

# **Exhibit 5**

**Michael Hiller**

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**From:** Dolinger, Samuel (USANYS) <Samuel.Dolinger@usdoj.gov>  
**Sent:** Wednesday, September 13, 2017 8:43 AM  
**To:** Lauren Rudick  
**Cc:** Michael Hiller  
**Subject:** RE: Joint Letter to the Court

Lauren,

While our position is that no discovery is appropriate, we do plan to seek reciprocal discovery if it is ordered by the Court. As a result, it is our position that all proposed dates should be reciprocal. Do you intend for the last four dates you propose to read "2018" rather than "2017"?

We will consider our response to your proposed dates and get back to you, but cannot give a complete response because you have provided only a proposed schedule without information about the substance of proposed discovery. We note initially that we will object to your proposals that do not comply with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York, including (1) proposals for shorter response or objection deadlines than the rules provide, or (2) a proposals for depositions whose number or duration exceeds those provided by the rules. The lack of exigency for expedited deadlines is clear from the proposal to conclude discovery, at earliest, at the end of March 2018. We also note that you have not proposed any schedule for expert depositions, nor for a staggered expert disclosure schedule or, alternatively, rebuttal reports. Also, it is our position that any RFAs should be delayed until the end of discovery, as they are not intended as a discovery device but to narrow the issues for trial. See *Wiwa v. Royal Dutch Petroleum Co.*, No. 01 Civ. 1909 (KMW), 2009 WL 1457142, at \*4 (S.D.N.Y. May 26, 2009).

Additionally, we will need to review the full draft of your letter, not only the portion proposing a schedule, to determine what type of discovery you plan to seek. Under Rule 26(f), the discovery plan must state, *inter alia*, the parties' views on "the subjects on which discovery may be needed." This would include the types of information you plan to seek through the various forms of discovery you propose and how that information is relevant to your claims under the relevant standards. Moreover, as you know, discovery must be proportional to the needs of the case, including whether the burden of the proposed discovery outweighs its likely benefit. At the moment, Defendants have no information about what information you believe to be relevant to your claims, or what you envision as the permissible scope of discovery, and therefore are not in a position to respond.

Thank you.

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