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

## MOTION FOR RELIEF FROM REQUIREMENT THAT PARTIES ENGAGE IN ALTERNATIVE DISPUTE RESOLUTION

Defendant, United States Commodity Futures Trading Commission ("CFTC"), seeks relief from the requirement that the parties engage in alternative dispute resolution because the CFTC's request for the Court to enter judgment *against* it is pending and fully briefed in the CFTC's Motion for Judgment on the Pleadings (ECF No. 82). Engaging in and reporting on alternative dispute resolution under these circumstances - where the Court can enter the CFTC's requested judgment to end this case immediately - is an inefficient use of the parties' time and resources, and very likely futile.

Given the ruling of the United States Court of Appeals for the Fifth Circuit that the CFTC's Division of Market Oversight's revocation of the no-action letter issued in 2014 to Victoria University of Wellington was likely arbitrary and capricious<sup>1</sup>, the CFTC is asking this Court to enter an order giving Plaintiffs the relief they are seeking in their complaint – an order

<sup>1</sup> Clarke v. Commodity Futures Trading Comm'n, 74 F.4th 627 (5th Cir. 2023).

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vacating the two letters issued by the CFTC's Division of Market Oversight that are the subject of Plaintiffs' complaint.<sup>2</sup> If the Court enters a judgment vacating the DMO Letters, that order would conclude this litigation, making engaging in alternative dispute resolution unnecessary.

Counsel for the parties have conferred on this issue. Counsel for Plaintiffs advised the CFTC that Plaintiffs oppose this motion. The parties fundamentally disagree about the scope of relief available to Plaintiffs, a legal issue addressed in detail in the parties' briefs on the CFTC's Motion for Judgment on the Pleadings. From the CFTC's perspective, the CFTC is asking this Court to give Plaintiffs all the relief they are entitled to under the Administrative Procedure Act. Plaintiffs disagree, believing that this Court should become the de facto regulator of an unregistered event prediction market through permanent injunctive relief. But such relief is beyond what is available in this case. As Plaintiffs note in their recently filed Motion to Compel "[t]he Court's role in a challenge to agency action under the Administrative Procedure Act is to determine whether the agency's decision was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." (See ECF No. 102, p. 6, citing 5 U.S.C. § 706(2).) The CFTC has asked the Court to do this in its pending Motion for Judgment on the Pleadings. A mediation or settlement conference cannot achieve more.

The CFTC therefore requests an order exempting the parties from the requirement of Local Rule CV-88 to engage in alternative dispute resolution, and from the requirement in the Scheduling Order (ECF No. 94) that the parties report on alternative dispute resolution by December 15, 2024. In the alternative, the CFTC requests that the Court stay the deadline for

<sup>&</sup>lt;sup>2</sup> As explained in further detail in the CFTC's Motion for Judgment on the Pleadings and associated Reply brief (ECF Nos. 82 and 97) Plaintiffs' arguments that they are entitled to more in a judgment than the APA allows are meritless. The Court should reject Plaintiffs' argument that the Court, through supposed additional injunctive relief, should effectively become the regulator of the PredictIt market.

engaging in and reporting on alternative dispute resolution efforts until the Court has ruled on the CFTC's pending Motion for Judgment on the Pleadings.

Date: December 6, 2024 Respectfully submitted,

/s/ Carlin R. Metzger

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## CERTIFICATE OF SERVICE

I certify that on December 6, 2024, I caused the foregoing document 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/ Carlin R. Metzger

Carlin R. Metzger, Assistant General Counsel U.S. COMMODITY FUTURES TRADING COMMISSION