

**FINAL ORDER – THIS PRELIMINARY DETERMINATION BECAME THE FINAL ORDER OF THE COMMISSION ON MAY 30, 2023 PURSUANT TO RULE 21F-10(f) OF THE SECURITIES EXCHANGE ACT OF 1934**

Notice of Covered Action [REDACTED]  
[REDACTED]

**PRELIMINARY DETERMINATION  
OF THE CLAIMS REVIEW STAFF**

On [REDACTED], the Claims Review Staff (“CRS”) issued a Preliminary Determination (the “[REDACTED] PD”) related to Notice of Covered Action [REDACTED], which was issued in connection with the Commission’s successful resolution of the above-referenced [REDACTED] action (the “Covered Action”). The [REDACTED] PD recommended that [REDACTED] and [REDACTED] (together, “Claimants”) receive a joint whistleblower award because Claimants voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-6(b)(1), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a). Further, the CRS recommended that Claimants’ award be set in the amount of [REDACTED] percent ([REDACTED]) of the monetary sanctions collected or to be collected in the Covered Action. In reaching this recommendation, the CRS considered the factors set forth in Rule 21F-6, 17 C.F.R. § 240.21F-6, in relation to the facts and circumstances of Claimants’ applications.<sup>1</sup>

At the time of the [REDACTED] PD, the record supported finding that Claimants identified helpful pieces of information amid a large number of postings on a public message board and proposed a theory of wrongdoing that caused Enforcement staff to open the investigation that culminated in the Covered Action. The CRS viewed such efforts as sufficient to sustain a determination that Claimants had supplied “independent analysis” of the public postings, one of the avenues of satisfying the original information requirement for whistleblower eligibility.

Since the [REDACTED] PD, however, new evidence has come to the CRS’s attention about the steps taken by the Division of Enforcement staff leading up to the opening of the investigation. Among other things, this new evidence now makes apparent that Claimants forwarded to staff an unusually large number of public message-board postings without filtering or otherwise identifying specific postings, and Claimants neither pieced together nor otherwise analyzed the postings in a way that bridged the gap between the publicly available postings and possible securities laws violations. Instead, the public postings forwarded to the Commission by Claimants were received and initially analyzed by two members of the Enforcement staff who were charged with reviewing incoming tips from the public. It was these two members of the Enforcement staff – not Claimants – who combed through the voluminous public postings provided by Claimants, conducted research on issues they detected therein, identified potential witnesses to interview, concluded that [REDACTED] did appear to be engaged in [REDACTED] (as alleged by some commenters on the message board

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<sup>1</sup> The PD also recommended that Claimants be treated as joint whistleblowers.

itself), identified the small number of useful postings that contained [REDACTED], and proposed a theory of the case that triggered the opening of the investigation on [REDACTED]. These two members of the Enforcement staff also forwarded the subset of useful postings that they had identified, along with their legal theories, to an investigative attorney who was assigned to the matter after the investigation already had been opened. In short, the new evidence now available to the CRS provides greater context demonstrating that the analysis that led to the opening of the investigation was undertaken by the Commission's own staff rather than by Claimants.

In light of the new record evidence, the CRS no longer recommends that the Commission find that Claimants performed independent analysis. Consistent with the Commission's previous statements, the mere supply of publicly available information, without more, cannot satisfy the original-information requirement for eligibility.<sup>2</sup> Accordingly, the CRS hereby issues this PD to recommend that the Commission deny Claimants' award claim in this matter.

By: Claims Review Staff

Date: March 27, 2023

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<sup>2</sup> The Commission has explained that "independent analysis" requires that the whistleblower "do more than merely point the staff to disparate publicly available information that the whistleblower has assembled, whether or not the staff was previously aware of the information." *Securities Whistleblower Incentives & Protections*, 76 Fed. Reg. 34300, 34312 (June 13, 2011). To be credited with providing "independent analysis," the whistleblower's examination and evaluation should contribute significant independent information that "bridges the gap" between the publicly available information and the possible securities violations. Adopting Release for Amendments to Whistleblower Rules, Release No. 34-89963 (Sept. 23, 2020), at 122, available at <https://www.sec.gov/rules/final/2020/34-89963.pdf>. "[I]n each case, the touchstone is whether the whistleblower's submission is revelatory in utilizing publicly available information in a way that goes beyond the information itself and affords the Commission with important insights or information about possible violations." *Id.* at 116.