

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96527 / December 19, 2022

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-21

In the Matter of the Claims for Awards

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination¹ recommending that Redacted (“Claimant”) receive a whistleblower award of more than \$29 million, equal to Redacted percent (*** %) of monetary sanctions collected in the above-referenced Covered Action and an award of more than \$8 million, equal to *** percent (*** %) of monetary sanctions collected in an action brought by *** Redacted (the “Other Agency”) (hereinafter, “Related Action”).² In recommending that Claimant be found eligible for an award, the CRS recommended that the Commission exercise its general exemptive authority to waive the timing element of the first requirement of Rule 21F-4(c)(3).

¹ The Preliminary Determination of the CRS also recommended denying an award to two claimants who did not submit requests for reconsideration. Accordingly, the preliminary denial of the second and third claimants’ award applications have become Final Orders of the Commission pursuant to Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

² The action brought by the Other Agency, Redacted
Redacted, constitutes a “related action” to the Covered Action within the meaning of Section 21F(a)(5) of the Exchange Act, 15 U.S.C. § 78u-6(a)(5), and Rule 21F- 4(d)(3) promulgated thereunder, 17 C.F.R. § 240.21F- 4(d)(3), which provides that Redacted
Redacted after July 21, 2010 is “deemed to be an administrative action and any money required to be paid thereunder will be deemed a monetary sanction.”

The recommendation of the CRS is adopted. The record demonstrates that Claimant voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.³

We have determined that it would be in the public interest and consistent with the protection of investors for the Commission to exercise our discretionary authority under Section 36(a) of the Exchange Act to waive the timing element of the first requirement of Rule 21F-4(c)(3) and find that Claimant voluntarily provided original information to the Commission that led to the successful enforcement of the referenced Covered Action pursuant to § 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder. To be eligible for an award, a whistleblower must provide original information that leads to a successful enforcement action. As relevant here, a claimant satisfies Rule 21F-4(c)(3) where he/she does the following: (1) reports original information through an entity's internal whistleblower, legal or compliance procedures before or at the same time he or she reports to the Commission; (2) the entity provides the Commission with the whistleblower's information or with the results of an investigation initiated in response to the whistleblower's information; (3) the information provided by the entity to the Commission "led to" successful enforcement under the criteria of Rule 21F-4(c)(1)⁴ or (2)⁵; and (4) the whistleblower provides the same information to the Commission in compliance with Rule 21F-9 within 120 days of providing it to the entity.

Here, Claimant does not satisfy the first requirement under Rule 21F-4(c)(3) because Claimant did not submit the information to the entity before or at the same time Claimant reported to the Commission. Rather, Claimant submitted a tip that was received by the Commission approximately six months before Claimant sent an email directly to the company's ^{Redacted} making substantially the same allegations. The company opened an internal investigation based on Claimant's information and reported the allegations to the Commission, which prompted the opening of the Commission's investigation.

³ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

⁴ Pursuant to Rule 21F-4(c)(1), the Commission will consider that a whistleblower provided original information that led to the successful enforcement of a judicial or administrative action if the whistleblower gave the Commission original information that was sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation, reopen an investigation that the Commission had closed, 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 the whistleblower's original information.

⁵ Rule 21F-4(c)(2) provides that the Commission will consider that a whistleblower provided original information that led to the successful enforcement of a judicial or administrative action if the whistleblower gave the Commission original information about conduct that was already under examination or investigation by the Commission, the Congress, any other authority of the federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the PCAOB (except in cases where the whistleblower was an original source of this information as defined in paragraph (b)(5) of this section), and the whistleblower's submission significantly contributed to the success of the action.

Claimant then submitted a tip to the Commission within 120 days that included the email that Claimant had sent to the company. While Claimant, an outsider to the company, did not first submit the information to the company, Claimant made persistent efforts to bring the conduct to the attention of the Commission as well as the company. Further, the principal objective of Rule 21F-4(c)(3) – to encourage internal reporting, thereby allowing a company the opportunity to address the conduct – was satisfied here. Quickly after Claimant submitted the email to the company, the company opened an internal investigation, hired outside counsel to conduct the investigation, and reported the allegations to the Commission. It would be in the public interest and consistent with the protection of investors to waive the first requirement of Rule 21F-4(c)(3) as to Claimant’s award application for both the Covered Action and the Related Action.

In applying the facts under Rules 21F-6(a) and (b), we find the recommended award percentages to be appropriate. Claimant’s initial anonymous tip to the company was the initial source of the company’s internal investigation, as well as both the Commission’s and Other Agency’s investigations. Claimant submitted multiple anonymous tips to both the company and the Commission throughout the course of the investigations. The resulting Covered and Related Actions, however, addressed misconduct broader than that reported in Claimant’s tips and a large percentage of the monetary sanctions ordered against the company related to conduct other than the violations alleged by Claimant. Further, Claimant’s level of contribution to the Covered Action was higher than to the Related Action, as Claimant’s specific allegations were not included as part of the charges in the action brought by the Other Agency.

Accordingly, it is ORDERED that Claimant shall receive an award of ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the Covered Action and an award of ^{***} percent (^{***} %) of the monetary sanctions collected in the Related Action.

By the Commission.

Vanessa A. Countryman
Secretary