

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 93604 / November 18, 2021

WHISTLEBLOWER AWARD PROCEEDING  
File No. 2022-14

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

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that the Commission deny the award claims of Redacted (“Claimant”) in connection with the above-referenced eight Covered Actions (the “Covered Actions”). The CRS also recommended

that the Commission determine that Claimant’s award applications were frivolous or lacking a colorable connection between the tip and the Covered Actions, and pursuant to 17 C.F.R. § 240.21F-8(e), that the Commission should permanently bar Claimant from participation in the Commission’s Whistleblower Program. Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant’s award claims are denied, Claimant’s award applications are deemed frivolous or lacking a colorable connection between the tip and the Commission actions for which Claimant has sought an award, and Claimant is barred from participating in the Commission’s Whistleblower Program.

**I. Background**

**A. Claimant’s Tip and the Covered Actions**

Claimant submitted a tip, and several supplements thereto, alleging violations of the tax laws. Claimant’s submissions do not allege violations of the securities laws. Claimant applied for an award in connection with the following eight Covered Actions, none of which have any relation to the subject of Claimant’s information.

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## **B. Notice and Preliminary Determinations**

Claimant began submitting award applications to the Office of the Whistleblower (“OWB”) in 2017 and since then has submitted over 1600 applications. Claimant bases the award claims in the Covered Actions on a single tip (with multiple supplements) concerning alleged tax violations. None of Claimant’s submissions referenced any of the entities, individuals, organizations or companies identified in the Covered Actions nor did they identify any possible securities law violations. Each one was closed with a disposition of No Further Action and none were forwarded to Commission investigative staff.

On March 4, 2021, pursuant to Exchange Act Rule 21F-8(e), OWB provided notice to Claimant that it had determined that the award applications for the Covered Actions were frivolous or lacking a colorable connection between the submissions and the actions for which Claimant has sought awards. OWB also informed Claimant that the Commission has the authority to bar permanently a claimant from its Whistleblower Program if the claimant makes three or more award applications that the Commission finds to be frivolous or lacking a colorable connection between the claimant’s submissions and the Commission actions for which the claimant seeks awards. Accordingly, OWB recommended that Claimant withdraw all frivolous or noncolorable claims that he/she had submitted. Claimant declined to withdraw any of his/her pending claims.

On April 26, 2021, the Claims Review Staff issued Preliminary Determinations recommending that Claimant’s applications for award in the above Covered Actions be denied and further recommended the Commission find that his/her award claims are frivolous or lacking a colorable connection between the claimant’s submissions and the Commission actions for which the claimant seeks awards because the information submitted by Claimant did not relate to the subject matter of the referenced Covered Actions and the record showed the information could not have contributed to any successful enforcement action. Finally, the CRS recommended that the Commission permanently bar Claimant from participation in the Commission’s Whistleblower Program.

### **C. Claimant’s Response to the Preliminary Determinations**

On April 28, 2021, as permitted by Exchange Act Rule 21F-10(e)(1), Claimant requested the record that formed the basis of the Preliminary Determinations (“Record Request”). In the Record Request, Claimant principally argued: i) he/she was denied due process because the Preliminary Determinations involved eight Covered Actions and Claimant was purportedly limited to one response, ii) the Commission has never tried to bar Claimant in the past, iii) the Commission lacks the legal authority to bar Claimant, iv) the CRS was not provided the totality of Claimant’s thousands of pages of submissions for review, and v) the thousands of pages Claimant submitted should not be considered frivolous or result in a bar because of Claimant’s ongoing voluntary help, information, theories, and documenting of “everything” for many years.

In response to the Record Request, OWB sent Claimant a standard Confidentiality Agreement (“CA”) which, under the Commission’s rules, OWB may require claimants to sign before providing them the materials comprising the record.<sup>1</sup> Claimant declined to sign the CA and argued: i) that requiring Claimant to sign and return the CA violated the due process protections of “the Constitution of the United States: The Sarbanes Oxley Act; The Administrative Procedures Act (A.P.A.); The All Writs Act: and, the Whistle Blowers Act, and precedents;” ii) that Claimant was subject to Cybercrimes that interfered with the ability to use electronic devices, iii) that Claimant refused to withdraw any applications/claims, iv) that signing the CA is discretionary, and v) that requiring the Claimant to respond to eight Covered Actions in one filing and within specific deadlines violates Claimant’s due process rights.

### **III. Analysis**

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.<sup>2</sup>

The record demonstrates that Claimant did not provide information that led to the successful enforcement of any 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 any information provided did not: (1) cause the Commission to (a) commence an examination,

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<sup>1</sup> Rule 21F-12(b) states: “These rules do not entitle claimants to obtain from the Commission any materials (including any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission in deciding the claim) other than those listed in paragraph (a) of this section. Moreover, the Office of the Whistleblower may make redactions as necessary to comply with any statutory restrictions, to protect the Commission’s law enforcement and regulatory functions, and to comply with requests for confidential treatment from other law enforcement and regulatory authorities. The Office of the Whistleblower may also require you to sign a confidentiality agreement, as set forth in § 240.21F-(8)(b)(4) of this chapter before providing these materials.”

<sup>2</sup> See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation, and (b) thereafter bring an action based, in whole or in part, on conduct that was the subject of Claimant's information; or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action.<sup>3</sup>

This is because the record demonstrates that Claimant's submissions were never forwarded to investigative staff on any of the Covered Actions, and it therefore did not lead to any of the Covered Actions. Further, they were unrelated to any of the Covered Actions and as such, Claimant's award applications are frivolous and lacking a colorable connection to the Covered Actions.

As noted above, Claimant argued in his/her responses to the Preliminary Determinations that allowing Claimant only one response to the denial of awards in eight Covered Actions violates the Claimant's due process rights. However, the rules require that before a claimant be barred from participating in the Commission's Whistleblower Program, that the claimant be given notice that at least three of the claimant's award applications are frivolous or lacking a colorable connection between the submissions and the Covered Actions pursuant to Rule 21F-8(e). Therefore, the rules foresaw that a claimant would be given notice and opportunity to respond to the denial of multiple award claims at one time. Further, the basis for denying each of Claimant's applications is straightforward — none of Claimant's submissions were forwarded to Enforcement staff in connection with any investigation and they lacked any nexus to the Covered Actions. Claimant has not identified any precedent requiring that Claimant be permitted to file a separate response to each denial, nor has Claimant explained how Claimant has been prejudiced by being limited to filing just one consolidated response.

As to Claimant's objections concerning the Confidentiality Agreement, Rule 21F-12 identifies the materials that may form the basis of an award determination and that may comprise the record on appeal, and the rule specifies that OWB may request an executed CA as a precondition to providing these materials to a claimant. OWB's request that Claimant sign a CA is consistent with OWB's approach of asking all claimants who request the record to sign a standard CA. Moreover, Rule 21F-12(b), requiring the execution of a CA, is reasonably designed to protect whistleblower confidentiality and the Commission's law enforcement interests.

Finally, we find that permanently barring Claimant from the whistleblower program is appropriate. Exchange Act Rule 21F-8(e), which became effective on December 7, 2020, authorizes the Commission to permanently bar a claimant from the Whistleblower Program based on submissions or applications that are frivolous or fraudulent, or that otherwise hinder the

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<sup>3</sup> Alternatively, all eight of Claimant's award applications are untimely, which would provide an independent basis for denying them. *See* Rule 21F-10(b). In fact, some of Claimant's award claims were submitted years after the deadline and after the Commission already made awards in connection with the Covered Action.

effective and efficient operation of the Whistleblower Program. The Commission’s Adopting Release defines “frivolous claims” as “those that lack any reasonable or plausible connection to the covered or related action.”<sup>4</sup>

The Commission finds that the Claimant’s award applications are frivolous or lacking a colorable connection between the submissions and the Commission actions for which Claimant has sought an award within the meaning of Rule 21F-8(e) of the Exchange Act. There is no relation between the information provided by Claimant and the Covered Actions.

As such, pursuant to Rule 21F-8(e), the Commission permanently bars Claimant from participation in its Whistleblower Program because Claimant has filed three or more applications for award that are frivolous or fraudulent, or otherwise hinder the effective and efficient operation of the Whistleblower Program. Claimant has submitted over 1600 award applications that are unrelated to any of the claimed Covered Actions. Claimant’s filing of frivolous claims has consumed considerable staff time and resources and has hindered the efficient operation of the Whistleblower Program. As such, we find it appropriate to permanently bar Claimant from the Commission’s Whistleblower Program. This permanent bar applies to any pending applications from Claimant at any stage of the claims review process as well as to all future award claims.

#### **IV. Conclusion**

Accordingly, it is hereby ORDERED that Claimant’s award claims in the Covered Actions are denied, and it is determined that the applications are frivolous or lacking a colorable connection between the tip and the Covered Actions. It is further ORDERED that Claimant is permanently barred from participation in the Commission’s Whistleblower Program.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>4</sup> Further, Rule 21F-8(e)(4) states: “(i) Paragraph (e) of this section shall apply to all award applications pending as of December 7, 2020, which is the effective date of paragraph (e) of this section. But with respect to any such pending award applications, the Office of the Whistleblower shall advise you, before any Preliminary Determination or Preliminary Summary Disposition is issued that may recommend a bar, of any assessment by that Office that the conditions for issuing a bar are satisfied....” OWB provided such notice to the Claimant.