

**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

**PLAINTIFFS' PARTIAL OPPOSITON TO CFTC'S MOTION TO EXTEND TIME TO
COMPLY WITH THE COURT'S JANUARY 8, 2025 ORDER (ECF NO. 119)**

The Plaintiffs oppose, in part, the CFTC's request for a full thirty additional days to comply with this Court's January 8, 2025 Order requiring the CFTC to produce additional documents and materials, unless other accommodations are provided. As stated in the meet and confer with counsel for the CFTC, the Plaintiffs would have consented, and do consent, to a shorter two-week extension of time or to a thirty-day extension of time in the event this Court orders a corresponding thirty-day extension of a deadline for filing dispositive motions. In all events, if the Court extends the deadline for completing the administrative record, the Court also should order the Commission to produce the documents it has gathered or continues to gather on a rolling basis. The full request for thirty days, without adjustments to the scheduling order and the other requested conditions, should be rejected for the following reasons.

First, the CFTC's requested thirty-day extension would make the deadline for producing documents completing the administrative record just before the deadline for filing dispositive motions. A thirty-day extension would delay the CFTC's production until Sunday, March 9, 2025, just one day before the Scheduling Order's March 10 deadline for dispositive motions (or on the same day, accounting for the fact that the contemplated extension deadline falls on a weekend). Dkt. 94, ¶ 8. This would disrupt the necessary sequence of events in an Administrative Procedure Act ("APA") case, as motions for summary judgment are to be based on the administrative record. To address this tension, the Plaintiffs during the meet and confer process offered to consent to a two-week extension of time, but the CFTC declined to accept that accommodation. Alternatively, the Plaintiffs offered not to oppose appropriate adjustments to the scheduling order based on the Commission's inability to comply with existing deadlines. The Plaintiffs remain unopposed to a shorter extension of time or to the full thirty days if adjustments are made to the scheduling order to space the dispositive motion deadline at least thirty days after the CFTC's compliance with their discovery obligations.

Second, the CFTC's production of the full administrative record is long overdue. This case has been pending for two and a half years, and the CFTC answered the Second Amended Complaint almost a year ago, on February 26, 2024. Yet, the agency did not even attempt to produce the administrative record until November 14, 2024. *See, e.g.*, D.D.C. LCvR 7(n)(1) (contemplating that dispositive motions will rely on portions of the administrative record, the production of which must begin 30 days after an agency answers the complaint). It is not clear why the change of personnel as the director of the Division of Market Oversight would affect the Commission's ability at least to begin producing the documents gathered. If the Court extends the deadline for producing the administrative record, it should order the Commission to produce the

documents it has gathered on a rolling basis so the transparency that accompanies APA and other types of actions against the Government can begin. *See, e.g., Environmental Defense Fund v. EPA*, 2022 WL 136792, at *3 (D.D.C. 2022, Mehta, J.). The relevant official can then execute the affidavit of completeness at the end of the process, as the extended deadline approaches. In all events, as stated above, the extension must either be shorter or be accompanied by a corresponding extension of the dispositive motion deadline due to the Commission's inability to comply with the Court's set deadlines.

For these reasons, the CFTC's requested thirty-day extension—unaccompanied by adjustment to the dispositive motion deadline—should be denied. The Court should either grant a shorter extension or make a corresponding 30-day adjustment to the dispositive motion deadline. In addition, if the Court grants the extension with the foregoing necessary adjustments, the Court should order the Commission to produce the documents it has gathered, and continues to gather, to complete the administrative record on a rolling basis as they become available, even if the relevant official's affidavit of completeness may need to wait until the end of the extended period.

Dated: February 6, 2025

Respectfully submitted,

/s/ Michael J. Edney

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2025, 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