

FINAL ORDER – THIS PRELIMINARY DETERMINATION BECAME THE FINAL ORDER OF THE COMMISSION ON AUGUST 27, 2021 WITH RESPECT TO CLAIMANTS 1 AND 2 PURSUANT TO RULE 21F-10(f) OF THE EXCHANGE ACT

Notice of Covered Action [REDACTED]  
Notice of Covered Action [REDACTED]

**PRELIMINARY DETERMINATIONS OF THE CLAIMS REVIEW STAFF**

In response to the above-referenced Notices of Covered Action,<sup>1</sup> the Securities and Exchange Commission (the “Commission”) received joint whistleblower award claims from [REDACTED] (“Claimant 1”) and [REDACTED] (“Claimant 2”) (collectively, the “Claimants”). Pursuant to Section 21F of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 21F-10 promulgated thereunder, the Claims Review Staff has evaluated these claims in accordance with the criteria set forth in Rules 21F-1 through 21F-18.

The Claims Review Staff has preliminarily determined to recommend that the Commission deny an award to both Claimants. The basis for this determination is marked below as follows:

**Claimants did not provide information that led to the successful enforcement of the above-referenced Covered Actions within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder because the information provided did not: (1) cause the Commission 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 under Rule 21F-4(c)(1) of the Exchange Act; or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.<sup>2</sup>**

**Claimants were not “whistleblowers” under Exchange Act Sections 21F(a)(6) and 21F(b)(1), and Exchange Act Rule 21F-2(a)(1) thereunder, with respect to the**

<sup>1</sup> The two referenced covered actions [REDACTED] arising from the same investigation.

<sup>2</sup> Claimants submitted their information to the Commission nearly two years after the staff opened the investigation leading to the above-referenced Covered Actions. Claimants’ submission did not significantly contribute to the success of the above-referenced Covered Actions because, by the time Claimants’ tip was submitted to the Commission, the investigation was substantially complete and the staff was about to enter into settlement discussions with the defendants. Further, the investigative staff was aware of Claimants’ information by the time Claimants submitted their information to the Commission, in part because the staff had previously read this information in several articles posted on the Internet by Claimant 1 several years before the Claimants submitted their tip.

**Covered Action until they submitted their information to the Commission. To qualify as a whistleblower, an individual must (among other things) provide information regarding a potential securities law violation to the Commission in the form and manner that is required by Exchange Act Rule 21F-9(a), which Claimant did not do until nearly two years after the investigation was opened that led to the above-referenced Covered Actions.<sup>3</sup>**

Claimant failed to submit the claim for award to the Office of the Whistleblower within ninety (90) days of the date of the above-referenced Notice for the Covered Action, as required under Rule 21F-10(b) of the Exchange Act.<sup>4</sup>

Claimant's whistleblower submission(s) upon which Claimant bases the claim for an award was not made voluntarily as required by Exchange Act Section 21F and Rules 21F-3 and 21F-4(a)(1) because Claimant made the submission(s) after receiving a request, inquiry, or demand, from Commission staff that was directed to Claimant and that related to the subject matter of the submission(s).

Claimant did not provide "original information" that led to the successful enforcement of the above-referenced Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(2) and 21F-4(b) thereunder because the information was not derived from Claimant's: (1) "independent knowledge," as defined under Rule 21F-4(b)(2), but instead was derived entirely from "publicly available sources;" or (2) "independent analysis," as defined under Rule 21F-4(b)(3), because the information did not include an examination and evaluation of information that "reveals information that is not generally known or available to the public."

Claimants did not provide "original information" that led to the successful enforcement of the above-referenced Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(2) and 21F-4(b) thereunder because the information provided by Claimants was already known to the Commission.

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<sup>3</sup> Claimants first submitted information to the Commission in [REDACTED]. Posting articles on the Internet does not satisfy the requirement that individuals provide their information to the Commission.

<sup>4</sup> See Order Determining Whistleblower Award Claim, Release No. 34-77368 (Mar. 14, 2016), *pet. for rev. denied sub nom. Cerny v. SEC*, 708 F. App'x 29 (2d Cir. Sept. 7, 2017), *cert. denied*, 138 S.Ct. 2005 (2018).

Notice of Covered Action [REDACTED]  
Notice of Covered Action [REDACTED]

[REDACTED]

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Claimant did not provide “original information” that led to the successful enforcement of the above-referenced Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(2) and 21F-4(b) thereunder because the information was not provided to the Commission for the first time after July 21, 2010 (the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act).<sup>5</sup>

By: Claims Review Staff

Date: May 17, 2021

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<sup>5</sup> See *Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015).