



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400
NEW YORK, NY 10281-1022

November 5, 2021

Via ECF

Hon. Andrew L. Carter, Jr.
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square, Room 435
New York, NY 10007

Re: SEC v. Fauth; 21 Misc. 787 (ALC)

Dear Judge Carter:

Plaintiff, Securities and Exchange Commission (“Commission”), respectfully submits this response to the Status Report filed last night by Respondent Gerald Fauth.

The Commission has no objection to taking the testimony of Respondent in a single day and has advised Fauth’s counsel that it will do its best to limit the session to two and a half hours. The Commission would like to schedule that session for a date prior to Thanksgiving that is convenient for Respondent.

Likewise, the Commission has no intention of conducting the questioning in an adversarial manner, as this is investigative testimony, not a deposition. Indeed, the staff has made no determination of whether it should recommend that any charges at all be brought in this matter. The Commission trusts that Fauth and his counsel will conduct themselves in good faith, and therefore an order from the Court that the parties proceed in a non-adversarial manner is unnecessary and impractical, particularly since Fauth’s primary care physician does not specify what conduct he would view as outside the bounds of his recommendation.

Nor does the Commission object to providing Respondent with the topics it plans to cover in the 2.5 hours of its questioning. What it does object to is providing the specific questions it plans to pose and all of the documents it plans to ask him about. If forced to submit its questions in advance, the Commission will be in much the same position as if it submitted its questions for written answers by the Respondent. For all the reasons provided in our Reply (DE 21, 22 at 6-7), that procedure will deny the Commission Fauth’s spontaneous responses, limiting the Commission’s ability to assess Fauth’s credibility. In this regard, the Commission notes that Fauth does not argue that the Senate HELP Committee provided him with the specific questions it planned to ask him prior to his appearance before it in connection with his nomination, and yet

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Fauth's physician allowed him to appear there.¹

As we advised Respondent's counsel on Wednesday, we are prepared to provide them with most of the documents we believe we will want to show Fauth prior to his appearance. But without knowing what Fauth will say, the Commission cannot commit to restricting itself to those documents. There may be documents that only become relevant once Fauth has provided a response that makes them so.

The Commission appreciates the Respondent's willingness to discuss accommodations that will make Fauth's testimony possible.

Respectfully submitted,

/s/ Nancy A. Brown

Nancy A. Brown

¹ The Commission further notes that, on October 26, 2021, the Senate HELP Committee advanced Fauth's nomination to the Senate, "[s]ubject to nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate." See <https://www.congress.gov/nomination/117th-congress/797>