

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 91253 / March 4, 2021

WHISTLEBLOWER AWARD PROCEEDING

File No. 2021-32

In the Matter of the Claims for Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that claimants Redacted (“Claimant 1”) and Redacted (“Claimant 2”) receive a joint whistleblower award of over \$5 million, equal to Redacted percent (*** %) of the monetary sanctions collected in the above-referenced Covered Action (the “Covered Action”).¹ The CRS further preliminarily determined to recommend the denial of the award applications submitted by Redacted (“Claimant 11”) and Redacted (“Claimant 12”). Claimants 1 and 2 provided written notice of their decision not to contest the Preliminary Determinations, and Claimants 11 and 12 submitted timely notices contesting the preliminary denial of their award claims. For the reasons discussed below, and based on the Commission’s independent review of the materials before us, we adopt the CRS’s recommendations with respect to Claimant 1, Claimant 2, Claimant 11, and Claimant 12.

I. Background

A. The Covered Action

¹ A joint award is appropriate as Claimants 1 and 2 jointly submitted their tip and Forms WB-APP. *See* Securities Exchange Act of 1934 (“Exchange Act”) Section 21F(a)(6) (defining “whistleblower” to mean, as relevant here, “2 or more individuals acting jointly who provide[] information relating to a violation of the securities laws to the Commission...”). Our proceeding in this way has not impacted the net total award percentage to Claimants 1 and 2. Unless Claimants 1 and 2, within ten (10) calendar days of the issuance of this Order, make a joint request, in writing, for a different allocation of the award between the two of them, the Office of the Whistleblower is directed to pay each of them individually 50% of their joint award.

On ^{Redacted}, the Commission filed a settled administrative proceeding against ^{Redacted} (“the Company”) for violations of ^{Redacted}. The Commission found that ^{Redacted}. The Commission further found that ^{Redacted}. The Company agreed ^{Redacted}.

On ^{Redacted}, the Office of the Whistleblower posted the above-referenced Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.² Claimants 1, 2, 11, and 12 all filed timely whistleblower award claims.

B. The Preliminary Determinations

The Claims Review Staff issued Preliminary Determinations³ recommending that: (1) Claimants 1 and 2 receive a joint award of ^{***} % of the monetary sanctions collected in the Covered Action, and (2) the award claims of Claimants 11 and 12 in the Covered Action be denied.⁴ The CRS preliminarily determined to recommend that Claimant 11’s and Claimant 12’s award claims be denied because their information did not lead to the success of the Covered Action as required under Exchange Act Rule 21F-4(c).⁵

Claimants 11 and 12 had submitted tips to the Commission that alleged ^{Redacted} by competitors of the Company. Claimants 11 and 12 had also stated that they provided their information to the news media, which resulted in news articles that may have at least prompted the Company to initiate an internal review that ultimately uncovered violations at the Company.

² See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

³ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁴ The CRS also recommended that the award claims of Claimant 3, Claimant 4, Claimant 5, Claimant 6, Claimant 7, Claimant 8, Claimant 9, and Claimant 10 be denied. These individuals did not contest the preliminary denial of their claims. Accordingly, the Preliminary Determinations with respect to their award claims became the Final Order of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

⁵ *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 85412, 2019 SEC LEXIS 615, at *16 (Mar. 26, 2019); *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 82897, 2018 SEC LEXIS 750, at *16 (Mar. 19, 2018).

The CRS, however, preliminarily determined that even if Claimants 11 and 12 provided information to the news media about the Company’s competitors and that information influenced the Company to conduct an internal review of its own conduct, Claimants 11 and 12 still did not satisfy the “led to” standard. Because neither of the tips caused the opening of the Covered Action investigation under Rule 21F-4(c)(1), which Enforcement staff confirmed was based on the tip submitted by Claimants 1 and 2, their claims could only succeed if they satisfied the “led to” standard under either Rule 21F-4(c)(2) or (3). The CRS preliminarily determined that Claimants 11 and 12 did not satisfy either rule. First, Rule 21F-4(c)(2) requires that the claimant give the Commission original information about conduct that was already under examination or investigation and that the claimant’s submission significantly contributed to the success of the action. To the extent Claimants 11 and 12 submitted any information after the investigation was opened,⁶ they did not provide the Commission information about conduct that was already under examination or investigation, as their tips related to conduct by entirely different companies, and not the Company. Additionally, the allegations made by Claimants 11 and 12 were not used in the Covered Action, which concerned conduct by the Company ^{Redacted} only. Thus, their submissions had no impact on the Covered Action. Further, the CRS preliminarily determined that the connection that Claimants 11 and 12 attempted to establish between information they provided to the news media about entirely different companies and the charges in the Covered Action, which do not relate to those companies, does not show that their information significantly contributed to the success of the Covered Action. Second, Rule 21F-4(c)(3) provides that claimants may receive credit for information the entity provides to the Commission resulting from an investigation initiated in whole or in part in response to information the claimant reported *to the entity*.⁷ Here, Claimants 11 and 12 provided information about the Company’s competitors to the news media, not to the Company. Therefore, the CRS preliminarily determined that they did not satisfy the requirements of the rule.

Because Claimants 11 and 12 did not submit information that led to the successful enforcement of the Covered Action, the CRS preliminarily determined that their claims for award should be denied.

C. Claimant 11’s and Claimant 12’s Responses to the Preliminary Determination

Claimant 11 and Claimant 12 submitted timely written responses contesting the Preliminary Determinations.⁸ Claimants 11 and 12 make substantially similar arguments contending that their information satisfies the “led to” requirement of Rule 21F-4(c). Claimant 11 states that he/she provided information regarding ^{Redacted} (“Competitor 1”), a

⁶ Claimant 11’s tip was submitted over a year after the opening of the investigation. Claimant 12 submitted some information prior to the opening of the investigation and some subsequent tips after the opening of the investigation.

⁷ Rule 21F-4(c)(3) also requires that a claimant submit the same information to the SEC within 120 days.

⁸ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

competitor of the Company, to ^{Redacted} (“Newspaper”), which resulted in two news articles published in ^{Redacted} about Competitor 1’s conduct ^{Redacted} relating to alleged ^{Redacted}. Claimant 12 states that he/she provided information about another competitor of the Company, ^{Redacted} (“Competitor 2”), to the Newspaper, which published articles concerning Competitor 2 in ^{Redacted}. Claimant 12 also states that the news articles published in ^{Redacted} by the Newspaper “flowed from” his/her information. Claimants 11 and 12 both claim that according to ^{Redacted}, the information published by the Newspaper in ^{Redacted} caused the Company ^{Redacted} that uncovered additional ^{Redacted} violations that were ultimately incorporated into the enforcement action.

Claimants 11 and 12 assert that the CRS erred in concluding as a matter of law that the three fact patterns set forth in Rule 21F-4(c) constitute the only fact patterns that satisfy the “led to” standard. Claimants 11 and 12 disagree with the SEC’s position in *Order Determining Whistleblower Award Claim*, Release No. 89551 (Aug. 13, 2020) (“August 13, 2020, Commission Order”), which stated that Rule 21F-4(c) provides the only mechanisms by which a claimant can satisfy the “led to” requirement, as consistent with the Commission’s interpretation since the enactment of Dodd-Frank.⁹ Claimants 11 and 12 also disagree with language in the June 13, 2011, Adopting Release that states that a whistleblower is only entitled to an award if one of three general standards – spelt out in Rule 21F-4(c) – is satisfied.¹⁰

Instead, Claimants 11 and 12 claim that the “led to” requirement can be satisfied in “some limited circumstances” by alternative circumstances not specified in Rule 21F-4(c) and that the circumstances in this instance support a finding that Claimants 11 and 12 satisfied that requirement. Claimants 11 and 12 believe that their submissions satisfy the “led to” requirement because their information was, in part, responsible for the Company’s internal review that discovered numerous ^{Redacted} violations at the Company.

Further, Claimants 11 and 12 argue that the facts of this matter are much stronger than the facts considered in the August 13, 2020, Commission Order because Claimants 11 and 12 allege facts that are “undisputed.” Claimant 11 states that he/she declared under penalty of perjury that he/she caused and was a source of the ^{Redacted} news articles ^{Redacted}. According to Claimant 11, the initial ^{Redacted} news article mentions him/her by stating that Competitor 1 disclosed ^{Redacted} ^{Redacted} about Competitor 1’s conduct. Claimant 11

⁹ *Order Determining Whistleblower Award Claim*, Rel. No. 89551, at 6 (Aug. 13, 2020) (“Although Rule 21F-4(c) does not expressly state that the three components are the only way to establish ‘led to,’ it has been the Commission’s consistent practice for almost a decade now to apply the rule in this manner.”).

¹⁰ See 76 Fed. Reg. 34,300, 34,357, n.438 (June 13, 2011).

also believes that it is undisputed that the “media reports” referenced in ^{Redacted} refer to the ^{Redacted} news articles and that the “competitor” referenced was Competitor 1.

Claimant 12, in turn, states that he/she declared under the penalty of perjury that he/she not only caused and was a source of the ^{Redacted} news articles, but also that the ^{Redacted} news articles referenced in ^{Redacted} “flowed from” his/her information. Claimant 12, in contradiction to Claimant 11, claims that the competitor referenced in ^{Redacted} was actually Competitor 2.

Claimants 11 and 12 further state that it is undisputed that the Company learned of the ^{Redacted} news articles and initiated ^{Redacted} review of its conduct ^{Redacted} in response to the media reports and that review materially impacted the enforcement action. Based on these facts, Claimants 11 and 12 claim that their information more than satisfies the “led to” standard by alternative circumstances not specified in Rule 21F-4(c).

II. Analysis

A. Joint Claimants 1 and 2

The record demonstrates that Claimants 1 and 2 voluntarily provided original information to the Commission that caused Enforcement staff to open an investigation that led to the successful enforcement of the Covered Action. As relevant here, information leads to the success of an enforcement action if it: (1) was “sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation... or to inquire concerning different conduct as part of a current... investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of [this] information” or (2) significantly contributed to the success of a Commission judicial or administrative enforcement action.¹¹ Claimants 1 and 2 voluntarily submitted a joint tip to the Commission in ^{Redacted} that alleged that the Company had ^{Redacted}. ^{Redacted}. The tip caused Enforcement staff to open the investigation in the Covered Action, and the charges brought by the Commission in the Covered Action were based, in part, on the conduct alleged by Claimants 1 and 2. Accordingly, Claimants 1 and 2 qualify for a joint whistleblower award.

Applying the award criteria specified in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find the proposed award amount is appropriate.¹² In reaching

¹¹ See Exchange Act Rule 21F-4(c)(1), (2), 17 C.F.R. § 240.21F-4(c)(1), (2). See also Order Determining Whistleblower Award Claims, Exch. Act Rel. No. 85412, 2019 SEC LEXIS 615, at *16 (Mar. 26, 2019); Order Determining Whistleblower Award Claims, Exch. Act Rel. No. 82897, 2018 SEC LEXIS 750, at *16 (Mar. 19, 2018).

¹² In assessing the appropriate award amount, Exchange Act Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the

that determination, we positively assessed the following facts: (1) Claimants 1 and 2 provided significant information that caused Commission staff to open an investigation and they provided assistance during the investigation; (2) Claimant 1's and Claimant 2's information directly supported certain allegations in the Commission's enforcement action; and (3) there are significant law enforcement interests in this matter, which involved misconduct abroad that would have been difficult to detect without the information reported by Claimants 1 and 2. The determination also reflects that certain of the Commission's charges related to misconduct by the Company that was more extensive than that reported by Claimants 1 and 2.

B. Claimants 11 and 12

Contrary to the assertions in the Responses of Claimants 11 and 12, which appear to concede that they have not satisfied the three fact patterns set forth in Rule 21F-4(c),¹³ there are no alternative circumstances not specified in Rule 21F-4(c) in which a claimant can satisfy the "led to" requirement. The Commission previously rejected this very argument and has unambiguously stated that Rule 21F-4(c) "provides the only mechanisms by which a claimant can satisfy the 'led to' requirement" and therefore, if a claimant "does not fall within any of the three circumstances identified in the rule, then he or she is not entitled to an award."¹⁴ In fact, when the Commission adopted the "led to" requirement under Rule 21F-4(c), the Commission explained that a whistleblower is "*only entitled to an award if one of three general standards is satisfied.*"¹⁵ Further, as a policy matter, the Commission has previously concluded that expanding the "led to" definition beyond the three circumstances set forth in Rule 21F-4(c) "would risk introducing speculative and complex causal chains that would be difficult and impracticable in many instances for the Commission to investigate and evaluate."¹⁶ Accordingly, Claimants 11 and 12 cannot satisfy the "led to" requirement by any alternative circumstances.

Commission action; (3) law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems. 17 C.F.R. § 240.21F-6.

¹³ Exchange Act Rule 21F-4(c) provides that information will be deemed to have "led to the successful enforcement of" an action where a person provides: (1) "sufficiently specific, credible, and timely [original information to the Commission] to cause the staff to commence an examination, open an investigation, reopen an investigation [that has been closed] ..., or to inquire concerning different conduct as part of a current examination or investigation," and the action is "based in whole or in part on conduct that was the subject of your original information"; (2) original information in connection with misconduct that is already under investigation or examination and that "submission significantly contributed to the success of the action"; and (3) information to specified reporting authorities within an entity, and the entity subsequently provides that information to the Commission (along with additional information the entity may have uncovered as a result of the tip) and the information the entity reports otherwise satisfies (1) or (2) above.

¹⁴ See *Order Determining Whistleblower Award Claim*, Rel. No. 89551, at 6 (Aug. 13, 2020).

¹⁵ See *id.* (citing 76 Fed. Reg. 34300, 34357 (June 13, 2011)). See also 75 Fed. Reg. 70487, 70497 (Nov. 17, 2010) ("Proposed Rule 21F-4(c) defines when original information 'led to successful enforcement.'). Furthermore, "[a]t no point during the rulemaking did the Commission suggest that there would be residual or catch-all authority for the Commission to consider information to have 'led to' the success of an action beyond the three prongs of the 'led to' definition set forth in Rule 21F-4(c)." *Order Determining Whistleblower Award Claim*, Rel. No. 89551, at 6, n.11.

¹⁶ See *Order Determining Whistleblower Award Claim*, Rel. No. 89551, at 6.

Claimant 11's and Claimant 12's award applications are denied.

III. Conclusion

Accordingly, it is hereby ORDERED that Claimants 1 and 2 shall receive a joint award equal to ^{Redacted} percent (%^{***}) of the monetary sanctions collected in the Covered Action.

It is further ORDERED that Claimant 11's and Claimant 12's whistleblower award applications in the Covered Action be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary