



collected in the Covered Action, which should equal a payout of at least \$20 million. We, however, concur with the Preliminary Determination's recommendation that Claimant 2's and Claimant 3's claims should be denied.

## **I. BACKGROUND**

On [Redacted] Claimant 1 submitted to the Commission information about a [Redacted] [Redacted] This information caused staff in the [Redacted] (the "Covered Action Staff") to open the investigation that resulted in the Covered Action. In [Redacted], Claimant 1 provided additional information about [Redacted] [Redacted] of which the Covered Action Staff was previously unaware; this information assisted their investigation into the matters that resulted in the Covered Action.

On [Redacted], the Commission [Redacted] [Redacted] alleging that [Redacted] (collectively the "Defendants") [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]

On [Redacted], the Commission's Office of the Whistleblower ("OWB") posted Notice of Covered Action [Redacted] to advise interested individuals that they could apply for a whistleblower award in connection with the Covered Action. As noted above, Claimant 1, Claimant 2, and Claimant 3 filed timely whistleblower award applications.

## **II. CLAIMANT 1'S CLAIM IS APPROVED.**

### **A. Preliminary Determination**

The CRS preliminarily determined that Claimant 1 provided original information to the Commission that led to the successful enforcement of the Covered Action pursuant to Section 21F(b)(1) of the Exchange Act and Rule 21F-3(a) promulgated thereunder, 17 C.F.R. § 240.21F-3(a). The CRS also preliminarily determined to recommend that Claimant 1's award be set in an amount equal to [Redacted] of the monetary sanctions collected or to be collected in the Covered Action. In arriving at 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 Claimant 1's application.

## B. Analysis

Claimant 1 contested the amount of the Preliminary Determination's award recommendation. In Claimant 1's reconsideration submission, Claimant 1 seeks a larger award because of certain actions that Claimant 1 took after learning of the securities law violations.

Generally speaking, the factors that may increase an award focus on a claimant's activities in whistleblowing to the Commission, to another appropriate law-enforcement or regulatory authority, or to an internal compliance system.<sup>2</sup> By contrast, the actions that Claimant 1 has identified in requesting a higher award were neither necessary to, nor reasonably in furtherance of, Claimant 1's whistleblowing to the Commission; in our view, these actions are not the type of whistleblowing activities that Section 21F seeks to promote or that the Rule 21F-6 award criteria cover.<sup>3</sup>

Nonetheless, having engaged in a *de novo* review of the administrative record, we find that Claimant 1's assistance to the Commission given the specific facts and circumstances of this case merits a Redacted upward adjustment to the award recommendation in the Preliminary Determination. Put simply, by promptly coming forward with information about the Defendants' wrongdoing, and by subsequently alerting the Commission about Redacted, Redacted, Claimant 1 enabled the Commission to move quickly to shut down the Redacted and to obtain a near total recovery of investors' funds—in excess of Redacted—before the Defendants could squander those monies.

---

<sup>2</sup> See, e.g., Exchange Act Rule 21F-6(a)(1) ("The Commission will assess the significance of the information provided by a whistleblower to the success of the Commission action or related action."); Rule 21F-6(a)(2) ("The Commission will assess the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the Commission action or related action."); Rule 21F-6(a)(3) ("The Commission will assess its programmatic interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws."); Rule 21F-6(a)(4) ("The Commission will assess whether, and the extent to which, the whistleblower and any legal representative of the whistleblower participated in internal compliance systems.").

<sup>3</sup> Among the actions that Claimant 1 is relying on to seek an upward adjustment to Claimant 1's award include Redacted. We find that this action cannot fairly be construed as an attempt to report a potential securities violation by participating in an internal compliance system. Similarly, we find that Claimant 1's Redacted cannot be fairly construed as actions in furtherance of Claimant 1's whistleblowing to the Commission.

Accordingly, Claimant 1's request for an upward adjustment to Claimant 1's award is hereby granted, and we hereby order that Claimant 1 receive Redacted of the monetary sanctions collected, or to be collected, in the Covered Action.

### **III. CLAIMANT 2'S AND CLAIMANT 3'S CLAIMS ARE DENIED**

#### **A. Preliminary Determination**

In recommending a denial of Claimant 2's and Claimant 3's award applications, the Preliminary Determination explained that both of these claimants based their respective award claims, in part, on information provided to the Commission before July 21, 2010. Such information is not "original information," as that term is defined under Rule 21F-4(b)(1) of the Exchange Act, 17 C.F.R. § 240.21F-4(b)(1), because "original information" must be provided after the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act").<sup>4</sup> Further, with respect to certain of the information that Claimant 2 submitted after July 21, 2010, the Preliminary Determination explained that this information was not "original information," as that term is defined under Rule 21F-4(b)(1) of the Exchange Act, because such information was already known to the Commission.

Finally, the Preliminary Determination explained that none of the original information that the claimants made available to the Commission after the enactment of the Dodd-Frank Act led to the successful enforcement of the Covered Action. *See* Section 21F(b)(1) of the Exchange Act, and Rules 21F-3(a) and 21F-4(c) promulgated thereunder, 17 C.F.R. §§ 240.21F-3(a) and 240.21F-4(c).<sup>5</sup>

#### **B. Analysis**

To qualify for an award, a claimant must provide original information to the Commission in the form and manner required by the Commission's rules, and that original information must

---

<sup>4</sup> *See Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015).

<sup>5</sup> With respect to Claimant 3, the Preliminary Determination explained that Claimant 3's award application should be denied for the additional reason that Claimant 3 failed to submit information to the Commission pursuant to the procedures set forth in Rule 21F-9(a) of the Exchange Act, as further required by Rule 21F-2 promulgated thereunder, 17 C.F.R. § 240.21F-2. Claimant 3's claim for an award is based, at least in part, upon information that Claimant 3 Redacted

lead to the success of a covered action.<sup>6</sup> Neither Claimant 2 nor Claimant 3 has shown that the information that they are relying on to seek an award satisfies these requirements.

In our analysis below, we do not discuss any arguments that either Claimant 2 or Claimant 3 makes with respect to information that they submitted on or before July 21, 2010. We agree with the Preliminary Determination's conclusion that such information would not constitute original information and, therefore, may not serve as the basis for an award. As a result, we focus only on the information that may have been received by the Commission after July 21, 2010, and find with respect to both Claimant 2 and Claimant 3 that neither provided original information that led to the success of the Covered Action.

### **1. Claimant 2**

On Redacted, Claimant 2 submitted a written response contesting the Preliminary Determination. Claimant 2 raised two principal arguments, which we consider in turn below.

In Claimant 2's response, Claimant 2 contends that Claimant 2's involvement in the Covered Action was critical to its success and statements to the contrary by Covered Action Staff are inaccurate and incomplete. In advancing these arguments, Claimant 2 contests the chronology provided by the Covered Action Staff, points to an Inspector General's report about the whistleblower program, and accuses the Commission of both engaging in a corrupt award deliberation process and misrepresenting its initial outreach efforts to Claimant 2 in response to Claimant 2's whistleblower tip.

After careful consideration of the administrative record (which includes sworn statements by the Covered Action Staff), we find that Claimant 2 did not provide original information that led to the successful enforcement of the Covered Action. Specifically, we find that the record demonstrates that certain of the information that Claimant 2 provided the Commission after July 21, 2010 was already known to the Commission, and thus it did not constitute original information; we also find that to the extent that Claimant 2 did provide the Commission with original information, this information did not lead to the success of the Covered Action. In reaching these determinations, we credit the statements in the sworn declarations provided by a

---

<sup>6</sup> 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).

Commission staff member (“Staff Member 1”) who had primary responsibility for the Covered Action Staff’s investigation from the outset of the investigation, regarding the chronology of events leading to the successful enforcement of the Covered Action; we find that Staff Member 1’s declarations provide a complete and persuasive accounting of the relevant events.<sup>7</sup> Moreover, while Claimant 2 has made a number of accusations challenging the credibility of the staff and the awards process, we are not persuaded that these claims have merit.

In Claimant 2’s response to the Preliminary Determination, Claimant 2 raises an additional argument related to Claimant 2’s award application concerning the sequence of events leading to the opening of the investigation that resulted in the Covered Action. We briefly recite the relevant facts, which are undisputed. On Redacted, Claimant 2 submitted information to the Commission alleging certain misconduct by the Defendants. The information was forwarded to the Commission’s Office of Investor Education and Advocacy (OIEA) and a staff member from that office followed up by emailing Claimant 2 on Redacted. No response to that email was received and the tip was closed with no further action taken on it.

Claimant 2 argues that, had the Commission successfully contacted Claimant 2 in Redacted Redacted Claimant 2 would have provided the Commission with sufficient information to cause the opening of the investigation several months earlier than actually occurred. Claimant 2 further asserts that Claimant 2 is being penalized because the staff did not make other efforts to follow-up and that Claimant 2 should therefore receive an award. We do not agree. *First*, even if the OIEA staff had reached Claimant 2, any helpful information that Claimant 2 might have provided could have been received on or before July 21, 2010, and thus the Commission would be statutorily precluded from making an award based on that information.<sup>8</sup> *Second*, in this situation, both Section 21F and the rules promulgated thereunder require that Claimant 2’s original information must have actually “led to” the success of the Covered Action for Claimant

---

<sup>7</sup> Although Claimant 2 has submitted a declaration that offers a competing description of events related to Claimant 2’s interactions with the Covered Action Staff, we are persuaded that Staff Member 1’s account of the relevant events is the accurate version. We note that a second member of the Covered Action Staff has, to the extent that this staff member was either directly involved with or otherwise learned of the relevant events during the investigation, submitted a declaration supporting Staff Member 1’s descriptions of those events. Further, Staff Member 1 has no apparent reason to mischaracterize the relevant events. We also note that Staff Member 1 was intimately involved in the totality of the investigation leading to the Covered Action and, as such, relative to Claimant 2, may have a clearer understanding of how the disputed events in the investigation unfolded and how those events fit into the broader investigation. In this regard, we find particularly helpful Staff Member 1’s supplemental declaration that responds to the factual claims in Claimant 2’s declaration about Claimant 2’s purported involvement in the investigation leading to the Covered Action and Claimant 2’s claims about inaccuracies in the original Staff Member 1 Declaration.

<sup>8</sup> See *Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015).

2 to be potentially eligible for an award.<sup>9</sup> *Third*, even if it were appropriate to consider a potential award for Claimant 2, we would not be inclined to depart from the “led to” requirement here because the administrative record is clear that after receiving Claimant 2’s tip, OIEA staff in fact contacted Claimant 2 at the email address that Claimant 2 had provided but OIEA staff never received a response.

Because Claimant 2 did not provide the Commission with original information that actually led to the successful enforcement of the Covered Action, Claimant 2’s claim is denied.

## 2. Claimant 3

On [Redacted], Claimant 3 submitted a written response contesting the Preliminary Determination. In this request for reconsideration, Claimant 3 provided additional arguments and information to support Claimant 3’s claims that: (i) Claimant 3 discovered the Defendants’ [Redacted] during Claimant 3’s efforts in assisting Commission staff with another matter [Redacted], which was being handled by an investigative team that was separate from the Covered Action Staff;<sup>10</sup> and (ii) Claimant 3 continually provided (both directly and [Redacted] documentation to the investigative staff handling [Redacted] evidencing the Defendants’ fraud as Claimant 3 obtained it.<sup>11</sup>

---

<sup>9</sup> See, e.g., Section 21F(b) of the Exchange Act (Commission “shall pay an award [to a whistleblower] ... who voluntarily provided original information to the Commission *that led to the successful enforcement* of the covered [action]”) (emphasis added). Cf. generally Rule 21F-4(b)(7), 17 C.F.R. § 240.21F-4(b)(7) (establishing a limited look-back period “for purposes of evaluating [a] claim to an award” where a whistleblower first reports original information to another authority of the federal government, Congress, or certain other specified entities, and “within 120 days, submit[s] the same information to the Commission” in accordance with the procedural requirements in Rule 21F-9).

<sup>10</sup> We note that the administrative record does indicate that [Redacted] provided [Redacted] [Redacted] to both [Redacted] and the Covered Action. However, there is no indication in the record that [Redacted] communicated any information from [Redacted] to the Covered Action Staff. [Redacted] staff from the OWB pulled and reviewed [Redacted] relevant email correspondence and found no indication that actionable information from [Redacted] was shared with the Covered Action Staff by [Redacted]. Further, by way of Staff Member [Redacted] I’s supplemental declaration, Covered Action Staff has confirmed that [Redacted] was not involved [Redacted] [Redacted] the Covered Action and did not relay to them any actionable information from [Redacted] [Redacted]

<sup>11</sup> In support of these claims, Claimant 3 provided (i) a chronology of Claimant 3’s efforts to aid the Commission before and during the period of investigation of the Covered Action, (ii) evidence of e-mail correspondence to various Commission staff members and to a court-appointed receiver unrelated to the Covered Action, and (iii) [Redacted]

After careful consideration of the administrative record, including Claimant 3's written response, we deny Claimant 3's award application. We find that Claimant 3 is not entitled to an award because the record conclusively demonstrates that Claimant 3's information did not lead to the successful enforcement of the Covered Action. Among the relevant considerations are the following. *First*, the record demonstrates that Claimant 3 did not communicate with the Covered Action Staff and that Claimant 3's communications with the Commission after July 21, 2010 (the date the Dodd-Frank Act was enacted) were directed to the staff handling Redacted. *Second*, the record demonstrates that none of this information that was received from Claimant 3 was either forwarded by the staff handling Redacted to the Covered Action Staff or used by the Covered Action Staff. *Third*, the record demonstrates that the Covered Action Staff did not use any information that Claimant 3 may have Redacted 12

Because Claimant 3's information did not lead to the successful enforcement of the Covered Action, Claimant 3's award claim is denied.<sup>13</sup>

#### IV. CONCLUSION

Accordingly, it is ORDERED that Claimant 1 shall receive an award equal to Redacted of the monetary sanctions collected or to be collected in the Covered Action. It is also ORDERED that Claimant 2's and Claimant 3's whistleblower award claims are denied.

By the Commission.

Brent J. Fields  
Secretary

---

<sup>12</sup> In Claimant 3's response to the Preliminary Determination, Claimant 3 challenges the conclusion that Claimant 3 was ineligible for award consideration as to Redacted because the information was not submitted in accordance with the methods prescribed by Exchange Act Rule 21F-9. *See generally* FN 5, *supra*. In light of our determination above, we find it unnecessary to reach Claimant 3's arguments on this issue. We do note, however, that contrary to Claimant 3's contention, the investigative staff handling Redacted disagrees with Claimant 3's assertion that they had an arrangement with Claimant 3 Redacted Redacted

<sup>13</sup> As noted above, Claimant 3 provided assistance in connection with Redacted. Although we are not able to consider Claimant 3 for an award in that case because it pre-dates the enactment of our whistleblower program, we agree with the views expressed by a staff attorney assigned to Redacted that Claimant 3 "should be lauded for [Claimant 3's] assistance" in connection with that case.