

parties to request relief from the standard ADR requirement, and this is a case where relief from the standard requirement makes sense. Moreover, the fact that the CFTC has asked the Court to enter judgment in favor of the Plaintiffs shows how serious the CFTC is about conserving the parties' and the Court's valuable time and resources. While it is true that considering the CFTC's Motion for Judgment on the Pleadings will require the Court's time, it is in the end the most efficient use of the Court's time. The parties have fully briefed that motion, and the CFTC believes a ruling in its favor can and should end this case immediately. Moreover, Plaintiffs dramatically overstate the complexity of the CFTC's pending Motion for Judgment on the Pleadings. It is a straightforward request to have the Court enter an order of judgment under the Administrative Procedure Act in favor of Plaintiffs vacating the two DMO Letters that are the subject of Plaintiffs' complaint.

Plaintiffs ask why the CFTC agreed to the requirement in the scheduling order that the parties report on ADR efforts by December 15. The answer is straightforward – the language was part of the Court's template, and the CFTC believed that the requirement that the parties engage in ADR would be moot once the Court ruled on the CFTC's Motion for Judgment on the Pleadings.

Finally, Plaintiffs misunderstand (or misrepresent) how the CFTC, a federal regulatory agency governed by five commissioners, is required by law to make decisions and how that impacts the CFTC's participation in alternative dispute resolution proceedings. The CFTC is an independent federal regulatory agency that administers and enforces the Commodity Exchange Act, 7 U.S.C. §§ 1–26, and accompanying regulations, 17 C.F.R. Pts. 1–190. The CFTC is composed of and governed by five Commissioners and acts through formal proceedings undertaken by its constituent members. 7 U.S.C. § 2(a)(2). The CFTC appears in litigation

through its attorneys, but the Commission's attorneys do not possess independent authority to resolve a case on behalf of the Commission. To the extent the Court denies the CFTC's motion for relief from the ADR requirement, the CFTC intends to participate in ADR through attorneys with authority to negotiate the terms of a potential settlement, which would subsequently need to be presented to and accepted by the Commission.

The CFTC 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 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.

Respectfully submitted,

/s/ Carlin R. Metzger

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CERTIFICATE OF SERVICE

I certify that on December 20, 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,
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