

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

KEVIN CLARKE, TREVOR
BOECKMANN, HARRY CRANE, CORWIN
SMIDT, PREDICT IT, INC., ARISTOTLE
INTERNATIONAL, INC., MICHAEL
BEELER, MARK BORGHI, RICHARD
HANANIA, JAMES MILLER, JOSIAH
NEELEY, GRANT SCHNEIDER, and WES
SHEPHERD,

Plaintiffs,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

Civil Docket No. 1:22-cv-00909-LY

The Honorable Lee Yeakel

OPPOSITION TO PLAINTIFFS' MOTION TO EXPEDITE

This Court has set both the CFTC's Motion to Transfer Venue, Dkt. 8, and the CFTC's Motion to Dismiss, Dkt. 19, for a hearing at 10:00 a.m. on December, 1, 2022. *See* Dkts. 20, 24. Plaintiffs on November 18, 2022 filed their Motion to Expedite, requesting that this Court further schedule a hearing on their Motion for Preliminary Injunction, Dkt. 12, at an unspecified date in December so as to "render a decision before Christmas." Dkt. 23 at 1.

The CFTC opposes Plaintiffs' Motion to Expedite. For the reasons explained both in the CFTC's Opposition to Plaintiffs' Motion for Preliminary Injunction, Dkt. 17, and the CFTC's Motion to Dismiss briefing, Dkts. 19, 25, there is no jurisdiction under the Administrative Procedure Act for Plaintiffs' putative claims against staff no-action letters, as decades of settled case law confirm. Moreover, "the February 15 liquidation mandate" underlying Plaintiffs' supposed need for expedited treatment, Dkt. 23 at 3, is no such thing. *See, e.g.*, Dkt. 25 at 4–6.

Unless and until the Commission itself acts as an exercise of prosecutorial discretion, to the extent the Commission might chose to do so, that staff-specific grace period carries no independent legal effects as to PredictIt's operations. Nor have Plaintiffs shown the sort of "irreparable harm" that would warrant expedited resolution of their non-meritorious request for extraordinary relief months in advance of the supposed compliance deadline.

For these reasons, Plaintiffs' motion to expedite should be denied.

Respectfully submitted,

/s/ Kyle M. Druding

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CERTIFICATE OF SERVICE

I certify that on November 25, 2022, I caused the foregoing Opposition to Plaintiffs' Motion to Expedite to be served on the Clerk of the Court using the Court's CM/ECF system, which will send notice to all counsel of record in this case.

/s/ Kyle M. Druding
Kyle M. Druding