

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

KEVIN CLARK, 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 DAE

The Honorable David Ezra

**DEFENDANT CFTC'S CONSENTED MOTION FOR EXTENSION OF TIME
TO FILE ANSWER OR DISPOSITIVE MOTION IN RESPONSE
TO SECOND AMENDED COMPLAINT**

The Commodity Futures Trading Commission (“CFTC”) moves the Court for an extension of time to file an answer and/or a dispositive or partially dispositive motion in response to the Second Amended Complaint filed by Plaintiffs on November 27, 2023 (Dkt. 55). The CFTC consented to the filing of this amended complaint. Specifically, the CFTC requests the Court to permit the filing of an answer and/or a dispositive or partially dispositive motion (other than a motion for summary judgment, which may be filed later under the applicable rules) by January 26, 2024, 60 days after the filing of the Second Amended Complaint. *See* Fed. R. Civ. P. 15(a)(3) (setting 14-day deadline as default “[u]nless the court orders otherwise”). Counsel for Plaintiffs has advised counsel for the CFTC by email that Plaintiffs consent to this motion for extension. In addition, a 60-day time for the CFTC to respond to a second amended complaint was specified in Paragraph 6 of the Parties’ Agreed Joint Scheduling Recommendations filed with the Court on October 4, 2023 (Dkt. 47).

A 60-day period to respond to the Second Amended Complaint is appropriate because the Second Amended Complaint substantially expands the scope of this case. The original complaint and first amended complaint sought judicial review of a letter issued by the CFTC Division of Market Oversight (“DMO”) in August of 2022 withdrawing a 2014 no-action letter issued to Victoria University of Wellington, New Zealand. *See* First Amended Complaint, Dkt. 15 at Counts I and II. The Second Amended Complaint adds allegations, legal contentions, and requests for relief with respect to an additional DMO letter issued to Victoria University in March of 2023. Second Amended Complaint, Dkt. 55 at ¶¶ 88-102, 114-119, 129, Prayer for Relief §§ c, d, and e. The 2023 letter is more complex than the 2022 letter since the 2023 letter withdraws the 2022 letter, makes a “preliminary” determination that the 2014 letter is void, goes into more detail concerning the reasons for this determination than the 2022 letter, and provides

Victoria University with an opportunity to respond. *See* Second Amended Complaint, Dkt. 55 Attachment 3. The associated allegations, legal contentions, and relief in the Second Amended Complaint are similarly more complex. The Second Amended Complaint thus raises substantial factual, legal, and practical issues beyond those the CFTC has already evaluated in connection with the earlier complaints.

CONCLUSION

For these reasons, the Court should grant the CFTC's motion and extend the deadline for the CFTC's response to the Second Amended Complaint until January 27, 2024.

Respectfully submitted,

/s/ Martin B. White

Robert A. Schwartz (D.C. Bar No. 489240)

General Counsel

Anne W. Stukes (D.C. Bar. No. 469446)*

Deputy General Counsel

Martin B. White (D.C. Bar. No.221259)*

Senior Assistant General Counsel

U.S. COMMODITY FUTURES TRADING

COMMISSION

Three Lafayette Centre

1155 21st Street, N.W.

Washington, DC 20581

Phone: (202) 993-1390

Fax: (202) 418-5127

mwhite@cftc.gov

* Admitted pro hac vice

CERTIFICATE OF SERVICE

I certify that on November 29, 2023, I caused the foregoing Defendant CFTC's Consented Motion for Extension of Time to File Answer or Dispositive Motion 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/ Martin B. White

Martin B. White