award Claims*, Release No. 34-82955 at *5 (Mar. 27, 2018).

[11] 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 would 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).

Joint Claimants do not dispute in their Response that the information they provided to the Commission after the opening of the investigation did not significantly contribute to the success of the Covered Action under Rule 21F-4(c)(2). Nor does the record support the conclusion that their information significantly contributed to the success of the Covered Action. According to a declaration provided by Enforcement staff responsible for the Covered Action, the information the Joint Claimants provided to the Commission beginning in Redacted did not substantially advance the investigation because the information was duplicative of information already known to Enforcement staff from the Joint Claimants' published reports or other sources or otherwise concerned conduct that did not become part of the Covered Action.

C. Joint Claimants Do Not Satisfy "Led to" Under Exchange Act Rule 21F-4(c)(3)

Exchange Act Rule 21F-4(c)(3) provides a third mechanism for satisfying the "led to" requirement. 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 at 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."

Joint Claimants do not satisfy "led to" under Exchange Act Rule 21F-4(c)(3).

First, the record does not support the conclusion that Joint Claimants provided original information through the Company's "internal whistleblower, legal, or compliance procedures." They contend that Claimant 1 contacted the Company's head of investor relations, which in turn, directed him/her to the firm's outside PR agency. As an initial matter, we do not believe that providing information to a company's investor relations department or their outside PR agency satisfies the requirement to report original information of wrongdoing through a company's "internal whistleblower, legal, or compliance procedures." A company's investor relations department or outside PR firm are not generally persons responsible for a company's compliance with law.[12] Nor

[12] Pursuant to the Commission's 2011 Adopting Release, "a report to a supervisor will qualify under this standard if the

does the record support the conclusion that the Company's investor relations department or outside PR firm had responsibility for internal whistleblower, legal or compliance procedures. While the General Counsel of a company is a person responsible for compliance with law, we do not believe that a reporter leaving a voicemail message about an upcoming story he/she intends to publish on a General Counsel's cell phone satisfies the first requirement of Rule 21F-4(c)(3).

In connection with the Response, Joint Claimants submitted a sworn declaration by Claimant 1, which supports the conclusion that *** outreach to the Company's head of investor relations, outside PR firm and General Counsel was not an internal report of wrongdoing for purposes of Rule 21F-4(c)(3). While Joint Claimants contend that Claimant 1 was not just seeking comment, but was also reporting original information, that conclusion is not supported by Claimant 1's declaration, which states in relevant part:

> [A]s Redacted journalist it is customary to fact-check and seek comment before the publication of stories about public companies or individuals. At the Redacted, to ensure both accuracy and fairness, we never sandbag or surprise the subjects of our investigations with what appears in our reports. Further, most media liability policies—better known as libel or error-and omission policies—require the publisher to attempt to make the subject of its reporting aware of what is being written. Accordingly, despite being ready to publish my report in early Redacted, I repeatedly offered [the Company] the opportunity to comment on my upcoming report.[13]

In other words, Claimant 1 was seeking comment from various Company personnel on his/her upcoming publications. He/She also appears to have contacted the Company because doing so may have been required under the media liability policies of his/her employer. We do not believe that a news reporter who contacts a company to solicit comment on an upcoming article is using the company's procedures to internally report wrongdoing. To conclude otherwise would mean that any time a news reporter contacts an organization about an upcoming publication regarding wrongdoing by that organization, the reporter's contact would be transformed into an internal whistleblower report. Furthermore, Claimant 1's declaration supports the conclusion that instead of reporting wrongdoing, Claimant 1 was asking the Company questions about conduct on which he/she intended to report. Because Claimant 1 did not submit anything in writing to the General Counsel, we are left with

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entity's internal compliance procedures require or permit reporting misconduct in the first instance to supervisors. Furthermore, if an entity does not have established internal procedures for reporting violations of law, we will consider an employee who reports a possible violation to the entity's legal counsel, senior management, or a director or trustee to have provided the information through the appropriate 'internal whistleblower, legal or compliance procedures.'" A company's investor relations department or outside PR firm does not fall into one of the persons or groups illustrated in the Adopting Release that would count for purposes of Rule 21F-4(c)(3). *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. at 34,325.

[13] Declaration of Claimant 1 ¶ 35.

Claimant 1's recollection about what he/she orally conveyed in his/her voicemail message to the General Counsel. But even Claimant 1's recollection does not support the conclusion that he/she was reporting misconduct, as opposed to informing the General Counsel about an upcoming publication and wanting to ask the General Counsel questions in furtherance of his/her story.[14] While the Commission has previously determined that outsiders, in addition to employees, may satisfy "led to" under Exchange Act Rule 21F-4(c)(3), they still must meet the rule's several requirements, which Joint Claimants failed to do.

Second, Joint Claimants do not satisfy the second requirement under Rule 21F-4(c)(3), because there is insufficient evidence in the record to support the conclusion that it was the information that Claimant 1 provided to the Company's investor relations department, outside PR firm or General Counsel on Redacted, that prompted the Company to internally investigate the misconduct or whether it was the subsequent publication of the online reports by the Joint Claimants that prompted the Company to initiate an internal investigation. According to the Response, it was Joint Claimants' "reporting [that] caused the Company to quickly take corrective actions," and that on Redacted, two days after Claimant 1's published report, the Company formed an ad hoc committee of its board of directors to review the allegations. As such, it is more likely, as acknowledged by the Joint Claimants, that the Company began internally investigating the conduct because of the publication of the online reports by the Joint Claimants (as well as the other news media surrounding the Joint Claimants' online reports) and not because of the voicemail message Claimant 1 left on the General Counsel's cell phone.

In sum, Joint Claimants did not provide original information that led to the success of the Covered Action under Rule 21F-4(c)(3).

D. Waiver of the "Led To" Requirement

Finally, the Joint Claimants argue that the Commission should use its broad discretion to waive[15] any eligibility requirements, contending that their denial is based on a simple timing issue – that had they submitted their TCR to the Commission prior to their online publications they would have been eligible for an award and that the Commission has previously granted exemptions to "deserving

[14] Declaration of Claimant 1 ¶ 43 ("I left him a long and detailed voice message. Among other substantive details, I identified myself and our Redacted; noted that we were about to publish a story about his company; provided my contact information; and indicated that I wanted to talk with him about the recent Redacted and an organization that appeared important to [the Company], [the Other Company], and why [the Company] had never disclosed its close relationship with [the Other Company].").

[15] Exchange Act 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 of 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." 15 U.S.C. § 78mm(a)(1).

whistleblowers who made only minor procedural missteps." We decline to use our Section 36(a) exemptive authority here.

Applying the "led to" requirement to deny an award does not result in any unfair burden to the Joint Claimants. 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. There is no unfairness in concluding that claimants who self-publish online or report to the press before submitting information to the Commission should generally bear the risk that the Enforcement staff may learn that information via those other sources before the staff receives the claimants' submission itself.[16] The precedents that Joint Claimants rely on in the Response did not involve waiver of the statutory "led to" requirement.[17] Rather, the Commission's decision here not to utilize Section 36(a) to waive the "led to" requirement is consistent with past Commission precedent.[18]

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award claims of Joint Claimants in connection with the Covered Action and the Criminal Action be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary

[16] *Order Determining Whistleblower Award Claim*, Release No. 34-102987 (May 5, 2025).

[17] *Order Determining Whistleblower Award Claim*, Release No. 34-94398 (Mar. 11, 2022) (exercising Section 36(a) exemptive authority to waive the Form TCR filing requirement, not the "led to" requirement).

[18] *Order Determining Whistleblower Award Claim*, Release No. 34-102987 (May 5, 2025); *Order Determining Whistleblower Award Claim*, Release No. 34-102232 (Jan. 17, 2025); *Order Determining Whistleblower Award Claim*, Release No. 34-102159 (Jan. 13, 2025).