

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION  
SECURITIES EXCHANGE ACT OF 1934  
Release No. 77529 / April 5, 2016  
WHISTLEBLOWER AWARD PROCEEDING  
File No. 2016-6

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In the Matter of the Claim for Award

in connection with

Redacted  
Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

On September 30, 2015, the Claims Review Staff (“CRS”) issued a Preliminary Determination related to Notice of Covered Action Redacted . The Preliminary Determination recommended that the award application submitted by Claimant (“Claimant”) be denied.

For the reasons stated below, Claimant’s claim is denied.

**I. Background**

In Redacted , the Commission Redacted in federal district court Redacted Redacted Redacted . In Redacted Redacted . On Redacted Redacted Redacted .

On Redacted , the Office of the Whistleblower (“OWB”) posted Notice of Covered Action Redacted for the Covered Action. Claimant filed a timely whistleblower award claim.

## **II. Claimant’s Claim Is Denied**

### **A. Preliminary Determination and Claimant’s Response**

On September 30, 2015, the CRS issued a Preliminary Determination recommending that Claimant’s award application be denied because Claimant did not provide any information that led to the successful enforcement of the Covered Action. *See* Section 21F(b)(1) of the Exchange Act, and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).

On November 30, 2015, Claimant submitted a written response contesting the Preliminary Determination (hereinafter, “Response”). In the Response, Claimant states that the Preliminary Determination is contested, but Claimant does not address the underlying basis for why Claimant’s claim was denied, *i.e.*, that the information Claimant provided did not lead to the successful enforcement of the Covered Action.

### **B. 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 judicial or administrative action or related action. 15 U.S.C. § 78u-6(b)(1). As relevant here, original information “leads to” a successful enforcement action if either: (i) the original information caused the staff to open an investigation, reopen an investigation, or inquire into different conduct as part of a current investigation, and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information; or (ii) the conduct was already under examination or investigation, and the original information significantly contributed to the success of the action. Rule 21F-4(c)(1)-(2), 17 C.F.R. § 240.21F-4(c)(1)-(2).

Based on our review of the record, we find that none of the information Claimant submitted led to the successful enforcement of the Covered Action. *First*, none of the tips identified by Claimant in Claimant’s award application was provided to the staff responsible for the Covered Action. The record conclusively demonstrates that each of the tips was designated for “no further action” by the Commission’s Office of Market Intelligence – the Commission office that is responsible for the initial intake review of whistleblower tips – and were not provided to investigative staff for further inquiry or for use in connection with *any* Commission

investigation. *Second*, the record demonstrates that at no point prior to the settlement of the Covered Action did the staff members responsible for the Covered Action have any contact with, or receive any information from, Claimant.

Because the record demonstrates that Claimant's information did not lead to the successful enforcement of the Covered Action and Claimant has not shown otherwise in Claimant's request for reconsideration of the Preliminary Determination, we deny Claimant's application for an award.<sup>1</sup>

### **III. Conclusion**

Accordingly, it is ORDERED that Claimant's whistleblower award claim is denied.

By the Commission.

Brent J. Fields  
Secretary

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<sup>1</sup> In the Response, Claimant challenges OWB's decision not to provide Claimant with the record materials underlying the Preliminary Determination. Under Exchange Act Rules 21F-8(b)(4) and 12(b), 17 C.F.R. § 240.21F-8(b)(4) and 12(b), claimants requesting the administrative record in order to challenge a preliminary determination may be required by OWB to sign a confidentiality agreement in a form acceptable to OWB as a prerequisite to receiving a copy of the record. In accordance with these rules, it is standard practice of OWB to require all claimants seeking copies of the record to sign a confidentiality agreement in order to prevent the disclosure of non-public information. Claimant failed to sign the confidentiality agreement within the deadline set by OWB. Several weeks after that deadline, Claimant returned a signed copy of a substantially modified version of the confidentiality agreement that included various material, objectionable provisions, including a provision that would have required the Commission to provide Claimant with counsel and to pay for Claimant's legal costs and expenses in connection with Claimant's challenge of the Preliminary Determination. We find that given these objectionable modifications, OWB appropriately declined to counter-sign the confidentiality agreement, and, in accordance with Rules 21F-8(b)(4) and 12(b), OWB appropriately declined to provide Claimant with the record.