

**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. 1:24-cv-00614-DAE

The Honorable David Alan Ezra

**APPENDIX IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL PRODUCTION  
OF COMPLETE ADMINISTRATIVE RECORD**

Michael J. Edney  
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*Attorney for Plaintiffs*

Plaintiffs file this Appendix in Support of their Motion to Compel Production of Complete Administrative Record. The Appendix has been consecutively paginated App. 001 – App. 035 as follows:

APPENDIX PAGE	DOCUMENT
App. 003 – 009	Plaintiffs’ First Set of Requests for Production of Documents, dated August 26, 2024
App. 010 – 015	CFTC’s Objections and Response to Plaintiffs’ Request for Production, dated September 25, 2024
App. 016 – 024	Plaintiffs’ Second Set of Requests for Production of Documents, dated October 30, 2024
App. 025 – 035	CFTC’s Objections and Response to Plaintiffs’ Second Request for Production, dated November 29, 2024

Dated: December 2, 2024

Respectfully submitted,

*/s/ Michael J. Edney*

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*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 2, 2024, a copy of the foregoing was filed electronically and was served on counsel of record through the Court’s electronic case filing/case management (ECF/CM) system.

*/s/ Michael J. Edney* \_\_\_\_\_  
 Michael J. Edney

**IN THE UNITED STATES DISTRICT COURT  
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KEVIN CLARKE, TREVOR  
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v.

COMMODITY FUTURES TRADING  
COMMISSION,

*Defendant.*

Civil Docket No. 1:24-cv-00614-DAE

The Honorable David Alan Ezra

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, and the Court's August 19, 2024 Scheduling Order, Dkt. 94, Plaintiffs Kevin Clarke, Trevor Boeckmann, Harry Crane, Corwin Smidt, Michael Beeler, Mark Borghi, Richard Hanania, James D. Miller, Josiah Neeley, Grant Schneider, Wes Shepherd, Predict It, Inc. ("PredictIt"), and Aristotle International, Inc. ("Aristotle"), by and through their undersigned counsel, hereby request that Defendant Commodity Futures Trading Commission ("CFTC" or "Commission") respond to the following Requests for Production of Documents ("Requests") and produce the documents and things requested herein within thirty (30) days of the date hereof.

## DEFINITIONS

The definitions and rules of construction set forth in the Federal Rules of Civil Procedure are hereby incorporated by reference. As used herein, the following terms shall have the meanings set forth below:

1. “And” as well as “or” are to be construed either disjunctively or conjunctively to acquire the broadest meaning possible, so as to bring within the scope of the Requests all information that might otherwise be construed to be outside its scope.
2. The term “all” is to be construed to mean “any” and “each” and vice versa.
3. “Communication(s)” has the broadest possible meaning permitted by the Federal Rules of Civil Procedure, as set forth in Local Rule CV-26(b)(1).
4. “Document(s)” has the broadest possible meaning permitted by the Federal Rules of Civil Procedure, as set forth in Local Rule CV-26(b)(2).
5. “Document(s)” also includes all drafts or non-final versions, alterations, modifications, and amendments to any of the foregoing.
6. “Concerning” has the meaning set forth in Local Rule CV-26(b)(7).
7. “Including” shall be construed to mean “including without limitation.” Under no circumstance should use of the word “including” in any request be construed to limit the scope of documents responsive to any Request.
8. “Person” has the meaning set forth in Local Rule CV-26(b)(6).
9. “Each” and “every” mean “each and every.”
10. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
11. The singular is to be construed as including the plural and vice versa.

12. “CFTC,” “Commission,” “Agency,” “Defendant,” “You,” and “Your” mean Defendant Commodity Futures Trading Commission, as well as its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates, as set forth on Local Rule CV-26(b)(5), and specifically includes the CFTC’s Division of Market Oversight.

13. “Plaintiffs” means Kevin Clarke, Trevor Boeckmann, Harry Crane, Corwin Smidt, Michael Beeler, Mark Borghi, Richard Hanania, James D. Miller, Josiah Neeley, Grant Schneider, PredictIt, and Aristotle as well as their officers, directors, employees, partners, corporate parent, subsidiaries or affiliates, as set forth on Local Rule CV-26(b)(5).

14. “Matter” means Civil Action 1:24-cv-00614-DAE (W.D. Tex.).

15. “Second Amended Complaint” means the Complaint filed by Plaintiffs against Defendant in this Matter on or about November 27, 2023. (Dkt. 55.)

16. “PredictIt Market” has the definition set forth in Paragraph 1 of the Second Amended Complaint.

17. “No-action letter” or “license” means CFTC Letter 14-130, dated October 29, 2014.

18. “Revocation letter” means CFTC Letter 22-08, dated August 4, 2022.

19. “March 2023 letter” means CFTC Letter 23-03, dated March 2, 2023.

20. “Administrative Record” means the full administrative record that was before Defendant at the time it made the challenged decisions, including all documents and materials directly or indirectly considered by Defendant.

### **INSTRUCTIONS**

1. In responding to these Requests, You shall produce all responsive documents that are in Your possession, custody, or control. You shall be deemed to be in possession, custody, or

control of all documents in the possession, custody, or control of Your employees, agents, attorneys, or other representatives.

2. This set of requests specifically requires the production of all responsive documents, including all responsive information that is stored electronically. This set of requests should thus be understood to encompass, and Your responses should include, electronically stored information.

3. Electronically stored information, electronic records, and computerized information must be produced in an intelligible form at or together with a description of the system from which it was derived sufficient to permit the material to be rendered intelligible.

4. Restate each Request in Your written response followed immediately by Your response to each Request.

5. For each request, specifically identify the documents being produced that are responsive to that Request.

6. If no documents or information is responsive to a particular request, so state.

7. If in answering any of these Requests You encounter any ambiguity in construing any Request or any Definition or Instruction relevant to the Requests, set forth the matter deemed ambiguous and the construction selected or used in answering the Request.

8. Whenever necessary to bring within the scope of any Request that which might otherwise be construed to be outside its scope: (i) the use of any verb in any tense shall be construed as the use of that verb in all other tenses; and (ii) the use of any word in its singular form shall be deemed to include within its use the plural form and vice versa.

9. The use of any definition for the purposes of these Requests shall not be deemed to constitute an agreement or acknowledgement on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this action.

10. To the extent that You consider any of the following Requests objectionable, respond to each part thereof that is not objectionable in Your view, and separately identify that part of the Request that You find objectionable and state the grounds for each such objection.

11. In the event that any documents responsive to a request or referred to in your response are not in your possession, custody, or control, please specify what disposition was made of those documents and by whom the documents are now possessed, held in custody, or controlled.

12. Each request shall be construed independently and without reference to any other request herein for purposes of limitation, unless a request so specifies.

13. If any document responsive to these requests has been destroyed, describe such document in full and complete detail, state the dates of destruction, state the name of the person who destroyed it, and set forth the reasons for its destruction.

14. If You or Your counsel fail to respond to any Request on the grounds that either the attorney-client privilege, the work-product doctrine, or any other claims of privilege applies, then as to such information or such documents allegedly subject to such asserted privilege, You are requested to supply a privilege log in accordance with Local Rule 26(e).

15. This set of requests is continuing in nature. If, after making Your initial production and inspection, You create, obtain, or become aware of any further documents or communications response to these Requests, You are requested to produce such additional documents or communications forthwith.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Produce the Administrative Record underlying the Revocation letter.
2. Produce the Administrative Record underlying the March 2023 letter.
3. Produce all communications between the Agency and persons outside the Agency concerning, referring, or relating to the PredictIt Market from January 1, 2021 to March 31, 2023.
4. Produce all communications between persons inside the Agency concerning, referring, or relating to efforts to revoke the no-action relief and/or license for the PredictIt Market from January 1, 2021 to March 31, 2023.
5. Produce all communications between persons inside the Agency concerning, referring, or relating to the March 2023 letter from January 1, 2021 to March 31, 2023.

Respectfully submitted,

/s/ Michael J. Edney

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*Attorneys for Plaintiffs Kevin Clarke,  
Trevor Boeckmann, Harry Crane, Corwin Smidt,  
Aristotle International, Inc., Predict It, Inc.,  
Michael Beeler, Mark Borghi, Richard Hanania,  
James D. Miller, Josiah Neeley, Grant Schneider,  
and Wes Shepherd*

Dated: August 26, 2024



**CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2024, the foregoing document was served on the following counsel of record for defendant CFTC, via electronic mail:

Anne W. Stukes  
Deputy General Counsel  
Martin B. White  
Senior Assistant General Counsel  
COMMODITY FUTURES TRADING COMMISSION  
Three Lafayette Centre 1155 21st Street, N.W.  
Washington, DC 20581  
Phone: (202) 993-1390  
Fax: (202) 418-5567  
astukes@cftc.gov  
mwhite@cftc.gov

/s/ Michael J. Edney  
Michael J. Edney

**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. 1:24-CV-614-DAE

The Honorable David A. Ezra

**DEFENDANT CFTC’S OBJECTIONS AND RESPONSES TO PLAINTIFFS’ REQUEST  
FOR PRODUCTION OF DOCUMENTS (SERVED 8/26/2024)**

Pursuant to Rules 34 and 26 of the Federal Rules of Civil Procedure, Defendant Commodity Futures Trading Commission (“CFTC” or “Commission”) makes the following objections and responses to Plaintiffs’ August 26, 2024 Request for Production of Documents (“Requests”).

**PRELIMINARY STATEMENT**

Plaintiffs’ discovery requests are inappropriate. This Administrative Procedure Act (“APA”) action seeks judicial review of a purported agency action and is therefore not subject to a discovery request under Fed. R. Civ. P. 34 or 26, nor to the time limitations set forth therein. The APA and case law applying it establish that judicial review in cases such as this is limited to the administrative record compiled by the CFTC and—with narrow exceptions not present here—it is improper to attempt to supplement the record by conducting discovery. The Federal

Rules of Civil Procedure, moreover, exempt administrative-record litigation, which includes this APA action, from discovery-based obligations. *See* Fed. R. Civ. P. 26(a)(1)(B), 26(f)(1).

### **GENERAL OBJECTIONS**

1. By objecting to the Requests or failing to specially refer to or specify any particular General Objection in response to a particular Request, the CFTC does not waive any of these General Objections, nor admit or concede that discovery is appropriate is in this APA action.

2. The CFTC objects to the Requests because discovery in APA cases is generally inappropriate absent certain limited exceptions, none of which exist in this litigation.

3. Nothing in these responses should be construed as waiving rights or objections that might otherwise be available to the CFTC, nor should the CFTC's responses to any of these Requests be deemed an admission of relevancy, materiality, or admissibility of evidence of the Request or the response thereto.

4. A representation that the CFTC will produce particular categories or types of documents in response to a Request is not a representation that such documents or information necessarily exists.

5. Plaintiffs' Requests are improper under Fed. R. Civ. P. 1 and 26 because they appear to be intended to prolong and increase the costs of this litigation.

6. Plaintiffs' Requests are unreasonable and unduly burdensome in the circumstances of this action because all claims and issues raised by Plaintiffs' Second Amended Complaint can be resolved by granting the CFTC's pending Motion for Judgment on the Pleadings or, if that Motion is denied, by proceedings for summary judgment without the need for discovery.

7. The CFTC objects to each Request, and to the definitions and instructions they incorporate, to the extent it seeks documents protected by the attorney-client privilege, work

product doctrine, common interest privilege, or any other privilege or immunity.

8. The CFTC objects to each Request, and to the definitions and instructions they incorporate, to the extent that it seeks to impose obligations on the CFTC broader than, or inconsistent with, those allowed by the Federal Rules of Civil Procedure, Court order, regulation, or case law, including any Request that requires Defendant CFTC to conduct a search beyond the administrative record.

9. The CFTC objects to each Request to the extent that the purpose of the Request is to enable additions or changes to the claims made by Plaintiffs in the existing Second Amended Complaint in this action.

10. By objecting to the Requests pursuant to Fed. R. Civ. P. 26 and 34, the CFTC does not waive any objections or rights relating to the Request that may arise from other sources of law.

### **OBJECTIONS AND RESPONSES TO REQUESTS**

1. Produce the Administrative Record underlying the Revocation letter.

#### **RESPONSE TO REQUEST NO. 1**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because the Administrative Record is not needed for the Court's consideration of the CFTC's pending Motion for Judgment on the Pleadings (Dkt. 82) and if the CFTC's Motion is granted, production of the Administrative Record would be unnecessary. Notwithstanding said objections, if the Court denies the CFTC's Motion, the CFTC will produce a copy of the certified Administrative Record within 30 days of said ruling.

2. Produce the Administrative Record underlying the March 2023 letter.

#### **RESPONSE TO REQUEST NO. 2**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because the Administrative Record is not needed for the Court's consideration of the CFTC's pending Motion for Judgment on the Pleadings (Dkt. 82) and if the CFTC's Motion is granted, production of the Administrative Record would be unnecessary. Notwithstanding said objections, if the Court denies the CFTC's Motion, the CFTC will produce a copy of the certified Administrative Record within 30 days of

said ruling.

3. Produce all communications between the Agency and persons outside the Agency concerning, referring, or relating to the PredictIt Market from January 1, 2021 to March 31, 2023.

**RESPONSE TO REQUEST NO. 3**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request to the extent it seeks information outside of the certified Administrative Record in this APA action, including but not limited to, information that is not relevant to the Court's review of this action.

4. Produce all communications between persons inside the Agency concerning, referring, or relating to efforts to revoke the no-action relief and/or license for the PredictIt Market from January 1, 2021 to March 31, 2023.

**RESPONSE TO REQUEST NO. 4**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request to the extent it seeks information outside of the certified Administrative Record in this APA action, including but not limited to, information that is not relevant to the Court's review of this action, as well information protected by numerous privileges and other confidentiality requirements, including but not limited to, the following (i) work product doctrine, (ii) attorney-client privilege, (iii) deliberative process privilege, and (iv) law-enforcement privilege, and no waiver or exception to these privileges would apply.

5. Produce all communications between persons inside the Agency concerning, referring, or relating to the March 2023 letter from January 1, 2021 to March 31, 2023.

**RESPONSE TO REQUEST NO. 5**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request to the extent it seeks information outside of the certified Administrative Record in this APA action, including but not limited to, information that is not relevant to the Court's review of this action, as well information protected by numerous privileges and other confidentiality requirements, including but not limited to, the following (i) work product doctrine, (ii) attorney-client privilege, (iii) deliberative process privilege, and (iv) law-enforcement privilege, and no waiver or exception to these privileges would apply.

Dated: September 25, 2024

U.S. COMMODITY FUTURES TRADING  
COMMISSION  
*ATTORNEYS FOR DEFENDANT*

/s/ Martin B. White

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

*Senior Assistant General Counsel*

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[mwhite@cftc.gov](mailto:mwhite@cftc.gov)

**CERTIFICATE OF SERVICE**

I certify that I have served all counsel of record who have appeared in this action with a true and correct copy of Defendant CFTC's Objections and Responses to Plaintiffs' Request for Production of Documents by email on September 25, 2024 to the addresses listed below.

*Attorney for Plaintiffs Kevin Clarke,  
Trevor Boeckmann, Harry Crane, Corwin Smidt,  
Aristotle International, Inc., Predict It, Inc.,  
Michael Beeler, Mark Borghi, Richard Hanania,  
James D. Miller, Josiah Neeley, Grant Schneider,  
and Wes Shepherd*

Michael J. Edney  
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/s/ Martin B. White

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*Plaintiffs,*

v.

COMMODITY FUTURES TRADING  
COMMISSION,

*Defendant.*

Civil Docket No. 1:24-cv-00614-DAE

The Honorable David Alan Ezra

**PLAINTIFFS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, and the Court's August 19, 2024 Scheduling Order, Dkt. 94, Plaintiffs Kevin Clarke, Trevor Boeckmann, Harry Crane, Corwin Smidt, Michael Beeler, Mark Borghi, Richard Hanania, James D. Miller, Josiah Neeley, Grant Schneider, Wes Shepherd, Predict It, Inc. ("PredictIt"), and Aristotle International, Inc. ("Aristotle"), by and through their undersigned counsel, hereby request that Defendant Commodity Futures Trading Commission ("CFTC" or "Commission") respond to the following Requests for Production of Documents ("Requests") and produce the documents and things requested herein within thirty (30) days of the date hereof.



## DEFINITIONS

The definitions and rules of construction set forth in the Federal Rules of Civil Procedure are hereby incorporated by reference. As used herein, the following terms shall have the meanings set forth below:

1. “And” as well as “or” are to be construed either disjunctively or conjunctively to acquire the broadest meaning possible, so as to bring within the scope of the Requests all information that might otherwise be construed to be outside its scope.
2. The term “all” is to be construed to mean “any” and “each” and vice versa.
3. “Communication(s)” has the broadest possible meaning permitted by the Federal Rules of Civil Procedure, as set forth in Local Rule CV-26(b)(1).
4. “Document(s)” has the broadest possible meaning permitted by the Federal Rules of Civil Procedure, as set forth in Local Rule CV-26(b)(2).
5. “Document(s)” also includes all drafts or non-final versions, alterations, modifications, and amendments to any of the foregoing.
6. “Concerning” has the meaning set forth in Local Rule CV-26(b)(7).
7. “Including” shall be construed to mean “including without limitation.” Under no circumstance should use of the word “including” in any request be construed to limit the scope of documents responsive to any Request.
8. “Person” has the meaning set forth in Local Rule CV-26(b)(6).
9. “Each” and “every” mean “each and every.”
10. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
11. The singular is to be construed as including the plural and vice versa.

12. “CFTC,” “Commission,” “Agency,” “Defendant,” “You,” and “Your” mean Defendant Commodity Futures Trading Commission, as well as its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates, as set forth on Local Rule CV-26(b)(5), and specifically includes the CFTC’s Division of Market Oversight.

13. “Plaintiffs” means Kevin Clarke, Trevor Boeckmann, Harry Crane, Corwin Smidt, Michael Beeler, Mark Borghi, Richard Hanania, James D. Miller, Josiah Neeley, Grant Schneider, PredictIt, and Aristotle, as well as their officers, directors, employees, partners, corporate parent, subsidiaries or affiliates, as set forth on Local Rule CV-26(b)(5).

14. “PredictIt Market” has the definition set forth in Paragraph 1 of the Second Amended Complaint. (Dkt. 55.)

15. “PredictIt” means both Predict It, Inc. and the collection of stakeholders in the PredictIt Market, including Predict It, Inc., Aristotle International, Inc., Victoria University of Wellington, VicLink, as well as their officers, directors, employees, partners, corporate parent, subsidiaries or affiliates, as set forth on Local Rule CV-26(b)(5).

16. “No-action letter” or “license” means CFTC Letter 14-130, dated October 29, 2014.

17. “Revocation letter” means CFTC Letter 22-08, dated August 4, 2022.

18. “March 2023 letter” means CFTC Letter 23-03, dated March 2, 2023.

19. “Administrative Record” means the full administrative record that was before Defendant at the time it made the challenged decisions, including all documents and materials directly or indirectly considered by Defendant.

### **INSTRUCTIONS**

1. In responding to these Requests, You shall produce all responsive documents that are in Your possession, custody, or control. You shall be deemed to be in possession, custody, or

control of all documents in the possession, custody, or control of Your employees, agents, attorneys, or other representatives.

2. This set of requests specifically requires the production of all responsive documents, including all responsive information that is stored electronically. This set of requests should thus be understood to encompass, and Your responses should include, electronically stored information.

3. Electronically stored information, electronic records, and computerized information must be produced in an intelligible form at or together with a description of the system from which it was derived sufficient to permit the material to be rendered intelligible.

4. Restate each Request in Your written response followed immediately by Your response to each Request.

5. For each request, specifically identify the documents being produced that are responsive to that Request.

6. If no documents or information is responsive to a particular request, so state.

7. If in answering any of these Requests You encounter any ambiguity in construing any Request or any Definition or Instruction relevant to the Requests, set forth the matter deemed ambiguous and the construction selected or used in answering the Request.

8. Whenever necessary to bring within the scope of any Request that which might otherwise be construed to be outside its scope: (i) the use of any verb in any tense shall be construed as the use of that verb in all other tenses; and (ii) the use of any word in its singular form shall be deemed to include within its use the plural form and vice versa.

9. The use of any definition for the purposes of these Requests shall not be deemed to constitute an agreement or acknowledgement on the part of Plaintiffs that such definition is accurate, meaningful, or appropriate for any other purpose in this action.

10. To the extent that You consider any of the following Requests objectionable, respond to each part thereof that is not objectionable in Your view, and separately identify that part of the Request that You find objectionable and state the grounds for each such objection.

11. In the event that any documents responsive to a request or referred to in your response are not in your possession, custody, or control, please specify what disposition was made of those documents and by whom the documents are now possessed, held in custody, or controlled.

12. Each request shall be construed independently and without reference to any other request herein for purposes of limitation, unless a request so specifies.

13. If any document responsive to these requests has been destroyed, describe such document in full and complete detail, state the dates of destruction, state the name of the person who destroyed it, and set forth the reasons for its destruction.

14. If You or Your counsel fail to respond to any Request on the grounds that either the attorney-client privilege, the work-product doctrine, or any other claims of privilege applies, then as to such information or such documents allegedly subject to such asserted privilege, You are requested to supply a privilege log in accordance with Local Rule 26(e).

15. This set of requests is continuing in nature. If, after making Your initial production and inspection, You create, obtain, or become aware of any further documents or communications responsive to these Requests, You are requested to produce such additional documents or communications forthwith.

16. The date range for requested documents is January 1, 2014 through the present.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Produce all documents and communications concerning, referring, or relating to the PredictIt Market.
2. Produce all documents and communications concerning, referring, or relating to the PredictIt Market from the time period between August 1, 2020 and April 1, 2023.
3. Produce all documents and communications concerning, referring, or relating to Aristotle International, Inc or PredictIt, Inc. or either company's role with respect to the PredictIt Market from the time period between August 1, 2020 and April 1, 2023.
4. Produce all documents and communications concerning, referring, or relating to any Plaintiff in this matter.
5. Produce all documents and communications concerning, referring, or relating to the Victoria University of Wellington.
6. Produce all documents and communications concerning, referring, or relating to the Victoria University of Wellington from the time period between August 1, 2020 and April 1, 2023.
7. Produce all documents and communications concerning, referring, or relating to the No-Action letter.
8. Produce all documents and communications concerning, referring, or relating to the No-Action letter from the time period between August 1, 2020 and April 1, 2023.
9. Produce all documents and communications concerning, referring, or relating to the Revocation.
10. Produce all documents and communications concerning, referring, or relating to the March 2023 letter.

11. Produce all documents and communications concerning, reflecting, or relating to Defendants' motivations, policy considerations or concerns, discussions, deliberations, or decision-making process related to potential withdrawal or cancellation of the No-Action Letter.

12. Produce all documents relating to both Aristotle International, Inc.'s application for a designated contract market pending before the CFTC and the role of Aristotle International, Inc. and its subsidiaries (including PredictIt Inc.) with respect to the operation of the PredictIt Market.

13. Produce all documents and communications concerning, referring, or relating to the consideration of any political event contract market operated or sought to be operated by PredictIt.

14. Produce all documents and communications concerning, referring, or relating to the Agency's contention in the March 2023 letter that "Aristotle, a for-profit corporation—not the University or its faculty—is operating the Market."

15. Produce all documents and communications concerning, referring, or relating to the Agency's contention in the March 2023 letter that "[t]he University has received, and permitted Aristotle to receive, separate compensation for Aristotle's operation of the Market."

16. Produce all documents and communications concerning, referring, or relating to the Agency's contention in the March 2023 letter that "[t]he University has offered numerous contracts that are outside the scope of the submarkets addressed in the Letter."

17. Produce all communications with Kalshi, Inc. or its employees or agents that concern, refer, or relate to PredictIt or the PredictIt Market and all documents relating to such communications, including but not limited to any notes taken of those communications or meetings in which the communications occurred and documents sufficient to show the identity of those who participated in such communications or meetings.

18. Produce all documents regarding or communications with FTX Trading Ltd. or its employees or agents concerning, referring, or relating to PredictIt or the PredictIt Market, including any documents or communications relating to FTX Trading Ltd.'s desire to open political event contract markets to U.S. traders because other entities are offering such contracts, and all documents relating to such communications, including but not limited to any notes taken of those communications or meetings in which the communications occurred and documents sufficient to show the identity of those who participated in such communications or meetings.

Respectfully submitted,

/s/ Michael J. Edney

Michael J. Edney

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and Wes Shepherd*

Dated: October 30, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that on October 30, 2024, the foregoing document was served on the following counsel of record for defendant CFTC, via electronic mail and regular first class mail:

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/s/ Michael J. Edney  
Michael J. Edney



**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. 1:24-CV-614-DAE

The Honorable David A. Ezra

**CFTC’S OBJECTIONS AND RESPONSES TO PLAINTIFFS’  
SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 34 and 26 of the Federal Rules of Civil Procedure, Defendant Commodity Futures Trading Commission (“CFTC” or “Commission”) makes the following objections and responses to Plaintiffs’ Second Set of Requests for Production of Documents (“Requests”).

**PRELIMINARY STATEMENT**

Plaintiffs’ discovery requests are inappropriate. This Administrative Procedure Act (“APA”) action seeks judicial review of a purported agency action and is therefore not subject to a discovery request under Fed. R. Civ. P. 34 or 26, nor to the time limitations set forth therein. The APA and case law applying it establish that judicial review in cases such as this is limited to the administrative record compiled by the CFTC and—with narrow exceptions not present here—it is improper to attempt to supplement the record by conducting discovery. The Federal

Rules of Civil Procedure, moreover, exempt administrative-record litigation, which includes this APA action, from discovery-based obligations. *See* Fed. R. Civ. P. 26(a)(1)(B), 26(f)(1).

### **GENERAL OBJECTIONS**

1. By objecting to the Requests or failing to specially refer to or specify any particular General Objection in response to a particular Request, the CFTC does not waive any of these General Objections, nor admit or concede that discovery is appropriate is in this APA action.

2. The CFTC objects to the Requests because discovery in APA cases is generally inappropriate absent certain limited exceptions, none of which exist in this litigation.

3. Nothing in these responses should be construed as waiving rights or objections that might otherwise be available to the CFTC, nor should the CFTC's responses to any of these Requests be deemed an admission of relevancy, materiality, or admissibility of evidence of the Request or the response thereto.

4. Plaintiffs' Requests are improper under Fed. R. Civ. P. 1 and 26 because they appear to be intended to prolong and increase the costs of this litigation.

5. Plaintiffs' Requests are unreasonable and unduly burdensome in the circumstances of this action because all claims and issues raised by Plaintiffs' Second Amended Complaint can be resolved by granting the CFTC's pending Motion for Judgment on the Pleadings or, if that Motion is denied, by proceedings for summary judgment without the need for discovery.

6. The CFTC objects to each Request, and to the definitions and instructions they incorporate, to the extent it seeks documents protected by the attorney-client privilege, work

product doctrine, deliberative process privilege, common interest privilege, or any other privilege or immunity.

7. The CFTC objects to each Request, and to the definitions and instructions they incorporate, to the extent that it seeks to impose obligations on the CFTC broader than, or inconsistent with, those allowed by the Federal Rules of Civil Procedure, Court order, regulation, or case law, including any Request that requires Defendant CFTC to conduct a search beyond the administrative record.

8. The CFTC objects to each Request to the extent that the purpose of the Request is to enable additions or changes to the claims made by Plaintiffs in the existing Second Amended Complaint in this action.

9. By objecting to the Requests pursuant to Fed. R. Civ. P. 26 and 34, the CFTC does not waive any objections or rights relating to the Request that may arise from other sources of law.

### **OBJECTIONS AND RESPONSES TO REQUESTS**

1. Produce all documents and communications concerning, referring, or relating to the PredictIt Market.

#### **RESPONSE TO REQUEST NO. 1**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC's pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight's letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

2. Produce all documents and communications concerning, referring, or relating to the PredictIt Market from the time period between August 1, 2020 and April 1, 2023.

**RESPONSE TO REQUEST NO. 2**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

3. Product (*sic*) all documents and communications concerning, referring, or relating to Aristotle International, Inc or PredictIt, Inc. or either company’s role with respect to the PredictIt Market from the time period between August 1, 2020 and April 1, 2023.

**RESPONSE TO REQUEST NO. 3**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

4. Produce all documents and communications concerning, referring, or relating to any Plaintiff in this matter.

**RESPONSE TO REQUEST NO. 4**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

5. Produce all documents and communications concerning, referring, or relating to the Victoria University of Wellington.

**RESPONSE TO REQUEST NO. 5**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

6. Produce all documents and communications concerning, referring, or relating to the Victoria University of Wellington from the time period between August 1, 2020 and April 1, 2023.

**RESPONSE TO REQUEST NO. 6**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

7. Produce all documents and communications concerning, referring, or relating to the No-Action letter.

**RESPONSE TO REQUEST NO. 7**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

8. Produce all documents and communications concerning, referring, or relating to the No-Action letter from the time period between August 1, 2020 and April 1, 2023.

**RESPONSE TO REQUEST NO. 8**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

9. Produce all documents and communications concerning, referring, or relating to the Revocation.

**RESPONSE TO REQUEST NO. 9**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

10. Produce all documents and communications concerning, referring, or relating to the March 2023 letter.

**RESPONSE TO REQUEST NO. 10**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

11. Produce all documents and communications concerning, reflecting, or relating to Defendants' motivations, policy considerations or concerns, discussions, deliberations, or decision-making process related to potential withdrawal or cancellation of the No-Action Letter.

**RESPONSE TO REQUEST NO. 11**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC's pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight's letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

12. Produce all documents relating to both Aristotle International, Inc.'s application for a designated contract market pending before the CFTC and the role of Aristotle International, Inc. and its subsidiaries (including PredictIt Inc.) with respect to the operation of the PredictIt Market.

**RESPONSE TO REQUEST NO. 12**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC's pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight's letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

13. Produce all documents and communications concerning, referring, or relating to the consideration of any political event contract market operated or sought to be operated by PredictIt.

**RESPONSE TO REQUEST NO. 13**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome,

especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

14. Produce all documents and communications concerning, referring, or relating to the Agency’s contention in the March 2023 letter that “Aristotle, a for-profit corporation—not the University or its faculty—is operating the Market.”

**RESPONSE TO REQUEST NO. 14**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

15. Produce all documents and communications concerning, referring, or relating to the Agency’s contention in the March 2023 letter that “[t]he University has received, and permitted Aristotle to receive, separate compensation for Aristotle’s operation of the Market.”

**RESPONSE TO REQUEST NO. 15**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC’s pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight’s letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

16. Produce all documents and communications concerning, referring, or relating to the Agency’s contention in the March 2023 letter that “[t]he University has offered numerous contracts that are outside the scope of the submarkets addressed in the Letter.”



**RESPONSE TO REQUEST NO. 16**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC's pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight's letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

17. Produce all communications with Kalshi, Inc. or its employees or agents that concern, refer, or relate to PredictIt or the PredictIt Market and all documents relating to such communications, including but not limited to any notes taken of those communications or meetings in which the communications occurred and documents sufficient to show the identity of those who participated in such communications or meetings.

**RESPONSE TO REQUEST NO. 17**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC's pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight's letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

18. Produce all documents regarding or communications with FTX Trading Ltd. or its employees or agents concerning, referring, or relating to PredictIt or the PredictIt Market, including any documents or communications relating to FTX Trading Ltd.'s desire to open political event contract markets to U.S. traders because other entities are offering such contracts, and all documents relating to such communications, including but not limited to any notes taken of those communications or meetings in which the communications occurred and documents sufficient to show the identity of those who participated in such communications or

meetings.

**RESPONSE TO REQUEST NO. 18**

The CFTC incorporates by reference its General Objections as if fully set forth in response hereto. The CFTC further objects to this Request because it is overbroad and unduly burdensome, especially considering the CFTC's pending Motion for Judgment on the Pleadings (ECF No. 82 and 97) which requests that the Court enter judgment in favor of Plaintiffs, vacate the CFTC Division of Market Oversight's letters at issue in this case, and close the case. Further, with narrow exceptions not present here, it is improper to attempt to supplement the record by conducting discovery beyond the Administrative Record (which was previously produced by the CFTC in this case).

Dated: November 29, 2024

U.S. COMMODITY FUTURES TRADING  
COMMISSION  
*ATTORNEYS FOR DEFENDANT*

/s/ Martin B. White

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

*Senior Assistant General Counsel*

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**CERTIFICATE OF SERVICE**

I certify that I served counsel for Plaintiffs Michael Edney with Defendant CFTC's Objections and Responses to Plaintiffs' Second Request for Production of Documents by email (medney@HuntonAK.com) on November 29, 2024.

/s/ Martin B. White  
Martin B. White