No. _____

IN THE

Supreme Court of the United States

JOHN DOE,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

STEPHEN M. KOHN
Counsel of Record
David K. Colapinto
Todd Yoder
KKC PLLC
1710 N Street, N.W.
Washington, D.C. 20036
Phone : (202) 342-6980
Email : sk@kkc.com
Email : dc@kkc.com
Email : ty@kkc.com
Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

In *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), this Court held that agency interpretations of statutory terms must conform to the "plain" or "best reading" of a statute. Every federal circuit has treated *Loper* as an intervening change of law and applied it to cases being litigated when *Loper* was decided, regardless of whether arguments implicating *Loper* had been previously raised.

In this case, the U.S. Court of Appeals for the D.C. Circuit held that Doe had forfeited his argument regarding the plain meaning of "voluntarily" under the Dodd-Frank Wall Street Reform and Consumer Protection Act's whistleblower provisions. The panel held that Doe was required to have raised the argument on administrative appeal years before *Loper* was decided, even though the argument was predicated on *Loper*. This holding conflicts with the precedent of every other U.S. Court of Appeals. Furthermore, when the D.C. Circuit considered the plain meaning of the statute's definition of "original information," the panel applied the standard required by *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which this Court had overturned in *Loper*.

The question presented is:

Whether, in light of the D.C. Circuit's gross error in declining to apply *Loper*, this Court should vacate the decision of the D.C. Circuit and remand for further proceedings not inconsistent with *Loper*.

PARTIES TO THE PROCEEDINGS

Petitioner John Doe was Petitioner in the Court of Appeals.

Respondent Securities and Exchange Commission was Respondent in the Court of Appeals.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- Order Determining Whistleblower Award Claims, Ex. Act. Rel. No. 97228 (Mar. 31, 2023)
- *Doe v. SEC*, No. 23-1124, 176 F.4th 32 (D.C. Cir. 2026)

TABLE OF CONTENTS

Page

PARTIES TO THE PROCEEDINGS ii
STATEMENT OF RELATED PROCEEDINGS iii
TABLE OF CONTENTS iv
TABLE OF AUTHORITIES vi
PETITION FOR WRIT OF CERTIORARI 1
OPINIONS BELOW 1
JURISDICTION 1
STATUTORY PROVISIONS INVOLVED 2
I. Statutory and Regulatory Background 2
II. Factual Background 3
REASONS FOR GRANTING THE PETITION 6
I. This Case Should Be Remanded to Require a Full Application of *Loper*. 6
II. The Doctrine of Forfeit Does Not Apply to Arguments Predicated on an Intervening Change of Law and Futile Under the Prior Standard 9
III. The D.C. Circuit Decided a Plain-Meaning Argument Based on Logic Rejected in *Loper*. 17
IV. Doe Was Not Required to Exhaust an Argument the Commission Considered in Rulemaking 19
CONCLUSION 21

APPENDIX CONTENTS

Page

Doe v. SEC, 176 F.4th 32 (D.C. Cir. 2026)..... App. 1

Order of the United States Court of Appeals, District of Columbia Circuit, Case. No 23-1124, Denying Petitioner's Petition for Panel Rehearing ..... App. 22

Order of the United States Court of Appeals, District of Columbia Circuit, Case. No 23-1124, Denying Petitioner's Petition for Rehearing En Banc ..... App. 23

Order Determining Whistleblower Award Claims, Ex. Act. Rel. No. 97228 (Mar. 31, 2023)..... App. 25

Statutory and Regulatory Provisions

15 U.S.C. §§ 78u-6(a)-(b)..... App. 50

15 U.S.C. § 78y(c)(1) ..... App. 52

17 C.F.R. §§ 240.21F-4(a)-(b)..... App. 54

TABLE OF AUTHORITIES

Cases

Page

3M Co. v. Comm'r, 154 F.4th 574 (8th Cir. 2025) 7

Abdulla v. AG of United States, 153 F.4th 342 (3rd Cir. 2025) 7

Alon Refin. Krotz Springs, Inc. v. EPA, 172 F.4th 12 (D.C. Cir. 2026).....12

Andrew v. White, 604 U.S. 86 (2025).....7, 20

Bastias v. Garland, 144 S. Ct. 2704 (2024).....8

Benson v. Warden FCI Edgefield, 174 F.4th 348 (4th Cir. 2026) 6

Blount v. SEC, 61 F.3d 938 (D.C. Cir. 1995) ...5, 6, 19

Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) ...4, 5, 6, 8, 9, 10, 12, 13, 16, 17, 19

Cisneros v. Blanche, 182 F.4th 363 (4th Cir. 2026)...7

Clark v. Sweeney, 607 U.S. 7 (2026).....7, 16

Consolidation Coal Co. v. McMahon, 77 F.3d 898 (6th Cir. 1996) 10, 11, 16

Consumer Fin. Prot. Bureau v. Townstone Fin., Inc.,
107 F.4th 768 (7th Cir. 2024).....7

Diaz-Rodriguez v. Garland, 144 S. Ct. 2705 (2024) ..8

Edison Elec. Inst. v. FERC, 144 S. Ct. 2705 (2024)...8

Feliciano v. DOT, 605 U.S. 38 (2024).....9

Foster v. Dep't of Agric., 144 S. Ct. 2707 (2024) 8

Fuller v. United States, 398 F.3d 644
(7th Cir. 2005) 11

Gulomjonov v. Bondi, 131 F.4th 601
(7th Cir. 2025) 7

Harper v. Va. Dep't of Taxation,
509 U.S. 86 (1993) 10

Hispanic Affairs Project v. Acosta, 901 F.3d 378
(D.C. Cir. 2018).....20

Hosp. Menonita de Guayama, Inc. v. NLRB,
145 S. Ct. 982 (2024) 8

Hosp. Menonita de Guayama, Inc. v. NLRB,
183 F.4th 745 (D.C. Cir. 2026).....7

Hutto v. Davis, 454 U.S. 370 (1982).....7

Institutional S'holder Servs. v. SEC,
142 F.4th 757 (D.C. Cir. 2025).....12

Kilgour v. SEC, 942 F.3d 113 (2nd Cir. 2019) 12

Klein v. Martin, 607 U.S. 213 (2026) 7, 19

Kokinda v. United States, 145 S. Ct. 124 (2024) 8

Kwok Sum Wong v. Garland, 145 S. Ct. 432 (2024)..8

Lesko v. United States, 130 F.4th 1385 (Fed. Cir. 2025).....7

Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) 3, 5, 6, 7, 9, 10, 11, 13, 15, 16, 19, 21

Lopez v. Garland, 116 F.4th 1032 (9th Cir. 2024).....7

Margolin v. Nat'l Ass'n of Immigr. Judges, 608 U.S. 339 (2026) 8

Moctezuma-Reyes v. Garland, 124 F.4th 416 (6th Cir. 2024) 7

Natural Resources Defense Council, Inc. v. U.S. EPA, 824 F.2d 1146 (D.C. Cir. 1987) 20

Ogier v. Int'l Follies, Inc., 2024 U.S. App. LEXIS 27875 (11th Cir. 2024) 7

PG&E v. FERC, 113 F.4th 943 (D.C. Cir. 2024).....12

Rangel-Fuentes v. Garland, 2024 U.S. App. LEXIS 17482 (10th Cir. 2024) 7

Relentless Inc. v. United States DOC,
2024 U.S. App. LEXIS 19654 (1st Cir. 2024) 6

Rest. L. Ctr. v. United States DOL, 120 F.4th 163
(5th Cir. 2024) 7

Reynoso-Salgado v. Blanche, 2191 F.4th 521
(7th Cir. 2026) 7

Richardson v. United States, 379 F.3d 485
(7th Cir. 2004) 10, 11, 16

Rivers v. Roadway Express, 511 U.S. 298 (1994) 11

Ross v. SEC, 34 F.4th 1114 (D.C. Cir. 2022) 12

Sacks v. SEC, 648 F.3d 945 (9th. Cir. 2011).....19, 20

Santana v. Garland, 145 S. Ct. 1042 (2025).....8

Sec'y of Lab. v. KC Transp., Inc., 173 F.4th 294
(D.C. Cir. 2026).....12

SKF USA, Inc. v. United States, 512 F.3d 1326
(Fed. Cir. 2007).....11

Solar Energy Indus. Ass'n v. FERC, 154 F.4th 863
(D.C. Cir. 2025).....7

United Nat. Foods, Inc. v. NLRB, 144 S. Ct. 2708
(2024) 8

United States SEC v. Amah, 2026 U.S. App. LEXIS
5399 (2nd Cir. 2026).....6

United States v. Coumaris, 399 F.3d 343 (D.C. Cir. 2005).....11

United States v. Durham, 795 F.3d 1329 (11th Cir. 2015) 11

Utah v. Su, 109 F.4th 313 (5th Cir. 2024) 6

Yupangui-Yunga v. Bondi, 157 F.4th 512 (2nd Cir. 2025).....7

Statutes

15 U.S.C. § 78u-6 3

15 U.S.C. § 78u-6(a).....2, 4, 18

15 U.S.C. § 78u-6(b).....2

15 U.S.C. § 78y(c)(1) 19

15 U.S.C. 78u-6(f).....4

Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub L. No. 111-203, 124 Stat. 1276 (2010) 2, 3, 5, 13, 17, 18

Rules

17 C.F.R. § 240.21F-4(a).....2

PETITION FOR WRIT OF CERTIORARI

Petitioner John Doe respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The panel opinion of the Court of Appeals is reported at *Doe v. SEC,* 176 F.4th 32 (D.C. Cir. 2026) and reproduced at App. 1.

The judgment of the Court of Appeals denying Petitioner's petition for panel rehearing is reported at 2026 U.S. App. LEXIS 18287 and reproduced at App. 22.

The judgment of the Court of Appeals denying Petitioner's petition for rehearing en banc is reported at 2026 U.S. App. LEXIS 18253 and reproduced at App. 23.

The relevant order of the Securities and Exchange Commission is reported at Order Determining Whistleblower Award Claims, Ex. Act. Rel. No. 97228 (Mar. 31, 2023) and reproduced at App. 25.

JURISDICTION

The judgment of the Court of Appeals was entered on April 7, 2026. A petition for panel rehearing and rehearing en banc was denied on June 23, 2026. On September 3, 2026, the Chief Justice extended the deadline for a certiorari petition to November 20, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutes and regulations are reproduced at App. 50-60.

STATEMENT OF THE CASE

I. Statutory and Regulatory Background

The whistleblower provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Pub L. No. 111-203, 124 Stat. 1276 (2010), require the U.S. Securities and Exchange Commission ("SEC" or "Commission") to pay mandatory awards to whistleblowers who "voluntarily provided original information to the Commission that led to the successful enforcement of [a] covered judicial or administrative action." 15 U.S.C. § 78u-6(b)(1). The law defines "original information" as information that "is not known to the Commission from any other source, unless the whistleblower is the original source of that information." *Id.* § 78u-6(a)(3)(B). This includes information the SEC learns from media reports and other third parties when the whistleblower was the "source" of the information to the third party. *Id.* § 78u-6(a)(3)(C).

By contrast, Dodd-Frank does not define "voluntarily," instead giving the term its plain meaning. Through rulemaking, the SEC defined "voluntarily" to require that a whistleblower share information with the Commission "before [receiving] a request, inquiry, or demand that relates to the subject matter of your submission" from the Commission or another government body. 17 C.F.R. § 240.21F-4(a)(1).

II. Factual Background

After his original information led to a successful enforcement action by the SEC, Petitioner Doe applied for a whistleblower award under the Dodd-Frank Act's whistleblower provisions, 15 U.S.C. § 78u-6. Petitioner John Doe's Application for Award for Original Information Submitted Pursuant to Section 21F of the Securities Exchange Act of 1934, Including Additional Sheets in Support, JA023.[1] The Commission initially denied Doe's award application on the grounds that Doe had failed to meet two regulatory requirements. Preliminary Determination of the Claims Review Staff, JA146. For purposes of this petition, only one is relevant: the Commission's claim that Doe did not submit his information "voluntarily."[2]

On administrative appeal, Doe challenged the Commission's regulatory interpretation of "voluntarily" as conflicting with the plain meaning of the Dodd-Frank Act. Claimant's Appeal and Written Response, 10-13, JA157-160 ("Admin. Appeal"). Recognizing the futility of arguments predicated on statutory construction tools when his arguments would be reviewed under the standard introduced by

---

[1] Citations to JA refer to the Sealed Joint Appendix in U.S. Court of Appeals for the D.C. Circuit case number 23-1124, *Doe v. SEC*, 176 F.4th 32 (2026), Dkt. No. 2108638. Citations to Dkt. No. refer to the electronic docket in the same case, and citations to App. refer to the appendix to this Petition. Dodd-Frank permitted Petitioner to file for an award anonymously and confidentially. 15 U.S.C. § 78u-6(d)(2). Copies of relevant documents will be provided to the Court upon request.

[2] Doe is petitioning for certiorari only on the basis of the D.C. Circuit's failure to apply *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) to his plain-meaning arguments.

Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), Doe emphasized on administrative appeal that the SEC's understanding of "voluntary"[3] conflicted with the Dodd-Frank Act's statutory definition of "original information," rather than centering the fact that the SEC's definition conflicted with the plain meaning of the term "voluntarily" itself. Admin. Appeal 1-2, JA148-49; 15 U.S.C. § 78u-6(a)(3).

The Commission rejected Doe's award claim again in its Final Order. Order Determining Whistleblower Award Claims, Ex. Act Rel. No. 97228 (Mar. 31, 2023), JA187 ("Final Order"). Doe timely petitioned the D.C. Circuit for review of the denial on April 28, 2023. 15 U.S.C. 78u-6(f); Pet. For Review, Dkt. No. 1997134.

Three days later, this Court granted certiorari in *Loper Bright Enters. v. Raimondo*. 143 S. Ct. 2429 (2023). Recognizing that this case could drastically change the standard under which his plain-meaning arguments would be reviewed, Doe filed an unopposed motion to hold his case in abeyance until *Loper* was decided. Pet'r's Unopp. Mot. To Hold in Abeyance, Dkt. No. 2001097.

After *Loper* was decided, a briefing schedule was set in Doe's case, and Doe filed his opening brief on November 26, 2024. Pet'r's Br., Dkt. No. 2087076 ("Pet'r's Br."). In keeping with the Supreme Court's new mandate that circuit courts review questions of statutory plain meaning using "the traditional tools of statutory construction," Doe cited those tools on

[3] "Voluntary" and "voluntarily" have been used by both parties in this case to refer to the same statutory and regulatory requirement and are likewise used interchangeably herein.

appeal to expand his arguments regarding the plain meaning of "voluntarily." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 374 (2024); Pet'r's Br. 32-39.

The SEC responded by claiming that Doe had forfeited his argument that the SEC's regulatory definition of "voluntarily" conflicted with the plain meaning of the term, as it constituted a new argument which he had not raised on administrative appeal. Res. Br., 25-26, Dkt. No. 2101201 ("Res. Br.").

In his reply brief, Doe argued that (1) he had in fact raised this argument on administrative appeal; (2) *Loper* constituted an intervening change in law which excused any failure to exhaust administrative remedies; (3) the argument's futility under *Chevron* likewise excused any failure to exhaust; and (4) under *Blount v. SEC*, 61 F.3d 938 (D.C. Cir. 1995), Doe was permitted to raise this argument for the first time on appeal because the SEC had already addressed it in rulemaking. Pet'r's Reply Br. 5-7, 9-10, 8-9, 7, Dkt. No. 2107418 ("Reply Br.").

The D.C. Circuit rejected all these arguments. The panel found that in arguing in his administrative appeal that the SEC's definition of "voluntarily" conflicted with Dodd-Frank's definition of "original information," Doe had "presumed the correctness of the Rule's interpretation of 'voluntarily,'" and as a result had forfeited the argument. App. 14. Doe's citation to *Loper* as intervening law was dismissed because "the question of whether the Commission's interpretation will receive deference by the court on appeal is irrelevant to Doe's arguments before the Commission." *Id.* This argument's futility under *Chevron* was characterized as a "mere losing

position," and Doe's citation to *Blount* was described as "misplaced." *Id.* at 13-14.

The panel did not apply the tools of statutory construction required under *Loper* when evaluating Doe's argument concerning the "plain meaning" of the term "voluntary." Instead, Doe's attempt to rely on a post-*Chevron* analysis of the Commission's regulation was held to be "forfeit." *Id.* at 12.

REASONS FOR GRANTING THE PETITION

I. This Case Should Be Remanded to Require a Full Application of *Loper*.

Doe petitions for certiorari in this case to address one issue: whether the D.C. Circuit could decline to apply this Court's instruction in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) in a case implicating the plain meaning of statutory terms which was pending before the D.C. Circuit when *Loper* was decided.

This case conflicts with precedent from every other federal circuit and other cases within the D.C. Circuit itself. Post-*Loper*, the standard of review changed in every active case challenging an agency's interpretation of a statute. **Every other** federal circuit has treated *Loper* as an intervening change of law and applied it to pending cases, whether by remanding cases to the district court to apply the *Loper* standard,[4] requesting additional briefing from

[4] *Relentless Inc. v. United States DOC*, 2024 U.S. App. LEXIS 19654 (1st Cir. 2024); *United States SEC v. Amah*, 2026 U.S. App. LEXIS 5399 (2nd Cir. 2026); *Benson v. Warden FCI Edgefield*, 174 F.4th 348 (4th Cir. 2026); *Utah v. Su*, 109 F.4th 313 (5th Cir. 2024); *Rangel-Fuentes v. Garland*, 2024 U.S. App.

parties on *Loper's* application to a case,[5] or simply applying the *Loper* standard at the appellate level.[6] But the D.C. Circuit did not apply *Loper* to Doe's plain-meaning arguments.

The D.C. Circuit is bound by decisions of the Supreme Court. *See, e.g.*, *Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be"). When circuit courts clearly contravene binding statutory text and legal principles, this Court is quick to issue summary disposition reversing that misapplication of the law. *See, e.g. Klein v. Martin*, 607 U.S. 213, 222 (2026) (remanding to correct "a basic misapplication" of applicable law); *Andrew v. White*, 604 U.S. 86, 96 (2025) (remanding where "clearly established law" directly contradicted the Tenth Circuit's holding); *Clark v. Sweeney*, 607 U.S. 7, 8 (2026) (remanding where the Fourth Circuit "departed dramatically" from controlling Supreme

---

LEXIS 17482 (10th Cir. 2024); *Ogier v. Int'l Follies, Inc.*, 2024 U.S. App. LEXIS 27875 (11th Cir. 2024).

[5] *Yupangui-Yunga v. Bondi*, 157 F.4th 512 (2nd Cir. 2025); *Abdulla v. AG of United States*, 153 F.4th 342 (3rd Cir. 2025); *3M Co. v. Comm'r*, 154 F.4th 574 (8th Cir. 2025); *Lesko v. United States*, 130 F.4th 1385 (Fed. Cir. 2025).

[6] *Cisneros v. Blanche*, 182 F.4th 363 (4th Cir. 2026); *Rest. L. Ctr. v. United States DOL*, 120 F.4th 163 (5th Cir. 2024); *Moctezuma-Reyes v. Garland*, 124 F.4th 416 (6th Cir. 2024); *Consumer Fin. Prot. Bureau v. Townstone Fin., Inc.*, 107 F.4th 768 (7th Cir. 2024); *Reynoso-Salgado v. Blanche*, 2191 F.4th 521 (7th Cir. 2026); *Gulomjonov v. Bondi*, 131 F.4th 601 (7th Cir. 2025); *Lopez v. Garland*, 116 F.4th 1032 (9th Cir. 2024); *Hosp. Menonita de Guayama, Inc. v. NLRB*, 183 F.4th 745 (D.C. Cir. 2026); *Solar Energy Indus. Ass'n v. FERC*, 154 F.4th 863 (D.C. Cir. 2025).

Court precedent); *Margolin v. Nat'l Ass'n of Immigr. Judges*, 608 U.S. 339, 343 (2026) (same).

Here, Doe appealed his whistleblower award denial to the D.C. Circuit before the Supreme Court had granted certiorari in *Loper*. Pet. for Review, Dkt. No. 1997134. Had this appeal gone ahead immediately, it would likely have been decided under *Chevron* and joined the wave of cases this Court remanded following its decision in *Loper*.[7] But recognizing that pursuit of such a decision would waste judicial resources, Doe requested the case be held in abeyance until *Loper* was decided. Pet'r's Unopp. Mot. to Hold in Abeyance, Dkt. No. 2001097. Following this Court's decision in *Loper*, Doe presented plain-meaning arguments largely predicated on the *Loper* standard. Pet'r's Br. 31.

When the D.C. Circuit decides a case which questions whether agency interpretation of a statute conflicts with the statute's plain meaning, it is now required to apply *Loper*. But the court in *Doe* did not apply *Loper*. The D.C. Circuit decided Doe's argument on the plain meaning of "original information" based on factors only determinative under *Chevron*, and found that a *Loper* analysis of the Commission's

---

[7] *See, e.g.*, *Kwok Sum Wong v. Garland*, 145 S. Ct. 432 (2024) (remanded to 2nd Cir.); *Kokinda v. United States*, 145 S. Ct. 124 (2024) (remanded to 4th Cir.); *Santana v. Garland*, 145 S. Ct. 1042 (2025) (remanded to 4th Cir.); *United Nat. Foods, Inc. v. NLRB*, 144 S. Ct. 2708 (2024) (remanded to 5th Cir.); *Foster v. Dep't of Agric.*, 144 S. Ct. 2707 (2024) (remanded to 8th Cir.); *Diaz-Rodriguez v. Garland*, 144 S. Ct. 2705 (2024) (remanded to 9th Cir.); *Bastias v. Garland*, 144 S. Ct. 2704 (2024) (remanded to 11th Cir.); *Edison Elec. Inst. v. FERC*, 144 S. Ct. 2705 (2024) (remanded to D.C. Cir.); *Hosp. Menonita de Guayama, Inc. v. NLRB*, 145 S. Ct. 982 (2024) (remanded to D.C. Cir.).

regulation defining the plain meaning of the term "voluntary" was "forfeit" even though Doe made his arguments before the Commission years before this Court reversed the *Chevron* standard of review. App. 14. To ensure that Supreme Court precedent is given its required weight, the D.C. Circuit must be required on remand to fully apply *Loper* to Doe's case.

II. The Doctrine of Forfeit Does Not Apply to Arguments Predicated on an Intervening Change of Law and Futile Under the Prior Standard

Before the D.C. Circuit, Doe's primary argument was a challenge to the SEC's definition of "voluntarily" as contrary to that word's plain or best meaning. *See* Pet'r's Br. 32-39. Consideration of the plain meaning of "voluntarily" would have required a full-throated *Loper* analysis of whether the SEC's definition matched an ordinary understanding of the word. *Feliciano v. DOT*, 605 U.S. 38, 45 (2024). The D.C. Circuit impermissibly dismissed the argument as forfeit due to a failure to exhaust, despite it being predicated on an intervening change of law, and thus avoided conducting a *Loper* analysis of whether the SEC's definition of "voluntary" is permissible in the absence of *Chevron* deference. App. 14.

In declining to address Doe's main plain-meaning argument, the D.C. Circuit did not permit Doe to rely on *Loper* as an intervening change of law. **Every other circuit** (and the D.C. Circuit in other cases) has treated *Loper* as an intervening change of law, *see supra* at 6-7, and other federal circuits are clear that an intervening change of law permits a party to raise additional arguments that would not have been considered under the prior standard. *Consolidation*

Coal Co. v. McMahon, 77 F.3d 898, 904 (6th Cir. 1996); *Richardson v. United States*, 379 F.3d 485, 487 (7th Cir. 2004).

Doe argued before the D.C. Circuit that he did not forfeit his *Loper*-based argument because "[t]he failure to raise an issue in a prior forum is excusable when due to an intervening change in the law." Reply Br. 9. The panel rejected this argument, holding that Doe's reliance on *Loper* was "misplaced" and that "the question of whether the Commission's interpretation will receive deference by the court on appeal is irrelevant to Doe's arguments before the Commission." App. 14-15.

This logic does not consider that Doe's primary argument before the Court was predicated on *Loper*. Doe's *Loper*-based arguments could not have been raised pre-*Loper*, and in any event would have been futile under the then-existing *Chevron* precedent. An intervening change of law justifies raising **new** arguments on appeal in such circumstances. *Consolidation Coal*, 77 F.3d, 904 (excusing failure to raise argument because prior to change in law the argument "would have been futile"); *Richardson*, 379 F.3d, 487. The "relevance" of *Loper* to "Doe's arguments before the Commission" is itself irrelevant to this holding.

Indeed, this Court has affirmed that lower courts are required to apply new judicial precedent to pending cases. *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993) (holding that new judicial authority "is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events") (emphasis

added); *Rivers v. Roadway Express*, 511 U.S. 298, 311-12 (1994).

Cases that have evaluated whether a party had to raise the issue implicated in the intervening change of law before the lower court are consistent with *Consolidation Coal* and have determined that no such obligation exists. *Richardson*, 379 F.3d at 487 ("It is well-established that a court generally applies the law in effect at the time of its decision, and that if the law changes while the case is on appeal the appellate court applies the new rule.") (emphasis added); *Fuller v. United States*, 398 F.3d 644, 650 n. 3 (7th Cir. 2005); *SKF USA, Inc. v. United States*, 512 F.3d 1326, 1330 (Fed. Cir. 2007).

Significantly, the Eleventh Circuit explained that "every other circuit" has rejected waiver as a justification for failing to apply new judicial precedent. *United States v. Durham*, 795 F.3d 1329, 1330-1331 (11th Cir. 2015) (permitting party to raise new issue in a reply brief based on intervening Supreme Court precedent). The panel's finding in *Doe* created a circuit split by conflicting with all other courts of appeals, which have definitively established that an intervening change of law caused by a new binding legal precedent must be applied by an appellate court. It creates a split within the D.C. Circuit as well; *see, e.g. United States v. Coumaris*, 399 F.3d 343, 347 (D.C. Cir. 2005) (ordering supplemental briefing and deferring resolution in response to intervening change of law).

As every circuit has also recognized, *supra* at 6-7, *Loper* clearly constitutes an intervening change of law. Yet in this case, the D.C. Circuit ignored the impact of *Loper*, which fundamentally changed the

way courts review agency regulations. Pre-*Loper*, the courts of appeals relied on *Chevron* when reviewing the SEC's award decisions, deferring to the Commission's interpretation of statutory terms. *See Ross v. SEC*, 34 F.4th 1114, 1118 (D.C. Cir. 2022); *Kilgour v. SEC*, 942 F.3d 113, 122 (2nd Cir. 2019).

Post-*Loper*, however, the D.C. Circuit acknowledged that it is required to rely on "the traditional tools of statutory construction" instead of individual policy preferences when reviewing agency action. *See Sec'y of Lab. v. KC Transp., Inc.*, 173 F.4th 294 (D.C. Cir. 2026) (evaluating the plain meaning of "mine" and rejecting the agency's rule); *Alon Refin. Krotz Springs, Inc. v. EPA*, 172 F.4th 12 (D.C. Cir. 2026) (evaluating the plain meaning of "small refinery" without deferring to the EPA's interpretation); *Institutional S'holder Servs. v. SEC*, 142 F.4th 757 (D.C. Cir. 2025) (rejecting the SEC's interpretation of "solicit" after conducting a plain meaning analysis). In *PG&E v. FERC*, the D.C. Circuit conducted a *Loper* analysis **even when the petitioner failed to raise a plain meaning argument before the agency**. 113 F.4th 943, 948-49 (D.C. Cir. 2024). In this case, by contrast, the D.C. Circuit refused to conduct a *Loper* analysis on a well-briefed plain meaning argument. As will be discussed further in the next section, the panel instead relied on *Chevron* principles that have been rejected by this Court. *See infra* at 17-19.

For cases pending when *Loper* was decided, other appellate circuits have sua sponte granted en banc for briefing on how *Loper* impacts the interpretation of key statutory terms. *See supra* at 7 n. 5.

In *Loper,* the Supreme Court rejected *Chevron's* two-step analysis. *Loper*, 603 U.S. at 369. In its place, it developed a completely new analysis which courts **must** apply when evaluating the legality of administrative regulations. *Id.* at 403. This intervening change in law was sweeping and unqualified.

First, *Loper* discussed the *Chevron* precedent that was controlling in the D.C. Circuit at the time the Commission approved its definition of "voluntary" and applied that definition to Doe:

> [T]he Court [in *Chevron*] articulated and employed a now familiar two-step approach broadly applicable to review of agency action.
>
> The first step was to discern "whether Congress ha[d] directly spoken to the precise question at issue." . . . To discern such intent, the Court noted, a reviewing court was to "employ [ ] traditional tools of statutory construction."

Id. at 372, 396-97 (internal citations omitted).

Because Congress had not "directly spoken" on the definition of "voluntary" in Dodd-Frank, Doe **could not** have prevailed before the agency on a Step 1 analysis, so presenting "traditional tools of statutory construction" would have been futile.

Doe's attempt to challenge the Commission's definition of "voluntary" under Step 2 of *Chevron* would also have been futile. The Court explained *Chevron* Step 2 in *Loper*.

> [The *Chevron*] Court articulated a second step applicable when "Congress ha[d] not directly addressed the precise question at issue." In such a case . . . a reviewing court could not "simply impose its own construction on the statute . . ."
>
> ***
>
> A court instead had to set aside the traditional interpretive tools and defer to the agency if it had offered "a permissible construction of the statute," even if not "the reading the court would have reached if the question initially had arisen in a judicial proceeding . . ."

Id. at 397 (internal citations omitted).

Chevron Step 2 required that courts conduct an analysis diametrically opposed to the new *Loper* standard. Step 2 demanded courts uphold an agency's definition of terms like "voluntary" if the agency "offered a permissible construction of the statute." *Id.* Once the agency offered such a "permissible construction," courts were required to "set aside 'traditional interpretive tools'" and instead "defer to the agency." *Id.* As Congress had not directly spoken on the issue, Doe's reliance on "traditional tools of statutory construction" (the new *Loper* standard) would therefore have been futile if raised during his administrative appeal, and his evidence regarding those tools of statutory construction would not have been considered.

Loper radically changed the entire analysis that the D.C. Circuit was required to apply when evaluating the legality of the Commission's definition of "voluntarily." As explained by the Supreme Court:

> ***Chevron* defies the command of the APA** that "the reviewing court"—not the agency whose action it reviews—is to "decide *all* relevant questions of law" and "interpret . . . statutory provisions." It requires a court to *ignore*, not follow, "the reading the court would have reached" had it exercised its independent judgment as required by the APA.
>
> ***
>
> [*Chevron*] demands that courts mechanically afford **binding** deference to agency interpretations . . . Still worse, it forces courts to do so even when a pre-existing judicial precedent holds that the statute means something else . . .
>
> ***
>
> ***Chevron* turns the statutory scheme** for judicial review of agency action **upside down.**
>
> ***
>
> *Chevron*'s presumption is misguided . . .

Id. at 399-400 (emphases added) (internal citations omitted).

It is simply inconceivable that overturning a longstanding precedent that this Court described as "turn[ing] the statutory scheme for judicial review of agency action upside down" would not qualify as an "intervening change of law." *Id.* Because Doe's arguments regarding the plain meaning of "voluntarily" had no relevance to the analysis required under *Chevron*, he was not required to raise them when a *Chevron* analysis still governed his case. *Consolidation Coal*, 77 F.3d, 904; *Richardson*, 379 F.3d, 487.

Because the panel failed to apply *Loper*, it failed to review the Commission's decision of whether Doe voluntarily submitted information under the proper standard – a standard that did not exist when Doe filed his administrative appeal with the SEC. Under *Loper*, the D.C. Circuit was required to "use every tool at [its] disposal to determine the best reading of the statute and resolve the ambiguity." *Id.* at 400. Yet because the panel found that Doe had forfeited his ability to apply *Loper*, it did not consider the various "tools of statutory construction" when evaluating the Commission's definition. App. 12. Such a failure to conduct the appropriate analysis is a standard basis for remand by this Court. *Clark*, 607 U.S. at 7; *supra* at 7-8.

On appeal, Doe presented (and the panel failed to consider) ample evidence that, if standard tools of statutory construction were applied, Doe's submission of information was voluntary, including (1) *Webster's* widely accepted definition of "voluntary" and consistent definitions from other respected dictionaries, Pet'r's Br. 32; (2) numerous court decisions that applied *Webster's* common-sense

definition, *id.*; (3) the leading case under the False Claims Act that applied *Webster's* definition, *id.* at 33-34; (4) the SEC's failure to apply any traditional tools of statutory construction in defining the term "voluntary" during its rulemaking, while contradictorily relying on three False Claims Act cases which were all consistent with *Webster's* definition, *id.* at 34; (5) Dodd-Frank's twelve other uses of "voluntary" which were all consistent with *Webster's* definition, *id.* at 34; (6) the fact that, consistent with the *Oxford* dictionary definition the Commission relied on, Doe's disclosures were the underlying cause of the Commission's investigation, Pet'r's Reply Br. 23-24; and (7) the fact that the SEC's own enforcement staff explicitly used the term "voluntary," consistent with *Webster's* definition and common usage of the word, in contemporaneous communications to Doe's counsel to describe his disclosures and interactions with the SEC, Pet'r's Br. 17.

None of this evidence would have been considered under a *Chevron* analysis. Failing to apply the intervening decision doctrine based on "forfeit," or for any other reason articulated by the panel, conflicted with the decisions of this Court and all other courts of appeals.

III. The D.C. Circuit Decided a Plain-Meaning Argument Based on Logic Rejected in *Loper*.

Although the D.C. Circuit refused to consider Doe's challenge to the plain meaning of "voluntary" on grounds of forfeit, they did review the merits of a separate plain meaning argument regarding Dodd-

Frank's statutory definition of "original information." 15 U.S.C. § 78u-6(a)(3). The Court rejected Doe's plain meaning argument in regard to the definition of "original source," but failed to properly apply *Loper* in reaching this decision. App. 12-14. The panel's response to this argument reads:

> Rule 21F-4(a) considers "voluntarily" provided those disclosures the whistleblower makes to the Commission or to proxy self-regulatory and governmental authorities with which the Commission has relationships and cooperative arrangements producing referrals and sharing of high-quality information about securities violations. The news media lacks such a formal relationship with the Commission. The Commission, therefore, **could reasonably conclude** that making a disclosure to the news media **would not fulfill** Dodd-Frank's "core objective" to "motivate people who know of securities violations to tell the [Securities and Exchange Commission]."

App. 12 (internal citations omitted) (emphases added).

In other words, the D.C. Circuit concluded its plain-meaning analysis of whether the Commission's rule violated the text of the Dodd-Frank Act by holding that the agency's logic was 'reasonable' and supported a policy objective. This logic is obviously and glaringly incompatible with *Loper*. "Reasonableness" made an agency's interpretation of a statute permissible under step two of a *Chevron*

analysis – the standard overruled in *Loper*. *Chevron*, 467 U.S. at 844. Further, *Loper* explicitly held that agency policy judgments cannot justify agency action because it is Congress's role to decide how a policy objective will be carried out by a statute. *Loper,* 603 U.S. at 403 ("Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences").

The above quote from the court's opinion is a *Chevron* analysis, and the D.C. Circuit is no longer permitted to conduct a *Chevron* analysis. Certiorari should be granted to correct this basic misapplication of controlling law and allow the D.C. Circuit to consider Doe's arguments under the applicable standard. *Klein*, 607 U.S. at 222; *supra* at 7-8.

IV. Doe Was Not Required to Exhaust an Argument the Commission Considered in Rulemaking

Finally, in declining to address Doe's argument regarding the plain meaning of "voluntarily," the D.C. Circuit also committed an error of law when it held that Doe's reliance on *Blount v. SEC*, 61 F.3d 938, 940 (D.C. Cir. 1995) was misplaced. App. 16. As with the failure to recognize an intervening change of law, this error allowed the D.C. Circuit to avoid a required *Loper* analysis.

Blount held that the SEC's exhaustion statute, 15 U.S.C. § 78y(c)(1), allows an argument to be raised for the first time in court if the agency addressed it in rulemaking, so long as the argument in question is not "in any salient way different from the concerns raised and considered during the rulemaking." *Blount*, 61 F.3d at 940. Under *Blount*, Doe was not

required to exhaust his plain-meaning argument on the administrative level, as the SEC conceded that it addressed Doe's plain-meaning argument in rulemaking. Res. Br. 32 (emphasis added) ("[i]n adopting the definition in 2011, the Commission expressly considered comments urging it to adopt the definition of voluntarily that Doe prefers in this appeal").

The Ninth Circuit has affirmed the D.C. Circuit's holding in *Blount*. *Sacks*, 648 F.3d at 949 (citing *Blount*) ("We agree with the D.C. Circuit…"). *See also Natural Resources Defense Council, Inc. v. U.S. EPA*, 824 F.2d 1146, 1150-51 (D.C. Cir. 1987) (internal citations omitted) ("This court has excused the exhaustion requirements for a particular issue when the agency has in fact considered the issue"); *Hispanic Affairs Project v. Acosta*, 901 F.3d 378 (D.C. Cir. 2018).

The SEC's concession that it addressed Doe's argument in rulemaking should have established that Doe was not required to exhaust the argument in administrative proceedings. But instead, the D.C. Circuit rejected Doe's reliance on *Blount* in one sentence, referring to factual distinctions between Doe's case and *Blount* when the facts discussed had no bearing on the holding in *Blount*. App. 16. It would be consistent with this Court's precedent to grant certiorari to correct this error and remand to the lower court for full consideration of Doe's plain-meaning arguments. *Andrew*, 604 U.S. at 96; *supra* at 7-8.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari, vacate the decision of the D.C. Circuit, and remand to require full consideration of Doe's arguments under *Loper Bright Enters. v. Raimondo*.

Respectfully submitted,

/s/ Stephen M. Kohn
Stephen M. Kohn
Counsel of Record
David K. Colapinto
Todd Yoder
KKC PLLC
1710 N Street, N.W.
Washington, D.C. 20036
Phone: (202) 342-6980
Email: sk@kkc.com

Counsel for Petitioner

APPENDIX

APPENDIX CONTENTS

Description of Document **Page**

Doe v. SEC, 176 F.4th 32 (D.C. Cir. 2026)..... App. 1

Order of the United States Court of Appeals, District of Columbia Circuit, Case. No 23-1124, Denying Petitioner's Petition for Panel Rehearing ..... App. 22

Order of the United States Court of Appeals, District of Columbia Circuit, Case. No 23-1124, Denying Petitioner's Petition for Rehearing En Banc ..... App. 23

Order Determining Whistleblower Award Claims, Ex. Act. Rel. No. 97228 (Mar. 31, 2023)..... App. 25

Statutory and Regulatory Provisions

15 U.S.C. §§ 78u-6(a)-(b)..... App. 50

15 U.S.C. § 78y(c)(1) ..... App. 52

17 C.F.R. §§ 240.21F-4(a)-(b)..... App. 54

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued September 8, 2025
Decided April 17, 2026

No. 23-1124

JOHN DOE,

PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION,

RESPONDENT

On Petition for Review of Order of the
Securities and Exchange Commission

Before: PILLARD and PAN, *Circuit Judges*, and ROGERS, *Senior Circuit Judge*.

Opinion for the Court filed by *Senior Circuit Judge* ROGERS.

ROGERS, *Senior Circuit Judge*: On the basis of information that John Doe disclosed about the misconduct of a large Company to the news media, the Securities and Exchange Commission successfully prosecuted an enforcement action against the Company. During the Commission's investigation, Congress and Commission staff contacted Doe for interviews and information about the disclosures to the news media, and Doe repeatedly obliged. On the basis of the same information, Doe filed an application with the Commission for a whistleblower award under the Securities Exchange Act of 1934, which authorizes the Commission to make monetary awards to individuals who "voluntarily" provide "original information" to the Commission, 15 U.S.C. § 78u-6(a), (b)(1); *see* 17 C.F.R. § 240.21F-4 ("Rule 21F-4"). The Commission denied Doe's application for an award because his submission was made only after the Commission had contacted him and thus was not "voluntarily" submitted under the statute and its rules. Doe's submission was also untimely. The Commission summarily denied Doe's request for exemptions.

Doe petitions for review. He contends that instead of applying the plain statutory text and its precedent, the Commission acted in an arbitrary and capricious manner because its interpretation of "voluntarily" in Rule 21F-4(a) is contrary to common sense and the plain meaning and purpose of the term as well as dictionary definitions. Also, he maintains that his

submission was timely. Alternatively, Doe contends that the denial of his request for exemptions was insufficiently explained and contrary to Commission precedent. Further, withholding financial rewards from whistleblowers due to their speech to the press, Doe maintains, raises questions under the First Amendment to the Constitution. Petitioner's Br. 24-28.

For the following reasons, Doe's challenges to the Commission's determination of his non-entitlement to a whistleblower award and to the Commission's interpretation of the statutory term "voluntarily" are unpersuasive. His First Amendment objection is based on a false premise. Doe's challenge to the Commission's denial of his request for an exemption from Rule 21F-4(a) is persuasive, however. In denying Doe's request for exemption from the voluntariness requirements, the Commission abused its discretion by perfunctorily restating the statutory policy goals in response to a credible showing that granting an exception would be "necessary or appropriate in the public interest," 15 U.S.C. § 78mm(a)(1), and consistent with the Commission's grant of exemptions in the past. Accordingly, the court denies the petition in part and grants it in part, vacating the denial of Doe's request for exemptions and remanding the request to the Commission for reconsideration.

I.

In the aftermath of the 2008 financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), PUB. L. NO. 111-203, 124 Stat. 1376 (2010) (codified in scattered sections of the U.S. Code.), "to promote stability in the U.S. financial system."

Nelson v. SEC, 138 F.4th 514, 517, 470 U.S. App. D.C. 310 (D.C. Cir. 2025). The Dodd-Frank Act amended the Securities Exchange Act and, among other things, created a whistleblower program to provide incentives for individuals "with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated securities laws and recover money for victims of financial fraud." S. REP. NO. 111-176, at 110 (2010). Recognizing that whistleblower programs deliver superior outcomes compared to other means of oversight, Congress intended the whistleblower "program to be used actively with ample rewards to promote the integrity of the financial markets." *Id.* at 110-12.

Section 21F of the Securities Exchange Act provides, as relevant, that a whistleblower is eligible for an award if the individual "voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action" that "results in monetary sanctions exceeding $1,000,000." 15 U.S.C. § 78u-6(a), (b)(1). The Commission is to "issue such rules and regulations as may be necessary or appropriate to implement" the whistleblower program and had discretion to determine "whether, to whom, or in what amount to make awards." *Id.* §§ 78u-6(f), (j), 78mm(a)(1). In adopting rules, *see* Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,300 (June 13, 2011) ("Final Rule"), the Commission defined "voluntarily," 15 U.S.C. § 78u-6(b)(1), to require an individual to "provide your submission *before* a request, inquiry, or demand that relates to the subject matter of your submission is directed to you or anyone representing you . . . [b]y the

Commission" or other designated investigative authorities, including Congress, any other authority of the federal government, a state Attorney General or securities regulatory authority, or self-regulatory organizations. 17 C.F.R. § 240.21F-4(a)(1) (emphasis added). A whistleblower's "submission of information to the Commission will be considered "voluntarily" made if the whistleblower "voluntarily provided the same information" to one of the listed authorities "*prior to* receiving a request, inquiry, or demand from the Commission." *Id.* § 240.21F-4(a)(2) (emphasis added). The manner and form of submission was addressed in Rule 21F-9, requiring, for eligibility to receive a whistleblower award, submission of information on a "Tip, Complaint, or Referral" form ("Form TCR") within thirty days of first providing the original information, *id.* § 240.21F-9(a), (e).

The Commission does not dispute that Doe provided "original information" that led to an enforcement action resulting in more than $1 million in monetary sanctions. Neither does the Commission contest Doe's position that he would be entitled under its precedent to an exemption from the manner and form requirements under Rule 21F-9 were he found to be "an otherwise qualified whistleblower." Petitioner's Br. 50 (citation omitted) & n.10; Respondent's Br. 49 n.11. Rather, the Commission disputes Doe's eligibility for a whistleblower award because his submission of information about the Company's misconduct was not made "voluntarily" since it occurred after the Commission and certain other authorities contacted him. Respondent's Br. 22, 24; Order Determining Whistleblower Award Claims at 8-10, Exchange Act Release No. 97228 (Mar. 31, 2023) ("Award Order").

Based on the Enforcement staff's review of the news reports relying on information from Doe about potential misconduct by the Company, the Commission opened an investigation. A few days after the disclosure, a congressional committee wrote to request that Doe appear for an interview and provide documents in connection with the reported misconduct; Doe obliged on several occasions. In the following months, the Commission contacted Doe for the first time to request that its staff be included in an interview Doe was scheduled to have with other enforcement agencies. Several months after the initial disclosure to the media, Doe had his first interview with the Commission's Enforcement staff. Thereafter, until Doe hired new counsel in connection with the Commission's whistleblower proceedings, Doe did not respond to further requests for information or contact the Commission. According to Doe, only new counsel mentioned his potential eligibility for a whistleblower award. More than eleven months after the first contact by the Commission staff, Doe submitted information on Form TCR. The Commission subsequently interviewed Doe again, and he submitted supplemental information on Form TCR.

Later that year, the Commission posted on its public website a Notice of Covered Action relating to its enforcement action against the Company that was the subject of Doe's submission. This triggered a ninety-day period for eligible applicants to file applications for whistleblower awards. *See* 17 C.F.R. § 240.21F-10(a). In response, Doe submitted an application for an award based on the original information he provided to the Commission about the Company's misconduct. The Claims Review staff

issued a Preliminary Determination ("PD") recommending that Doe's application for an award be denied: (1) Doe's submission was not "voluntarily" made under Section 21F of the statute and Rules 21F-3 and 21F-4(a)(1), because "[b]efore submitting information to the Commission," Doe "was contacted initially by the Commission staff and other federal agencies and regulators in the underlying investigation," and (2) Doe's submission of information about the Company on the Form TCR was untimely. PD at 2 & nns. 3, 5.

Doe contested the reasons for the recommended denial. He argued that the Commission's definition of "voluntarily" conflicts with the statutory meaning of an "original source" of the information, 15 U.S.C. § 78u-6(a)(3). He also argued that he had timely submitted the information on the required form upon learning of his statutory rights. In the alternative, Doe requested that the Commission to exercise its exemption authority to waive the "voluntarily" and manner and form requirements and grant him an award: (1) his initially disclosing the Company's misconduct "to the news media, cooperating with the subsequent investigations, [and] testifying in public proceedings . . . achieved the precise aim of the" Dodd-Frank Act, and (2) the Commission had granted waivers in similar circumstances in the past. Appeal and Written Response ("Admin. Appeal") at 19-20.

The Commission affirmed the denial, elaborating on the reasons in the PD in response to Doe's objections. In a footnote, the Commission denied Doe's request for an exemption from the voluntariness requirement, stating:

> One of the principal objectives of Section 21F of the [Securities] Exchange Act is to promote effective enforcement of the federal securities laws by providing incentives for persons with knowledge of misconduct to come forward and share their information with the Commission. Granting an exemption under these circumstances is inconsistent with the statutory purpose of incentivizing whistleblowers to come forward early.

Award Order at II.A.i. & n.26 (citations and quotation marks omitted). As to the timeliness of Doe's submission under Rule 21F-9, the Commission concluded that "[t]he circumstances here do not warrant invoking [a] Section 36(a) [exemption]" under the Securities Exchange Act. *Id.* at 11 n.29. Doe petitions the court for review.

II.

The Commission's decision to grant or deny a whistleblower award may be set aside by the court only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A); *see* 15 U.S.C. § 78u-6(f). The court, however, is to exercise "independent judgment in deciding whether an agency has acted within its statutory authority." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024). By contrast, the court's review of the Commission's denial of an exemption from the requirements of a statute that Congress has assigned it to implement, is "highly deferential"; the court may set aside the Commission's action only if "the agency's reasons are so insubstantial as to render that denial an abuse of discretion." *Copley Fund, Inc. v. SEC*, 796

F.3d 131, 135, 418 U.S. App. D.C. 131 (D.C. Cir. 2015) (quoting *Universal City Studios LLLP v. Peters*, 402 F.3d 1238, 1242, 365 U.S. App. D.C. 259 (D.C. Cir. 2005)). The Commission's factual findings are "conclusive" when "supported by substantial evidence." 15 U.S.C. § 78y(a)(4); *Steadman v. SEC*, 450 U.S. 91, 96 n.12, 101 S. Ct. 999, 67 L. Ed. 2d 69 (1981). Upon review, it suffices if the court "can discern the why and wherefore" of the Commission's denial of an exemption. *ICBC Corp. v. FCC*, 716 F.2d 926, 929 (D.C. Cir. 1983) (citation and quotation marks omitted).

A.

Under Commission Rule 21F-4(a), "voluntarily" submitted information is any information furnished to certain federal and state authorities as well as self-regulatory organizations with which the Commission coordinates oversight and enforcement of securities laws, *viz.* "the Public Company Accounting Oversight Board, or any self-regulatory organization; or . . . Congress, any other authority of the Federal government, or a state Attorney General or securities regulatory authority." 17 C.F.R. § 240.21F-4(a)(1)-(2). That is, the Commission will treat "original information" as "voluntarily" submitted if the whistleblower submits it to any of these authorities "*before* a request, inquiry, or demand." *Id.* § 240.21F-4(a)(1) (emphasis added). In proposing the Rule, the Commission stated that "[t]his approach is consistent with the statutory purpose of creating a strong incentive for whistleblowers to come forward early with information about possible violations of the securities laws rather than wait until Government or other official investigators 'come knocking on the

door.'" *Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, 75 Fed. Reg. 70,488, 70,490 (Nov. 17, 2010) (quoting S. REP. NO. 111-176, at 110).[1]

---

[1] Commission Rule 21F-4(a) defines "Voluntary submission of information," stating:

(1) Your submission of information is made voluntarily within the meaning of §§ 240.21F-1 through 240.21F-17 of this chapter if you provide your submission *before* a request, inquiry, or demand that relates to the subject matter of your submission is directed to you or anyone representing you (such as an attorney):

(i) By the Commission;

(ii) In connection with an investigation, inspection, or examination by the Public Company Accounting Oversight Board, or any self-regulatory organization; or

(iii) In connection with an investigation by Congress, any other authority of the Federal government, or a state Attorney General or securities regulatory authority.

(2) If the Commission or any of these other authorities direct a request, inquiry, or demand as described in paragraph (a)(1) of this section to you or your representative first, your submission will not be considered voluntary, and you will not be eligible for an award, even if your response is not compelled by subpoena or other applicable law. However, your submission of information to the Commission will be considered voluntary if you voluntarily provided the same information to one of the other authorities identified above *prior to* receiving a request, inquiry, or demand from the Commission.

(3) In addition, your submission will not be considered voluntary if you are required to report your original information to the Commission as a result of a pre-existing legal duty, a contractual duty that is owed to the Commission or to one of the other

Doe nevertheless contends that the submission to the news media of "original information," 15 U.S.C. § 78u-6(a)(3), qualifies as "voluntarily" providing it to the Commission, *id.* § 78u-6 (b)(1). Petitioner's Br. 38. He points to the Securities Exchange Act's definition of "original information" under which information may qualify as "original" if it is "derived from the independent knowledge or analysis of a whistleblower" and "not exclusively . . . from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media" — so long as the whistleblower is "a source of the information." *Id.* § 78u-6(a)(3)(A), (C). Doe maintains, therefore, that the statutory definition of "original information" gives whistleblowers a "statutory right to disclose to the news media." Petitioner's Br. 38 (capitalization modified). And he contends that, in any event, the Commission acted arbitrarily and capriciously in excluding the news media from the list of entities in Rule 21F-4(a) to which whistleblowers could "voluntarily" submit information. *Id.* 39-43.

Nothing in the text of the Securities Exchange Act indicates that the list of entities in Rule 21F-4(a) should mirror the statutory "original source" definition, and Doe cites no source that commands such a relationship. The "original information" and voluntariness requirements serve different purposes. The requirement that the whistleblower's information is "original" does not address the manner

---

authorities set forth in paragraph (a)(1) of this section, or a duty that arises out of a judicial or administrative order.

17 C.F.R. § 240.21F-4(a) (June 13, 2011) (emphases added).

in which the information is to be submitted to the Commission (*i.e.*, "voluntarily"); instead, it addresses the permissible sources of that information. The two requirements are compatible: it does not matter whether a whistleblower submits the original information to the news media so long as the whistleblower *also* submits the same information to the Commission (or one of the proxies listed in Rule 21F-4(a)) *before* the Commission (or proxy) contacts the whistleblower. 15 U.S.C. § 78u-6(b)(1). Furthermore, Rule 21F-4(a) considers "voluntarily" provided those disclosures the whistleblower makes to the Commission or to proxy self-regulatory and governmental authorities with which the Commission has relationships and cooperative arrangements producing referrals and sharing of high-quality information about securities violations. *See* 76 Fed. Reg. at 34,307-09 & nns. 74 & 81. The news media lacks such a formal relationship with the Commission. The Commission, therefore, could reasonably conclude that making a disclosure to the news media would not fulfill Dodd-Frank's "core objective" to "motivate people who know of securities violations to tell the [Securities and Exchange Commission]." *Digit. Realty Tr., Inc. v. Somers*, 583 U.S. 149, 162, 138 S. Ct. 767, 200 L. Ed. 2d 15 (2018) (emphasis omitted) (quoting S. REP. NO. 111-176, at 38).

Doe also contends that the regulatory definition of "voluntary" must include disclosures initially made to the news media because in enacting the "original information" carve-out in the Dodd-Frank whistleblower program, 15 U.S.C. § 78u-6(a)(3)(C), Congress "followed the precedent set when it passed the [Internal Revenue Service ("IRS")] whistleblower

law in 2006," which allows for awards to whistleblowers who disclosed original information regardless of whether they first disclosed it to the news media. Petitioner's Br. 39. Doe points to the provisions in the IRS statute qualifying the whistleblower for a discretionary award when the IRS prosecutes an action based on "disclosures of specific allegations . . . resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media," 26 U.S.C. § 7623(b)(2)(A), and for a mandatory award when the "information . . . was originally provided by" the whistleblower, *id.* § 7623(b)(2)(B).

That the Dodd-Frank whistleblower program was "modeled after a successful IRS Whistleblower Program enacted into law in 2006," S. REP. NO. 111-176, at 111, is not the same as the claim that the Dodd-Frank program imported the entirety of the IRS Whistleblower Program's requirements. For instance, the IRS whistleblower program does not include a voluntariness requirement, 26 U.S.C. § 7623(b), indicating that when Congress included a voluntariness requirement in the Dodd-Frank whistleblower program it intended to depart in that provision from the IRS Whistleblower Program. Doe notes that a 2006 policy statement acknowledging "[e]ffective journalism complements the Commission's efforts" was quoted in the Commission's enforcement manual, Petitioner's Br. 40 (quoting SEC Enforcement Manual at 39 (Nov. 28, 2017); the acknowledgement is consistent with the Commission's rules, which do not penalize media disclosures made simultaneously with or after disclosures to the Commission.

On appeal, Doe also contends that the "plain meaning" of "voluntarily" in the Securities Exchange Act, 15 U.S.C. § 78u-6(b)(1), which Congress did not define, means "[a]cting, or done, of one's own free will without valuable consideration . . . or . . . any present legal obligation to do the thing done. . . ." Petitioner's Br. 32 (citation omitted) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2564 (1981) (definition 1(g)). So, in Doe's view, the Commission's interpretation is contrary to the statute because it excludes any "original information" that was "requested" even if the individual who responds had no obligation to do so. *Id.* at 33. Because Doe never raised this plain-meaning challenge to Rule 21F-4(a) before the Commission and offers no reasonable explanation for not doing so, it is forfeit. 15 U.S.C. § 78y(c)(1); *Springsteen-Abbott v. SEC*, 989 F.3d 4, 7, 451 U.S. App. D.C. 155 (D.C. Cir. 2021).

Doe's plain-meaning argument before the Commission was that the failure to include news media in the carve-out in Rule 21F-4(a) contravened the statutory text because the definition of "original information" includes the news media. Admin. Appeal at 5-13; *contra* Reply Br. 6-7. That argument presumed the correctness of the Rule's interpretation of "voluntarily" as meaning unrequested or unprompted rather than done willingly — the interpretation Doe challenges for the first time on appeal. Doe failed to put the Commission "on notice," *Nelson*, 138 F.4th at 525, of this (other) plain-meaning argument and does not offer a "reasonable ground for failure to do so." 15 U.S.C. § 78y(c)(1). Doe's reliance on the Supreme Court's decision in 2024 in *Loper Bright*, Reply Br. 10 (citing 603 U.S. at 374, 400), is misplaced; the question of whether the Commission's

interpretation will receive deference by the court on appeal is irrelevant to Doe's arguments before the Commission. Absent due notice to the Commission, Doe cannot pursue his (other) plain-meaning argument on appeal.

Doe maintains that because the Commission has "made known . . . its general views" on voluntariness, it would have been futile to raise the issue before the Commission. Reply Br. 8 (internal quotation marks omitted). He points to the Order Determining Whistleblower Award Claims at 10 & n.21, Exchange Act Release No. 84046, Whistleblower Award Proceeding File No. 2018-11, (Sep. 6, 2018), where the Commission rejected a whistleblower's view that information was submitted "voluntarily" because it was done "of [the whistleblower's] own free will[.]" *Id.* This court has held that a litigant has "reasonable ground" for failure to exhaust under 15 U.S.C. § 78y(c)(1) where doing so would have been "clearly useless." *KPMG, LLC v. SEC*, 289 F.3d 109, 118, 351 U.S. App. D.C. 234 (D.C. Cir. 2002) (quoting *Randolph-Sheppard Vendors of Am. v. Weinberger*, 795 F.2d 90, 105-06, 254 U.S. App. D.C. 45 (D.C. Cir. 1986)). But, "a mere losing position" is "insufficient" to meet that standard where a litigant fails to specify circumstances showing why exhaustion would be futile. *Id.* Doe fails to meet this standard.

First, the Commission's rejection of another whistleblower's similar reading of the voluntariness requirement in an unrelated award order is insufficient to show that it would have been "clearly useless" for Doe to raise his argument before the Commission. Second, it is unclear how Doe could have known when he failed to exhaust that the

Commission would argue in *Ross v. SEC*, 34 F.4th 1114, 456 U.S. App. D.C. 389 (D.C. Cir. 2022), against the position he now advances, so that development cannot support his futility argument. Reply Br. 9, 14 (citing briefing in *Ross*). Third, Doe's suggestion that the Commission's consideration of alternative definitions of "voluntarily" during the rulemaking shows it "cannot claim to have been surprised" by the challenges he makes on appeal or "claim to not have had the chance to address them," Reply Br. 7 (citing 75 Fed. Reg. at 70,490; 76 Fed. Reg. at 34,306 n.54), fares no better. In his appeal of the Preliminary Determination, Doe asserted that "the news media was the *only* entity for which original information could be submitted that was omitted from the so-called 'knocking' rules exception. . . ." *Id.* at 6 (quoting Admin. Appeal at 12). That the Commission considered the scope of its Rule is not the same as considering the plain meaning of "voluntarily." Doe's reliance on *Blount v. SEC*, 61 F.3d 938, 314 U.S. App. D.C. 52 (1995), is similarly misplaced; this court held that a petitioner's "general constitutional objections" on a direct rulemaking challenge were exhausted because the objections were not "in any salient way different from the concerns raised [by others] and considered during rulemaking." *Id.* at 940-41.

B.

Because the court affirms the denial of Doe's petition on the ground that his submission was not made "voluntarily," and the Commission has not contested Doe's position that an "otherwise qualified" applicant for a whistleblower award would be exempted from the manner and form requirements of Rule 21F-9, *supra* (citing Respondent's Br. 49 n.1), the

court does not reach the Commission's alternative untimeliness ground for denial. *See Ross*, 34 F.4th at 1121.

C.

To Doe, the Commission "actions that disincentivize, punish, or penalize expressions of speech without specific and compelling justification raise First Amendment concerns as such actions can create a 'chilling effect' on future speech." Petitioner's Br. 55. After all, the government "may not deny a benefit to a person on a basis that infringes . . . constitutionally protected interests — especially, interest in freedom of speech." *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972). Specifically, Doe contends that the Commission's rules "[b]y denying awards to whistleblowers based on the initial reporting of their allegations to the press," create "a chilling effect on the willingness of future whistleblowers to work with the news media." Petitioner's Br. 56.

But whether Doe had initially disclosed the information about the Company's misconduct to the media was irrelevant to the Commission's determination of whether Doe's submission of an application for a whistleblower award was "voluntarily" made under the Securities Exchange Act and the Final Rule. The Commission's stated rationale in rejecting Doe's conflation of the distinct statutory requirements of coming forward "voluntarily" and providing "original information" is founded on statutory text and purpose. Award Order at II.A.i. & n.26. The Commission denied Doe's submission because of his failure to "voluntarily" tell

the Commission, not because he told the press. Nothing in the statute or rules prevented him from doing both at the same time or telling the Commission first, and then the press. Because the Commission denied Doe's whistleblower application for failure to submit the "original information" to the government before the government contacted him, Doe's constitutional challenge fails.

III.

Section 36(a) of the Securities Exchange Act grants the Commission authority to exempt whistleblowers from compliance with statutory provisions if "such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. § 78mm(a)(1). Doe contends that the Commission abused its discretion in denying his request for an exemption from the voluntariness requirement by failing to provide an adequate explanation and to follow its precedent "provid[ing] exemptions in cases involving far less voluntary disclosures." Petitioner's Br. 27.

Before the Commission, Doe adduced a wealth of credible information suggesting that granting an exemption would be consistent with "public interest" and "protection of investors." 15 U.S.C. § 78mm(a)(1. Indeed, the Commission does not dispute that Doe provided the critical original information on which the Commission relied in pursuing a significant and successful enforcement action. Doe met with the Commission on two occasions, and in advance the Commission staff emphasized that their requests sought his "voluntary" cooperation. Application for

Award (attaching emails between the Commission and Doe's Counsel) at 3-4.

In challenging the Preliminary Determination, Doe pointed out that "[b]y disclosing the [misconduct] to the news media, cooperating with the subsequent investigations, testifying in public proceedings, and updating the government with newly discovered critical information, [he] achieved the precise aim of the" Dodd-Frank Act. Admin. Appeal at 20. Doe also argued that the denial of an award in these circumstances would discourage others from coming forward, defeating the public interest. *Id.* at 18. Furthermore, Doe identified other cases in which the Commission waived the voluntariness requirement. Petitioner's Br. 44-45 (citing Order Determining Whistleblower Award Claim at 1, Exchange Act Release No. 72727 (July 31, 2014) & Order Determining Whistleblower Award Claim at 2, Exchange Act Release No. 86010 (June 3, 2019)).

Despite the substantial evidence of Doe's cooperation, the Commission summarily disposed of his exemption request in a footnote, stating only that granting his request for an award would be "inconsistent with the statutory purpose of incentivizing whistleblowers to come forward early" and "share their information with the Commission." Award Order at II.A.i. n.26 (internal quotation marks omitted). The Commission did not address its precedent that Doe identified. Merely "[s]tating that [something, such as pre-contact submission] is an existing requirement does not answer . . . argument that this is one of those circumstances in which it should be waived." *Gas Transmission Nw. Corp. v. FERC*, 363 F.3d 500, 503, 361 U.S. App. D.C. 64 (D.C.

Cir. 2004). Because the Commission's statement of general policy goals does not enable the court to determine "the why and wherefore" of the Commission's denial of Doe's request for exemptions, *ICBC Corp.*, 716 F.2d at 929 (citation omitted), its reasoning is "so insubstantial" that it fails even the highly deferential standard in *Copley Fund, Inc.*, 796 F.3d at 135.

The Commission may not need to address every argument and all factual circumstances of every application for a whistleblower award. But where the Commission receives an application for an award based on the submission of information leading to a significant and successful enforcement action by the Commission, and the applicant even points to examples of the Commission's past grants of such exemptions, it is not enough for the Commission to restate general policy goals underlying the requirements the applicant apparently failed to meet. *See BellSouth Corp. v. FCC*, 162 F.3d 1215, 1224-25, 333 U.S. App. D.C. 308 (D.C. Cir. 1999). The Commission did not address Doe's arguments that he submitted original information that led to its substantial enforcement success and that he cooperated with the Commission and other regulatory authorities, much less explain why Doe's request was less worthy of an award than others in which the Commission exercised its exemption authority. *Green Country Mobilephone, Inc. v. FCC*, 765 F.2d 235, 237-38, 246 U.S. App. D.C. 366 (D.C. Cir. 1985).

Accordingly, the court denies the petition in part and grants the petition in part, vacating the denial of Doe's request for exemptions and remanding the

request to the Commission for reconsideration and an adequate explanation of its determination.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-1124 **September Term, 2025**
SEC-2023-47
Filed On: June 23, 2026

JOHN DOE,

PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION,

RESPONDENT

BEFORE: Pillard and Pan, Circuit Judges; and Rogers, Senior Circuit Judge

O R D E R

Upon consideration of petitioner's redacted petition for panel rehearing and sealed petition for panel rehearing filed on May 29, 2026, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-1124 **September Term, 2025**
SEC-2023-47
Filed On: June 23, 2026

JOHN DOE,

PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION,

RESPONDENT

BEFORE: Srinivasan, Chief Judge; Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges; and Rogers, Senior Circuit Judge

O R D E R

Upon consideration of petitioner's redacted petition for rehearing en banc and sealed petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97228 / March 31, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-47

In the Matter of the Claims for an Award

in connection with

[Redacted]

[Redacted]

Notice of Covered Action [Redacted]

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff ("CRS") issued Preliminary Determinations recommending the denial of the whistleblower award claims submitted by [Redacted] ("Claimant 1"), [Redacted] ("Claimant 3"), and [Redacted] ("Claimant 4") (collectively, the "Claimants") in connection with the above-referenced covered action (the "Covered Action"). Claimants filed timely responses contesting the preliminary denials.

For the reasons discussed below, Claimants' award claims are denied.[1]

I. Background

A. The Covered Action

The investigation that led to the Covered Action (the "Investigation") was opened by Enforcement staff in [Redacted] after staff reviewed news reports indicating potential misconduct by [Redacted] (the "Company"). On [Redacted], the Commission filed a complaint against the Company in federal district court alleging the Company [Redacted]. The Commission alleged that [Redacted]. On [Redacted], the court entered final judgment ordering the Company to pay a [Redacted] civil penalty and permanently enjoining the Company from future violations of the securities laws.

On [Redacted], the Office of the Whistleblower ("OWB") posted the Notice for the Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days. Claimant 1 and Claimant 3 filed timely whistleblower award claims; Claimant 4 submitted an untimely award claim on [Redacted].

[1] The CRS also preliminarily denied the award claim of Claimant 2. That claimant did not seek reconsideration of the Preliminary Determination, and therefore the denial of his/her claim was deemed to be the Final Order of the Commission under Exchange Act Rule 21F-10(f).

B. The Preliminary Determinations and Claimants' Responses

On [Redacted], the CRS issued Preliminary Determinations recommending that Claimants' claims be denied.

1. Claimant 1

i. **Preliminary Determinations**

The CRS preliminarily determined that Claimant 1 was not a "whistleblower" as defined under the Securities Exchange Act of 1934 ("Exchange Act") Rule 21F-2(a)(1) because Claimant 1 did not provide information regarding a potential securities law violation to the Commission in the form and manner required by Rule 21F-9. The CRS noted that Claimant 1 submitted information on a Form TCR in [Redacted], approximately ten months after Claimant 1's initial meeting with Commission staff in [Redacted]. The CRS noted that the information provided by Claimant 1 in the [Redacted] TCR did not substantially assist the staff in its investigation and was not used in, nor contributed to, the charges brought by the Commission in the Covered Action.

The CRS also preliminarily determined that Claimant 1's submission to the Commission was not made voluntarily as required by Exchange Act Rules 21F-3 and 21F-4(a)(1). A submission to the Commission is considered "voluntary" if, as relevant here, it is provided "before a request, inquiry, or demand that relates to the subject matter of [the] submission" is directed to the claimant or the claimant's representative "[b]y the Commission" or in "connection with an investigation by . . . any other

authority of the federal government."[2] In particular, the CRS stated that Claimant 1 made his/her submission to the Commission after a request, inquiry, or demand by Commission staff and other federal agencies that related to the same subject matter as Claimant 1's submission. The CRS noted that Claimant 1 did not submit information to any of the entities enumerated in Rule 21F-4(a) prior to being contacted by the Commission. The CRS also stated that whistleblowers do not meet the requirement of making a voluntary submission pursuant to Rule 21F-4(a) by providing information to the news media or foreign authorities.

ii. **Claimant 1's Response to the Preliminary Determinations**

Claimant 1 submitted a timely written response ("Claimant 1's Response") contesting the Preliminary Determinations.[3] Claimant 1 argues that he/she complied with the "form and manner" requirements of Rule 21F-9 because he/she submitted a TCR within 30 days of learning of the requirement. Claimant 1, a foreign national, contends that Claimant 1 was not

---

[2] Exchange Act Rule 21F-4(a)(1)(i), 17 C.F.R. § 240.21F-4(a)(1)(i).

[3] See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e) (stating that a claimant may submit a written response contesting the Preliminary Determinations "within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made . . . , then within sixty (60) days of the Office of the Whistleblower making those materials available for your review."). Pursuant to Exchange Act Rule 21F-10(e)(1), claimants have thirty days from the date of the Preliminary Determinations to request the materials that formed the basis for the CRS's Preliminary Determinations. Claimant 1 did not submit such a request and thus did not receive the record materials.

aware of the TCR requirement until he/she met with his/her current counsel, and that none of his/her prior attorneys informed Claimant 1 of the existence of the Dodd-Frank Act or the TCR filing requirements. Claimant 1 also argues that he/she had not engaged any of his/her prior counsel with regard to the Dodd-Frank Act and was therefore not represented for purposes of a whistleblower submission until [Redacted]. Claimant 1 contends that once he/she became aware of those requirements, Claimant 1 submitted a TCR within 18 days. Claimant 1 also asserts that "there is no requirement that a whistleblower submit the same information provided to the news media to the SEC within a certain number of days to qualify for an award." Claimant 1 also states that he/she provided the information to other federal agencies before submitting his/her TCR.

Next, Claimant 1 argues that he/she "voluntarily provided 'original information' . . . through the news media, as permitted by the [Dodd-Frank Act]." Claimant 1 states that his/her information was "voluntarily" provided to the Commission effective the date Claimant 1 disclosed the information thorough the news media. Claimant 1 also contends that he/she qualifies as an original source of the information provided to the Commission via the news media, and submits a declaration from a journalist who worked with Claimant 1 in support of that contention.

Claimant 1 also argues that the Commission, "in an apparent oversight committed during the rulemaking process," did not include disclosures initially made to the news media within the definition of a voluntary submission. Claimant 1 states that such initial disclosures to the news media are

authorized under the Dodd-Frank Act. Claimant 1 notes that the "SEC should have addressed third-party news media disclosures in their implementing rules," but "the failure of the SEC to create a rule covering initial whistleblower disclosures of original information to the news media does not negate this Congressionally established right." Because, according to Claimant 1, the Commission did not address this concern, Claimant 1 argues that the Commission must interpret its rules in way that permits voluntary disclosures to the news media.

Claimant 1 also argues that because of "the failure of the SEC to approve specific rules applicable to news media whistleblowers, the only published SEC rules that can be lawfully applied to media whistleblowers" are Rules 21F-10 and 21F-11, which pertain to the submission of whistleblower award applications. Claimant 1 further contends that statutes covering other whistleblower programs, such as those of the Internal Revenue Service and the Department of Justice, provide "carve-outs" for disclosures to the news media, and the failure to address such disclosures to the media in the Commission's whistleblower rules "undermined the First Amendment." Claimant 1 also states that the Preliminary Determinations ignore the impact that Claimant 1's disclosures had on the public interest and ignores the whistleblower program's goal of deterring wrongdoing. Lastly, Claimant 1 argues that the Commission should waive the voluntary submission and TCR submission requirements at

issue here and grant Claimant 1 an award due to the quality of his/her submissions.[4]

2. Claimant 3

i. **Preliminary Determinations**

The CRS preliminarily determined that Claimant 3's claim be denied because Claimant 3 did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS

[4] After the sixty-day window to submit a response to the Preliminary Determination had passed, Claimant 1 made several other submissions contesting the CRS's recommendations. In [Redacted], approximately three months after the window for submitting a response had passed, Claimant 1 submitted a "Request for Exemptive Relief from Exchange Act Rules 21F-4 and 21F-9," comprising more than 400 pages, followed by several amendments over the following year, the most recent of which was submitted in [Redacted], approximately fifteen months after the window for submitting a response had passed. In [Redacted], approximately eight months after the window for submitting a response had passed, Claimant 1 submitted a "request for mediation" to the Commission's General Counsel of almost 150 pages. Because these materials were submitted after the sixty-day window for submissions established by Rule 21F-10(e) had passed, we decline to include them as part of this whistleblower proceeding. We did accept and incorporate into the record of this proceeding a corrected response to the Preliminary Determinations from Claimant 1 submitted in [Redacted]; the corrected response did not include new arguments or evidence, but only updated certain erroneous legal citations in Claimant 1's initial submission. In addition, in [Redacted], Claimant 1 submitted a motion for argument before the Commission. However, we do not believe that the circumstances here warrant using Section 36(a) or Rule 21F-8(a) to depart from the procedures already set forth in Rule 21F.

concluded that Claimant 3's information did not either (1) cause the Commission to (a) commence an examination, 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, pursuant to Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. The CRS noted that the staff did not communicate with Claimant 3 and that Claimant 3 was not the source of, or impetus for, the Commission's investigation and the information provided by Claimant 3 did not contribute to the charges brought in the Covered Action.

ii. **Claimant 3's Response to the Preliminary Determinations**

Claimant 3 submitted a timely written response ("Claimant 3's Response") contesting the Preliminary Determinations. Claimant 3 contends that he/she is entitled to "review the full administrative record," and that the Commission has "omitted" the declarations of several other Enforcement staff who were listed in the press release pertaining to the Covered Action. Claimant 3 states that "[t]he SEC's failure to provide the Whistleblower access to the full administrative record in this matter requires the SEC to vacate its Preliminary Determination, and allow the Whistleblower to prepare a response based on the full administrative record." Claimant 3 also argues that he/she provided information to other federal and state agencies, and that "the omitted declarations

from the agencies themselves, do not allow the administrative record to reflect the participation of any of these federal, or non-federal agencies . . . ." Claimant 3 further argues that the staff declaration relied upon by the CRS is based upon the staff's "limited knowledge" and that relevant personnel at other government agencies "must contribute to the full administrative record."

3. Claimant 4

i. **Preliminary Determinations**

The CRS preliminarily determined that Claimant 4's claim be denied because Claimant 4 did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS concluded that Claimant 4's information did not either (1) cause the Commission to (a) commence an examination, 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, pursuant to Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. The CRS noted that Claimant 4's information was not the impetus for opening the Investigation, nor did it contribute to the charges in the Covered Action, and that staff did not communicate with Claimant 4.

The CRS also preliminarily determined that Claimant 4 failed to submit his/her application for

award to the Commission within 90 days of the posting of the Notice of Covered Action, as required by Rule 21F-10(b). The CRS noted that Claimant 4's application for award was received 74 days after the notice period for the Covered Action closed.

ii. **Claimant 4's Response to the Preliminary Determinations**

Claimant 4 submitted a timely written response ("Claimant 4's Response") contesting the Preliminary Determinations. Claimant 4 argues that he/she is entitled to an award in connection with the Covered Action because he/she provided information about the Company to the Commission in *** seven years before the Covered Action was filed. Claimant 4 argues that "had the SEC Employees acted upon my Fraud TIP in *** , [the Company] would not have likely done the other Fraud TIP and each one in between, from [a seven year period] my window of entitlement, as I see it, within which to calculate my Whistleblower award." Claimant 4's Response did not address the CRS's preliminary determination that Claimant 4 submitted his/her whistleblower award application after the 90-day submission window had closed.

II. 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.[5] Under Exchange Act Rule 21F-4(a), a submission to the Commission is considered

[5] Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

"voluntary" if, as relevant here, it is provided "before a request, inquiry, or demand that relates to the subject matter of [the] submission" is directed to the claimant or the claimant's representative "[b]y the Commission" or in "connection with an investigation by . . . any other authority of the federal government."[6] If the Commission directs a request, inquiry, or demand to a claimant or his/her representative before the claimant makes a submission, "[the claimant's] submission will not be considered voluntary, and [the claimant] will not be eligible for an award."[7] The purpose of the rule is to "creat[e] a strong incentive for whistleblowers to come forward early with information about possible violations of the securities laws rather than wait until Government or other official investigators 'come knocking on the door.'"[8] Rule 21F-4(a)(1) establishes a "simple and straightforward test for when we will treat a whistleblower as having submitted information voluntarily; as relevant here, the whistleblower must provide his or her tip to the Commission before investigators direct a 'request, inquiry, or demand' to the whistleblower that relates

---

[6] Exchange Act Rule 21F-4(a)(1)(i), 17 C.F.R. § 240.21F-4(a)(1)(i).

[7] Exchange Act Rule 21F-4(a)(2), 17 C.F.R. § 240.21F-4(a)(2).

[8] Proposing Release for Whistleblower Rules, 75 Fed. Reg. 70488, 70,490 (Nov. 17, 2010); *see also* Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34,307 (June 13, 2011) (stating that a "whistleblower award should not be available to an individual who makes a submission after first being questioned about a matter (or otherwise requested to provide information) by the Commission staff acting pursuant to any of [its] investigative or regulatory authorities").

to the subject matter of the tip."[9] However, a claimant's submission also will be considered voluntary if the claimant "voluntarily provided the same information to one of the other authorities identified above [in Rule 21F-4(a)(1)]," such as Congress, other authorities of the federal government, or a state attorney general or securities regulatory authority, "prior to receiving a request, inquiry, or demand from the Commission."[10]

Under Exchange Act Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered action if, as relevant here, either: (i) the original information caused the staff to open an investigation "or to inquire concerning 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;[11] or (ii) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."[12]

In determining whether the information "significantly contributed" to the success of the action, the Commission will consider whether the

---

[9] Order Determining Whistleblower Award Claim, Exchange Act Release No. 84046 at 8 (Sept. 6, 2018).

[10] Exchange Act Rule 21F-4(a)(2), 17 C.F.R. § 240.21F-4(a)(2).

[11] *See* Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

[12] *See* Exchange Act Rule 21F-4(c)(2), 17 C.F.R § 240.21F-4(c)(2).

information was "meaningful" in that it "made a substantial and important contribution" to the success of the covered action.[13] For example, the Commission will consider a claimant's information to have significantly contributed to the success of an enforcement action if it allowed the Commission to bring the action in significantly less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.[14]

The requirement that claimants file whistleblower award claims within ninety days of the posting of a Notice of Covered Action ("NoCA"), set forth in Exchange Act Rule 21F-10, serves important programmatic functions. The deadline ensures fairness to potential claimants by giving all an equal opportunity to have their competing claims evaluated at the same time. The deadline also brings finality to the claims process so that the Commission can make timely awards to meritorious whistleblowers.[15]

The requirement of Exchange Act Rule 21F-9 to submit a tip in the prescribed manner on Form TCR or through the Commission's TCR System serves

---

[13] Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 (Mar. 26, 2019) at 9 (same).

[14] Exchange Act Rel. No. 85412 at 8-9.

[15] *See* Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34300 (June 13, 2011); Order Determining Whistleblower Award Claim, Release No. 88464 at 3 (Mar. 24, 2020).

similarly important functions and is critical to the trackability, management, and reliability of tips.[16] Exchange Act Rule 9(e), adopted in 2020, provides a limited exception to this filing requirement, stating that claimants must comply with the procedures for submitting information described in Rules 21F-9(a) and (b) within 30 days of providing the Commission with the original information to be relied upon as a basis for claiming an award. In addition, it provides for an automatic waiver of the TCR filing requirement where a claimant can show that he or she complied with the submission requirements of the rule within 30 days of "first obtaining actual or constructive notice about those requirements (or 30 days from the date you retain counsel to represent you in connection with your submission of original information, whichever occurs first);" and "[t]he Commission can readily develop an administrative record that

[16] *See* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 94398 (March 11, 2022) at 3 ("The programmatic purposes of requiring whistleblowers to submit their information on Form TCR or through the online TCR portal include: allowing the Commission to promptly determine whether an individual who submits information is subject to heightened whistleblower confidentiality protections; helping the staff efficiently process the information and other documentation provided by the individual and assess its potential credibility; and assisting the Commission in eventually evaluating the individual's potential entitlement to an award. Also, by submitting a tip on Form TCR, the submitter declares under penalty of perjury that the information is true and correct to the best of the submitter's knowledge and belief. A tip that bypasses the TCR System may not contain the sworn declaration under penalty of perjury as to the veracity of the information.").

unambiguously demonstrates that you would otherwise qualify for an award."[17]

A. Claimant 1

Claimant 1 does not qualify for an award. The record show that Claimant 1 did not meet the voluntary submission requirement of Rule 21F-4(a), or the form and manner requirements of Rule 21F-9. For clarity, we summarize the record with regard to Claimant 1 as follows:

The [Redacted] published articles on [Redacted], regarding [Redacted].[18] Enforcement staff opened the Investigation in March 2018 based upon review of the news reports. The staff became aware of Claimant 1 from those news reports, as they were reportedly based, in part, on Claimant 1's information and included statements from him/her. On [Redacted], two days after the articles were published, [Redacted] issued a letter to Claimant 1 requesting that Claimant 1 provide documents and appear for an interview. In [Redacted], Enforcement staff learned that other government agencies were attempting to interview Claimant 1. On [Redacted], Enforcement staff emailed foreign counsel for Claimant 1, and asked that staff be allowed to participate in any

---

[17] Exchange Act Rule 21F-9(e), 17 C.F.R § 240.21F-4(e).

[18] As part of Claimant 1's response to the Preliminary Determinations, Claimant 1 submitted an affidavit from the author of the [Redacted] article indicating that Claimant 1 had been in contact with the author since *** , and was a key source for a [Redacted] article by the same author that was published by the [Redacted] approximately ten months before the [Redacted] articles that were reviewed by Enforcement staff.

interview Claimant 1 gave to other government agencies. The record shows this was the first contact between Commission staff and Claimant 1 or his/her representatives.

On [Redacted], Enforcement staff and other government staff interviewed Claimant 1 at the offices of Claimant 1's initial U.S. counsel ("Initial Counsel"). The information provided by Claimant 1 at that interview did not substantially assist the Commission in bringing the charges in the Covered Action.[19] Following the interview, and beginning in [Redacted], the staff made several requests for information to Claimant 1 through Initial Counsel. Initial Counsel initially did not respond, and on [Redacted], Initial Counsel told Enforcement staff that Claimant 1 would not respond to the staff's requests.

Claimant 1 submitted a TCR on [Redacted], more than one year after the Investigation was opened, more than eleven months after the staff first contacted Claimant 1 requesting an interview, and more than ten months after the staff interviewed Claimant 1. In [Redacted], through new counsel, Claimant 1 sat for an interview and submitted an additional TCR. The information provided by Claimant 1 in [Redacted] was either duplicative of information Claimant 1 provided previously or not material to the allegations or charges in the Covered Action.

---

[19] The record indicates that Claimant 1, through Initial Counsel, also provided documents to the [Redacted] in [Redacted] pursuant to a subpoena.

i. Voluntary Submission of Original Information

The record shows that Claimant 1 did not make a voluntary submission to the Commission.[20] [Redacted] issued a request for documents and an interview to Claimant 1 related to the subject matter of his/her tip on [Redacted]. Enforcement staff first contacted Claimant 1 through his/her counsel regarding the subject matter of his tip in [Redacted], prior to receiving any information or contact from Claimant 1. Enforcement staff, along with other government agencies, interviewed Claimant 1 one month later. [Redacted] thus directed to Claimant 1 a "request, inquiry, or demand" related to the subject matter of Claimant 1's information before Claimant 1 provided his/her information to [Redacted]. And likewise the Commission directed its own "request, inquiry, or demand" related to the subject matter of Claimant 1's information to Claimant 1 before Claimant 1 provided his/her information to the Commission.

Further, Claimant 1's provision of information to foreign government entities does not satisfy Rule 21F-

[20] Claimant 1's whistleblower award application acknowledges that Claimant 1 received a request from an enumerated agency before Claimant 1 provided his/her information. In his/her award application, Claimant 1 responded "No" to the question "Did you provide the information identified [in the claimant's tip] before you (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of your submission (i) from the SEC, . . . or (iii) in connection with an investigation by the Congress."

4(a).[21] Claimant 1 states that he/she provided information to various foreign governmental entities, none of which are among those entities enumerated in Rule 21F-4(a). When adopting the whistleblower rules, the Commission explicitly declined to include foreign governments among the other enumerated entities in Rule 21F-4(a): "We have also determined not to expand the list of authorities in Rule 21F–4(a) to include foreign authorities. Foreign authorities operate under different legal regimes, with different standards. Further, as some commenters pointed out, whether and under what circumstances the Commission may receive information obtained by a foreign authority is more uncertain than is the case of other Federal authorities, and state Attorneys General or securities regulators. In addition, we may have limited ability to evaluate the scope of a request from a foreign authority to an individual, and whether it relates to the subject matter of the individual's whistleblower submission."[22] Accordingly, Claimant 1's submission of information to the Commission is not voluntary pursuant to Rule 21F-4.

Claimant 1 argues that the Dodd-Frank Act allows disclosures to the news media to be considered "voluntary" because the Dodd-Frank Act defines "original information" as, among other things, information that is "not exclusively derived . . . from the news media, unless the whistleblower is a source

---

[21] Exchange Act Rule 21F-4(a)(2), 17 C.F.R. § 240.21F-4(a)(2).

[22] *See* Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34,308 n.74 (June 13, 2011).

of the information."[23] However, whether Claimant 1's information is "original information" is irrelevant: The CRS did not make a recommendation on that issue, and it was not a basis for the Preliminary Determinations. A voluntary submission is a separate and independent requirement for a whistleblower award,[24] and the original information requirement is not a substitute for the voluntary submission requirement.[25] The record demonstrates that [Redacted] and Commission staff contacted Claimant 1 regarding the subject matter of his/her submission before Claimant 1 provided information to either of them or any other Rule 21F-4(a) enumerated entity.

We also decline to accept Claimant 1's argument that the Commission should interpret its rule in a way that equates the news media to the other enumerated authorities in Rule 21F-4(a)(2). This argument is contrary to the plain text of the rule. In addition, Claimant's proffered interpretation would create difficulties in the implementation of 21F-4(a).

---

[23] 15 U.S.C. § 78u-6(a)(3).

[24] *See* 15 U.S.C. § 78u-6(b)(1) ("the Commission . . . shall pay an award . . . to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action . . . ." (emphasis added).

[25] Claimant 1 also argues that the Commission's 2011 whistleblower rulemaking was inadequate in failing to include the news media as one of the enumerated entities to which Claimant 1's submission would be considered voluntary under Rule 21F-4(a)(1), and that consequently, only Rules 21F-10 and 21F-11 are applicable to Claimant 1. To the extent that Claimant 1 is challenging the Commission's 2011 rulemaking, such arguments are beyond the scope of this adjudication.

Accordingly, Claimant 1 has not met the voluntary submission requirement for a whistleblower award as set forth in Rule 21F-4(a).[26]

ii. TCR Filing Requirements

The record also shows that Claimant 1 did not follow the procedural TCR filing requirements of Rule 21F-9 and therefore his/her claim must be denied on this independent ground. Rule 21F-9 requires, among other things, that claimants submit information on Form TCR within 30 days of providing their information to the Commission. Claimant 1 first submitted a TCR to the Commission in [Redacted], more than ten months after first providing information to Enforcement staff in [Redacted] that he/she relies upon for his/her claim for award.

---

[26] Claimant 1 has requested that we invoke our exemptive authority under Section 36(a) of the Exchange Act to waive the voluntary requirement. Section 36(a) grants the Commission the authority in certain circumstances to "exempt any person . . . from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." The circumstances here do not warrant invoking Section 36(a). One of the principal objectives of Section 21F of the Exchange Act "is to promote effective enforcement of the federal securities laws by providing incentives for persons with knowledge of misconduct to come forward and share their information with the Commission." *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34,308 (June 13, 2011). Granting an exemption under these circumstances "is inconsistent with the statutory purpose of incentivizing whistleblowers to come forward early." Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 92355 (July 9, 2021).

Accordingly, Claimant 1 has not met the requirements of Rule 21F-9.

Claimant 1 argues that he/she was not personally aware of the TCR filing requirements, and when Claimant 1 became aware, he/she quickly submitted a TCR. But under Rule 21F-9(e), if a claimant has counsel, which Claimant 1 did, then the claimant is considered to have constructive notice of the filing requirements. Claimant 1 was represented by Initial Counsel at the [Redacted] interview with the Commission, and thus had constructive notice of the TCR filing requirements and the obligation to file a TCR within 30 days of the interview pursuant to Rule 21F-9. Claimant 1 further argues that Initial Counsel did not represent him/her with regard to the Dodd-Frank Act. But Rule 21F-9(e) charges a claimant with constructive notice of the filing requirements when claimants "retain counsel to represent [claimant] in connection with [claimant's] submission of original information."[27] Here, as evidenced by Initial Counsel's engagement agreement provided in Claimant 1's response to the Preliminary Determinations, Initial Counsel was retained "in connection with [Claimant 1's] efforts to provide information to the U.S. government." Initial Counsel represented Claimant 1 at the interview with Enforcement staff and staff from other government agencies. Based on these facts and circumstances, we find that Initial Counsel represented Claimant 1 with regard to his/her submission to the Commission, and

[27] Exchange Act Rule 21F-9(e)(1), 17 C.F.R. § 240.21F-9(e)(1).

that Claimant 1 was thus on notice of the TCR filing requirements as of [Redacted].[28]

Accordingly, Claimant 1 did not submit a TCR pursuant to the Commission's filing requirements, and thus Claimant 1 is not eligible for an award on this independent ground.[29]

B. Claimant 3

Claimant 3 does not qualify for an award. The staff confirmed that the information in Claimant 3's tips to the Commission was already known to the staff assigned to the Investigation. The staff also did not communicate with Claimant 3 during the course of the Investigation. Further, the staff confirmed that Claimant 3's information did not cause the staff to open the Investigation or have any impact on the Investigation or the charges brought in the Covered Action.

---

[28] Claimant 1 does not argue he/she meets all of the requirements for the Rule 21F-9(e) waiver of noncompliance. Even if Claimant 1 did, Claimant 1 would not merit a waiver. As discussed above, Claimant 1 did not make a voluntary submission, and thus the record does not "unambiguously demonstrate[ ] that [Claimant 1] would otherwise qualify for an award," a necessary element for the Rule 21F-9(e) waiver. Exchange Act Rule 21F-9(e)(2), 17 C.F.R. § 240.21F-9(e)(2).

[29] Claimant 1 does not argue he/she meets all of the requirements for the Rule 21F-9(e) waiver of noncompliance. Even if Claimant 1 did, Claimant 1 would not merit a waiver. As discussed above, Claimant 1 did not make a voluntary submission, and thus the record does not "unambiguously demonstrate[ ] that [Claimant 1] would otherwise qualify for an award," a necessary element for the Rule 21F-9(e) waiver. Exchange Act Rule 21F-9(e)(2), 17 C.F.R. § 240.21F-9(e)(2).

Claimant 3's arguments regarding the administrative record are unavailing. The whistleblower rules permit an award claimant to request and receive a copy of the materials that form the basis of the Preliminary Determinations as to that claimant.[30] Claimant 3 made such a request and received a copy of those materials, and thus Claimant 3 was provided the "full administrative record" to which he/she is entitled. The whistleblower rules do not entitle access to declarations that do not exist, nor entitle access to the files of other agencies.[31] And as evident from the record, Claimant 3's information did not lead to the success of the Covered Action.

---

[30] *See* Exchange Act Rule 21F-10(e)(1)(i), 17 C.F.R. § 240.21F-10(e)(1)(i).

[31] As part of the materials, Claimant 3 was provided with a copy of the single staff declaration that informed the CRS's Preliminary Determinations. The other declarations cited in Claimant 3's Response do not exist. And contrary to Claimant 3's view that the staff declaration was based on the limited knowledge of one attorney, the declaration, which we credit, states that it was based on the declarant's knowledge as well as information provided by other Commission staff. Claimant 3 also seeks materials from at least three other governmental agencies which allegedly received information from Claimant 3. But because Claimant 3 is not eligible for an award for the Covered Action, Claimant 3 is not eligible for an award based on a related action by another government agency. *See* 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f), and Rule 21F-11(a); Order Determining Whistleblower Award Claims, Release No. 34-84506 (Oct. 30, 2018); Order Determining Whistleblower Award Claims, Release No. 34-84503 (Oct. 30, 2018). Accordingly, there is no need for Commission staff to contact staff from any other government agency because Claimant 3 does not qualify for a related action award. Claimant 3 has received the record materials to which he/she is entitled.

Accordingly, Claimant 3 is not entitled to an award.

C. Claimant 4

Claimant 4 does not qualify for an award. As noted above, the staff declaration confirms, *** under penalty of perjury, that the Investigation began in following review of news articles. Further, the staff declaration confirms that Enforcement staff assigned to the Investigation did not receive any information from Claimant 4 during the Investigation, and that the staff did not have any communication with Claimant 4. While Claimant 4 argues in the Claimant 4 Response that he/she provided information to the Commission about the Company as early as *** , there is no information in the record supporting the contention that such information in any way contributed to the success of the Covered Action.[32] Accordingly, we find that Claimant 4's information did not lead to the success of the Covered Action.

In addition, Claimant 4's Response did not contest the CRS's recommendation that Claimant 4's claim be denied on the additional ground of Claimant 4's application not being submitted within ninety-days of the posting of the NoCA. By failing to timely present any argument to the Commission during the reconsideration stage as to this other ground for

[32] While Claimant 4's Response provided some documents that were allegedly part of Claimant 4's *** submission, Claimant 4 did not provide any submission number or identify any tip in support of his/her argument.

denial, Claimant 4 has forfeited the opportunity to contest this ground.[33]

For both of these reasons, Claimant 4 is not entitled to an award.

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimants 1, 3, and 4 in connection with the Covered Action be, and hereby are, denied.[34]

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary

---

[33] *Cf.* Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f) ("Your failure to submit a timely response contesting a Preliminary Determination will constitute a failure to exhaust administrative remedies, and you will be prohibited from pursuing an appeal pursuant to § 240.21F-13 of this chapter.").

[34] To the extent that Claimants seek a related action award, none are eligible. As already noted, a related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable Commission covered action in the first instance. Because Claimants are not qualified for an award in connection with the Covered Action, Claimants are ineligible for a related action award.

Statutory and Regulatory Provisions

1. 15 U.S.C. §§ 78u-6(a)-(b) provide:

78u-6(a) **Definitions**

In this section the following definitions shall apply:

(1) **Covered judicial or administrative action**

The term "covered judicial or administrative action" means any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000.

(2) **Fund**

The term "Fund" means the Securities and Exchange Commission Investor Protection Fund.

(3) **Original information**

The term "original information" means information that—

(A) is derived from the independent knowledge or analysis of a whistleblower;

(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

(4) **Monetary sanctions**

The term "monetary sanctions", when used with respect to any judicial or administrative action, means—

(A) any monies, including penalties, disgorgement, and interest, ordered to be paid; and

(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

(5) **Related action**

The term "related action", when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subclauses (I) through (IV) of subsection (h)(2)(D)(i) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

(6) **Whistleblower**

The term "whistleblower" means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner

established, by rule or regulation, by the Commission.

(b) **Awards**

(1) **In general**

In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—

(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

(2) **Payment of awards**

Any amount paid under paragraph (1) shall be paid from the Fund.

2. 15 U.S.C. §§ 78y(c) provides:

(c) **Objections not urged before Commission; stay of orders and rules; transfer of enforcement or review proceedings**

(1) No objection to an order or rule of the Commission, for which review is sought under this section, may be considered by the court unless it

was urged before the Commission or there was reasonable ground for failure to do so.

(2) The filing of a petition under this section does not operate as a stay of the Commission's order or rule. Until the court's jurisdiction becomes exclusive, the Commission may stay its order or rule pending judicial review if it finds that justice so requires. After the filing of a petition under this section, the court, on whatever conditions may be required and to the extent necessary to prevent irreparable injury, may issue all necessary and appropriate process to stay the order or rule or to preserve status or rights pending its review; but (notwithstanding section 705 of title 5) no such process may be issued by the court before the filing of the record or the materials set forth in subsection (b)(2) of this section unless: (A) the Commission has denied a stay or failed to grant requested relief, (B) a reasonable period has expired since the filing of an application for a stay without a decision by the Commission, or (C) there was reasonable ground for failure to apply to the Commission.

(3) When the same order or rule is the subject of one or more petitions for review filed under this section and an action for enforcement filed in a district court of the United States under section 78u(d) or (e) of this title, that court in which the petition or the action is first filed has jurisdiction with respect to the order or rule to the exclusion of any other court, and thereupon all such proceedings shall be transferred to that court; but, for the convenience of the parties in the interest of justice, that court may thereafter transfer all the

proceedings to any other court of appeals or district court of the United States, whether or not a petition for review or an action for enforcement was originally filed in the transferee court. The scope of review by a district court under section 78u(d) or (e) of this title is in all cases the same as by a court of appeals under this section.

3. 17 C.F.R. §§ 240.21F-4(a)-(b) provide:

(a) ***Voluntary submission of information.***

(1) Your submission of information is made *voluntarily* within the meaning of §§ 240.21F-1 through 240.21F-17 of this chapter if you provide your submission before a request, inquiry, or demand that relates to the subject matter of your submission is directed to you or anyone representing you (such as an attorney):

(i) By the Commission;

(ii) In connection with an investigation, inspection, or examination by the Public Company Accounting Oversight Board, or any self-regulatory organization; or

(iii) In connection with an investigation by Congress, any other authority of the Federal government, or a state Attorney General or securities regulatory authority.

(2) If the Commission or any of these other authorities direct a request, inquiry, or demand as described in paragraph (a)(1) of this section to you or your representative first, your submission will not be considered voluntary, and you will not be eligible for an award, even if your response is not

compelled by subpoena or other applicable law. However, your submission of information to the Commission will be considered voluntary if you voluntarily provided the same information to one of the other authorities identified above prior to receiving a request, inquiry, or demand from the Commission.

(3) In addition, your submission will not be considered voluntary if you are required to report your original information to the Commission as a result of a pre-existing legal duty, a contractual duty that is owed to the Commission or to one of the other authorities set forth in paragraph (a)(1) of this section, or a duty that arises out of a judicial or administrative order.

(b) ***Original information.***

(1) In order for your whistleblower submission to be considered *original information*, it must be:

(i) Derived from your independent knowledge or independent analysis;

(ii) Not already known to the Commission from any other source, unless you are the original source of the information;

(iii) Not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless you are a source of the information; and

(iv) Provided to the Commission for the first time after July 21, 2010 (the date of enactment

of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*).

(2) *Independent knowledge* means factual information in your possession that is not derived from publicly available sources. You may gain independent knowledge from your experiences, communications and observations in your business or social interactions.

(3) *Independent analysis* means your own analysis, whether done alone or in combination with others. *Analysis* means your examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.

(4) The Commission will not consider information to be derived from your independent knowledge or independent analysis in any of the following circumstances:

(i) If you obtained the information through a communication that was subject to the attorney-client privilege, unless disclosure of that information would otherwise be permitted by an attorney pursuant to § 205.3(d)(2) of this chapter, the applicable state attorney conduct rules, or otherwise;

(ii) If you obtained the information in connection with the legal representation of a client on whose behalf you or your employer or firm are providing services, and you seek to use the information to make a whistleblower submission for your own benefit, unless disclosure would otherwise be permitted by an

attorney pursuant to § 205.3(d)(2) of this chapter, the applicable state attorney conduct rules, or otherwise; or

(iii) In circumstances not covered by paragraphs (b)(4)(i) or (b)(4)(ii) of this section, if you obtained the information because you were:

(A) An officer, director, trustee, or partner of an entity and another person informed you of allegations of misconduct, or you learned the information in connection with the entity's processes for identifying, reporting, and addressing possible violations of law;

(B) An employee whose principal duties involve compliance or internal audit responsibilities, or you were employed by or otherwise associated with a firm retained to perform compliance or internal audit functions for an entity;

(C) Employed by or otherwise associated with a firm retained to conduct an inquiry or investigation into possible violations of law; or

(D) An employee of, or other person associated with, a public accounting firm, if you obtained the information through the performance of an engagement required of an independent public accountant under the Federal securities laws (other than an audit subject to § 240.21F-8(c)(4) of this chapter), and that information related to a

violation by the engagement client or the client's directors, officers or other employees.

(iv) If you obtained the information by a means or in a manner that is determined by a United States court to violate applicable Federal or state criminal law; or

(v) *Exceptions*. Paragraph (b)(4)(iii) of this section shall not apply if:

(A) You have a reasonable basis to believe that disclosure of the information to the Commission is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors;

(B) You have a reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the misconduct; or

(C) At least 120 days have elapsed since you provided the information to the relevant entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or your supervisor, or since you received the information, if you received it under circumstances indicating that the entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or your supervisor was already aware of the information.

(vi) If you obtained the information from a person who is subject to this section, unless the information is not excluded from that person's use pursuant to this section, or you are providing the Commission with information about possible violations involving that person.

(5) The Commission will consider you to be an *original source* of the same information that we obtain from another source if the information satisfies the definition of original information and the other source obtained the information from you or your representative. In order to be considered an original source of information that the Commission receives from Congress, any other authority of the Federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the Public Company Accounting Oversight Board, you must have voluntarily given such authorities the information within the meaning of these rules. You must establish your status as the original source of information to the Commission's satisfaction. In determining whether you are the original source of information, the Commission may seek assistance and confirmation from one of the other authorities described above, or from another entity (including your employer), in the event that you claim to be the original source of information that an authority or another entity provided to the Commission.

(6) If the Commission already knows some information about a matter from other sources at the time you make your submission, and you are not an original source of that information under

paragraph (b)(5) of this section, the Commission will consider you an original source of any information you provide that is derived from your independent knowledge or analysis and that materially adds to the information that the Commission already possesses.

(7) If you provide information to the Congress, any other authority of the Federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the Public Company Accounting Oversight Board, or to an entity's internal whistleblower, legal, or compliance procedures for reporting allegations of possible violations of law, and you, within 120 days, submit the same information to the Commission pursuant to § 240.21F-9 of this chapter, as you must do in order for you to be eligible to be considered for an award, then, for purposes of evaluating your claim to an award under §§ 240.21F-10 and 240.21F-11 of this chapter, the Commission will consider that you provided information as of the date of your original disclosure, report or submission to one of these other authorities or persons. You must establish the effective date of any prior disclosure, report, or submission, to the Commission's satisfaction. The Commission may seek assistance and confirmation from the other authority or person in making this determination.