The Honorable Tana Lin

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. NEVIN SHETTY, Defendant.	No. 2:23-cr-00084-TL **MOTION *IN LIMINE* TO EXCLUDE IMPROPER TESTIMONY OF BOARD MEMBER AND OFFICER OPINIONS** **NOTE ON MOTION CALENDAR: September 30, 2025** ***ORAL ARGUMENT REQUESTED***

Defendant Nevin Shetty respectfully submits this motion under Federal Rules of Evidence 401, 402, and 403, and 701 to exclude testimony from Commerce Fabric, Inc. ("Fabric") officers and board members regarding their individual views, opinions, preferences, or feelings about (i) cryptocurrency, (ii) investments, (iii) Shetty's investment in UST, and (iv) the meaning of the investment policy. Such testimony is irrelevant under Federal Rules of Evidence 401, 402, and 701, and it would be unfairly prejudicial and misleading under Rule 403.

In support of this motion, the Defendant states the following:

INTRODUCTION

The government has made clear that it plans to prove Mr. Shetty's intent to defraud, at least in part, through "testimony from members of [Fabric's] board of directors" showing "that every one of [Fabric's] directors wanted to invest the company's cash conservatively and thought it

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would be wildly inappropriate to invest any amount in cryptocurrency." (Dkt. 94 at 4, 7; *see also* Dkt. 169 at 4.)

But such testimony is irrelevant and unfairly prejudicial under any viable fraud theory. Individual board members' personal opinions about cryptocurrency, their own investment preferences, their own views of Shetty's specific investment decisions, and their interpretation of corporate policies—including those tainted by hindsight—are irrelevant to any viable fraud theory and would unfairly prejudice Shetty by inviting the jury to equate personal opinions and corporate policy disagreements with criminal intent.

Shetty seeks exclusion on two grounds:

First, such testimony is irrelevant under Rules 401, 402, and 701 because board members' personal opinions cannot establish any element of wire fraud under any theory the government has advanced so far. Board members' individual lay opinions about cryptocurrency markets, investment strategies, Shetty's UST investment, or their personal understanding of corporate policies cannot establish fraudulent intent or any other elements of wire fraud.

Second, even if marginally relevant, such testimony should be excluded under Rule 403 because it would confuse the jury about corporate authority and mislead them about the proper legal standards for determining criminal liability in this case.

ARGUMENT

I. Board members' opinions about these topics are irrelevant.

The government's fraud theory centers on whether Shetty acted with fraudulent intent when making the UST investment. Individual board members' personal views about cryptocurrency generally, investment preferences, Shetty's specific investment choice, or their personal interpretation of corporate policies cannot make any element of wire fraud more or likely to be true.

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Federal Rule of Evidence 701 requires that a lay witness' opinion be "helpful to clearly understanding the witness's testimony or to determining a fact in issue." An opinion is only helpful "if it aids or clarifies an issue that the jury would not otherwise be as competent to understand." *United States v. Fulton*, 837 F.3d 281, 292 (3d Cir. 2016). An opinion must be excluded "where a witness is not in a better position than the jurors to form an opinion or make an inference." *Id.* As discussed below, board member opinions on these topics are neither helpful in clearly understanding their other testimony or determining the facts in issue in this case.

A. Board members' personal views about cryptocurrency and investments are irrelevant to fraudulent intent.

Whether individual board members personally approve or disapprove of cryptocurrency as an asset class, or whether they personally favor such things as 30-year treasury bonds, has no bearing on whether Shetty acted with intent to defraud Fabric. Fraudulent intent must be proven through Shetty's own knowledge, actions, and intent—not through third parties' personal, individual investment philosophies or risk preferences.

Board members may have varying opinions about cryptocurrency based on their individual experiences, risk tolerance, or investment knowledge. Some may view cryptocurrency skeptically, while others may see it as a legitimate investment vehicle. These personal preferences reflect individual judgment calls about complex financial instruments; they are not legal standards for determining criminal fraud. A board member's personal opinions about cryptocurrency investments would not be "helpful [to the jury] . . . to determining a fact in issue." Fed. R. Evid. 701(b). But allowing evidence of such personal preferences would improperly suggest that a board member's disapproval of an investment strategy—standing alone—constitutes evidence of fraudulent conduct. It does not.

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B. Board members' opinions about Shetty's specific investment decision are irrelevant and prejudicial.

Testimony about whether individual board members personally approved or disapproved of Shetty's UST investment on Fabric's behalf is irrelevant to whether Shetty acted fraudulently, especially when many of the board members never communicated with Shetty about investments at all. Such general opinion testimony would invite the jury to substitute these personal, post-hoc disagreements in the place of the actual corporate decisions Fabric made. Corporate officers regularly make decisions that some directors personally question or would have made differently—this is a normal aspect of corporate governance, not evidence of fraud. Testimony about individual board members' approval of the investment would not be "helpful [to the jury] . . . to determining a fact in issue." Fed. R. Evid. 701(b), for the same reason it would be improper for the defense to call ten lay witnesses to say they approved of Mr. Shetty's investment strategy. It proves nothing.

Moreover, much of the member "disapproval" testimony will be tainted by hindsight bias, given UST's subsequent collapse. Board members' post-hoc criticism of Shetty's investment choice cannot establish his intent at the time he made the investment. Allowing such testimony would permit the government to bootstrap an investment's subsequent failure into evidence of prior criminal intent.

C. Under a policy violation theory, only official board acts matter.

If the government's theory is that the HighTower Treasury investment violated Fabric's Investment Policy or differed from what the board collectively authorized, individual board members' personal preferences and interpretations are irrelevant. Corporate authority derives from official board actions, not the individual opinions of its voting members or their personal interpretations of corporate documents.

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Fabric is a Delaware corporation. And Delaware law establishes that Fabric's board of directors is the governing body for corporate management and direction. DGCL § 141. The board may act only through resolutions adopted by vote at a meeting or through unanimous written consent. DGCL § 141(b), (f). Delaware law requires that boards act collectively for their decisions to be binding. DGCL § 141(a). Fabric's bylaws embody these same governance principles. *See* Exhibit 1: Fabric bylaws, at Art. II § 2.1, 2.9, 2.10.

Fabric's board acted collectively in adopting the Investment Policy with a board resolution, rendering it an official act of the board. Only another official act by the board can limit an officer's authority under that policy. Individual board members' personal interpretations of what the policy means, or should mean, do not constitute binding corporate action that can override the policy's actual terms. And instructions or requests from individual board members, directors, or officers do not constitute binding corporate action that can override official board resolutions.

Put simply, individual directors' personal views cannot modify or supersede official board actions. *Applied Energetics, Inc. v. Farley*, 239 A.3d 409, 443 (Del. Ch. 2020) (valid corporate action requires both power and authorization as defined by the DGCL and a corporation's governing documents). And this makes logical sense. Board members disagree with one another and with corporate officers regularly. They likely interpret corporate policies differently based on their individual backgrounds and perspectives. Such disagreements and differing interpretations are a normal part of corporate governance. If violating the personal preference of individual board members—or failing to conform to their personal understanding of corporate policies—could constitute fraud, then "fraud" would be rampant in every boardroom across America. Corporate officers would face criminal liability whenever they made decisions that some directors personally disliked or interpreted policies differently than some directors would, even when those decisions fell within the officer's authority granted under the policy's actual terms.

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If the board collectively opposed cryptocurrency investments or wanted to clarify the policy's meaning, Delaware law provided clear mechanisms to prohibit them: the board could have explicitly excluded such investments in the Investment Policy or acted collectively to modify the policy. Instead, the board collectively adopted a policy that did not explicitly prohibit cryptocurrency investments and took no official steps to restrict Shetty's authority as CFO. *See* Exhibit 2: Fabric Investment Policy; Exhibit 3: Fabric Board Resolution Adopting Investment Policy.

In addition, individual board members' personal understanding of what the policy means is irrelevant under basic principles of contract interpretation. If the Court determines that the Investment Policy is relevant to the fraud analysis,[1] the jury should decide whether Shetty intentionally violated the policy by analyzing his actions against the policy's actual terms by applying objective interpretive principles. Individual board members' subjective understanding of the policy's meaning constitutes improper parol evidence that would undermine the policy's written terms. And if the jury decides Shetty intentionally violated the policy, it can decide whether he knew he was violating it based on the policy's plain language and objective meaning, not on individual directors' personal interpretations.

Rule 701(b) demands that board members' opinions and interpretations of the policy be excluded because the board members are "no better suited than the jury to make the judgment at issue." *United States v. Meises*, 645 F.3d 5, 16 (1st Cir. 2011) (citations and internal quotations omitted). The board members have no "insight to offer the jurors" on whether Mr. Shetty violated the policy. *Id.*

Equally as important, this Court already has recognized that testimony about the meaning of terms in corporate policies impinges on the province of the jury. In excluding Shetty's expert

[1] Defendant has separately filed a Motion *in Limine* on this issue, seeking to exclude evidence or argument of any purported violation of the Investment Policy.

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witness testimony about the meaning of terms in the Investment Policy, this Court held that such testimony "goes to the expert's own version of contractual interpretation, and therefore impinges on the province of the jury." (Dkt. 103 at 19.) The same principle applies with equal force to board members' personal interpretations of the policy's meaning. If corporate law experts cannot offer testimony about what the Investment Policy terms mean, then individual board members—who lack specialized expertise in contract interpretation—certainly cannot do so either. Allowing such testimony would create an inconsistent standard that permits lay witnesses to invade the jury's interpretive role in ways that the Court has held that Shetty's expert witnesses cannot.

II. Such Testimony Should Be Excluded Under Rule 403.

Even if it were marginally relevant, which it is not, testimony regarding board members' personal views about cryptocurrency, investments generally, Shetty's investment decision, and the meaning of the investment policy should be excluded under Rule 403 because any minimal probative value is substantially outweighed by substantial dangers of unfair prejudice, confusion of issues, and misleading the jury. *See United States v. Quattrone*, 441 F.3d 153, 186 (2d Cir. 2006).

A. Personal opinions about cryptocurrency and investment strategies are unfairly prejudicial.

Board members' testimony about their personal cryptocurrency opinions or investment philosophies would unfairly prejudice Shetty by suggesting he committed fraud simply because he chose an investment strategy that some board members personally dislike. Allowing board members to express their personal views about cryptocurrency would invite the jury to convict based on their own biases about this asset class rather than evidence of fraudulent intent.

Similarly, testimony about board members' personal investment preferences—such as favoring a treasury account at Silicon Valley Bank—would create unfair prejudice by suggesting that any deviation from their preferred approach constitutes evidence of wrongdoing. Rule 701

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was “designed to provide assurance[] against the admission of opinions which would merely tell the jury what result to reach.” *United States v. Rea*, 958 F.2d 1206, 1215 (2d Cir. 1992) (quoting Fed. R. Evid. 704 Advisory Committee Note on 1972 Proposed Rules) (internal quotations omitted). Allowing this testimony contradicts Rule 701’s design by telling the jury what result to reach merely based upon the board members’ opinions about investments. Investment strategies exist along a spectrum, and reasonable people can disagree about appropriate risk levels without any party acting fraudulently.

B. Opinions about Shetty’s specific investment decision create additional prejudicial risks.

Board members’ testimony about their personal disapproval of Shetty’s UST investment would unfairly prejudice Shetty by suggesting he violated corporate policy simply because individual board members personally disapproved of his investment strategy. The government’s approach would invite the jury to equate personal disagreement with criminal intent—a legally improper basis for establishing wire fraud.

Such testimony poses substantial risk that the jury would conflate individual opinions with official corporate policy and convict based on personal disagreement rather than criminal intent. If personal disagreements with corporate officers could constitute evidence of fraud, corporate officers would face criminal liability whenever they made decisions that some directors personally disliked, even when those decisions fell within the officer’s granted authority. This would criminalize normal corporate disagreements and create an untenable standard for corporate governance.

C. Personal interpretations of corporate policies would mislead and confuse the jury.

Testimony about individual board members’ personal understanding or interpretation of the Investment Policy’s meaning would be particularly prejudicial and misleading. Such testimony

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would improperly invite the jury to rely on subjective interpretations rather than the policy's actual terms, creating confusion about how corporate policies should be construed and applied.

Moreover, this testimony would confuse the jury about the elements of wire fraud by suggesting that individual board member disapproval equals fraudulent intent. This conflates personal preferences with official corporate policy and muddles the distinction between poor business judgment and criminal fraud. Evidence about how individual board members interpreted or understood the meaning of the Investment Policy—*especially* without evidence they discussed these interpretations with Shetty—would encourage the jury to improperly consider parol evidence rather than relying on the policy's actual terms. Wire fraud requires specific intent elements that cannot be satisfied through evidence of personal disagreement or subjective policy interpretations.

Finally, such testimony would mislead the jury about fundamental principles of corporate law. The jury might incorrectly conclude that individual board members' personal interpretations of corporate policies or their informal "instructions" based on such interpretations can override official board actions or the plain meaning of written corporate policies. This would fundamentally misrepresent how corporate authority operates under Delaware law and how corporate policies should be interpreted and invite conviction on legally improper grounds. The Court should not allow it.

CONCLUSION

For these reasons, the Court should grant Shetty's motion *in limine* and exclude all testimony regarding board members' personal views or opinions about cryptocurrency, investment preferences, Shetty's UST investment, and the meaning of the Investment Policy.

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DATED this 23rd day of September, 2025. I certify that this motion does not exceed 12 pages, in compliance with Judge Lin's Standing Order for All Criminal Cases.

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