VIA ELECTRONIC SUBMISSION

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Office of the Secretariat

Commodity Futures Trading Commission

Three Lafayette Centre

1155 21st Street, N.W.

Washington, D.C. 20581

Re: Comment on Proposed Rulemaking — Prediction Markets in Designated Contract Markets (DCMs), 91 FR 12516

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I. Introduction

Vitruvitas submits this comment in response to the Commission's proposed rulemaking on Prediction Markets in Designated Contract Markets (DCMs), published at 91 FR 12516. Vitruvitas is developing institutional market infrastructure for a Designated Contract Market that would facilitate trading in Professional Performance Binary Swaps (PPBS) — binary swap contracts settling against verifiable, independently published individual performance metrics.

This comment is submitted in direct response to the Commission's Future-Proof Initiative — the Commission's stated program to modernize the regulatory framework for derivatives markets and establish clear, workable pathways for novel commodity classes that serve demonstrated commercial purposes. The PPBS framework presented here is constructed to satisfy the regulatory standards the Commission has articulated as foundational to that program: institutional compliance architecture, automated surveillance infrastructure, and a demonstrated economic purpose grounded in commercial hedging demand rather than speculative retail participation.

This comment addresses three issues: (1) the statutory basis for recognizing Individual Performance Metrics as Exempt Commodities under the Commodity Exchange Act (CEA); (2) the legal and economic architecture that renders PPBS contracts suitable for DCM listing; and (3) the operational infrastructure — including data source governance and automated trade surveillance — that satisfies Core Principles 3 and 4 through structural design rather than case-by-case regulatory discretion.

Vitruvitas has endeavored to address the primary legal, economic, and operational considerations relevant to the Commission's review of this product category. We recognize that novel commodity classifications and product structures may raise questions not fully anticipated here, and we welcome engagement with Commission staff on any aspect of this submission that would benefit from further development or clarification.

Confidential supporting materials — including the Objective Adjudication Source Certification Standard, Market Evidence Summary, and Technical Integrity Summary — are submitted simultaneously under 17 CFR § 145.9.

II. Commodity Classification — Individual Performance Metrics as Exempt Commodities

A. The Classification Argument

Individual Performance Metrics — the quantified, independently published output of professional competitive performance, as measured by verified Systemic Telemetry generated by independent Objective Adjudication Sources — constitute Exempt Commodities under CEA § 1a(9) and § 3(b). Specifically, these metrics represent a verifiable financial benchmark for human capital economic activity—a functional analogue to a derivative on a corporate index.

This classification is legally significant for a precise reason. Exempt Commodities — unlike Excluded Commodities — do not fall within the statutory restrictions that attach to that alternative classification under the CEA. The Exempt Commodity classification, combined with a demonstrated economic purpose, satisfies the applicable standard for market authorization under the CEA — a standard this submission is designed to meet on the record.

B. Why Performance Metrics Are Not Excluded Commodities

The statutory restrictions applicable to Excluded Commodities under § 1a(19) do not attach to Individual Performance Metrics. Performance metrics are not interest rates, exchange rates, currency values, debt instruments, measures of economic activity, or reports by the Government Accountability Office. They are the quantified output of a specific professional's competitive activity — a class of value that is commercial, verifiable, and independent of any financial index or government data series.

The statutory basis for this classification is grounded in the text of CEA § 1a(9) itself, which defines commodity to include "all services, rights, and interests" subject only to the specific exclusions Congress has chosen to enumerate. In the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress specifically excluded motion picture box office receipts — and any index, measure, value, or data related to such receipts — from the commodity definition. That exclusion is instructive in two respects. First, it demonstrates that Congress understands performance-derived metrics to otherwise fall within the commodity definition, and knows precisely how to carve out specific performance classes when it elects to do so. Second, it establishes that Individual Performance Metrics — which Congress has not excluded — remain within the statute's reach. The Commission’s existing oversight of derivatives on corporate indices—which are fundamentally measurements of human capital and management performance—confirms that the definition extends beyond physically deliverable goods to encompass verifiable, commercially valued measurements of ongoing economic activity. Individual Performance Metrics, when framed as a Human Capital Index, are the direct analogue in the domain of professional technical execution, meeting the functional standard for a verifiable **Reference Rate** established by the Commission’s precedents for non-physical commodities.

Framing Individual Performance Metrics as "services" or "rights" — specifically, the Commercialized Value of superlative professional output — places them squarely in the Exempt Commodity category. This is not a strained reading of the statute. Sponsors, commercial partners, and performance-linked compensation administrators already buy, sell, and contractually price this value in bilateral commercial agreements every day. The PPBS framework simply moves that existing commercial activity into a regulated, surveilled, transparent market structure.

C. Economic Purpose — The Authorization Standard

Consistent with the conclusion that Individual Performance Metrics qualify as Exempt Commodities under CEA § 1a(9), this submission demonstrates that asserting the necessary DCM jurisdiction is the least burdensome action consistent with the public interest under CEA § 3(b), as the resulting federal uniformity is the prerequisite for enabling legitimate corporate risk management.

III. Federal Preemption and DCM Jurisdiction

The Commission's active posture asserting exclusive federal jurisdiction over event contracts — including its efforts to affirm the primacy of federal law for federally designated markets — provides the direct legal infrastructure on which PPBS designation rests. The jurisdictional framework is established; this comment asks the Commission to apply it to a novel commodity class that satisfies the applicable legal standards, thereby providing an institutional-grade defense against misclassification under state-level gambling or illegality statutes.

Exclusive federal jurisdiction under CEA § 5 governs the operation of a DCM-designated exchange. The regulatory framework applicable to such an exchange is established by federal law and the Commission's rules — a framework that provides uniform, institutional-grade compliance standards applicable to all market participants regardless of their geographic location. DCM designation produces a single federal compliance environment in place of the fragmented, inconsistent patchwork of state-level treatment that would otherwise apply to novel derivatives products. For institutional market participants — sponsors, commercial hedgers, proprietary trading firms — this uniformity is not a preference but a prerequisite: entities operating across multiple states cannot commit capital to a market that carries materially different legal treatment in different jurisdictions.

This preemption structure is not incidental to the PPBS framework — it is load-bearing. Commercial entities with performance-contingent balance sheet exposure cannot participate in a market that carries state-level enforcement risk. Federal preemption through DCM designation is the mechanism that converts regulatory theory into a functioning institutional market.

The Exempt Commodity classification advanced here rests on the text of CEA § 1a(9) and requires no interpretive extension beyond what the statute plainly provides. The framework is constructed to stand on the record as written.

IV. Economic Purpose — Contingent Liability Smoothing

A. The Structure of Unhedged Performance-Linked Exposure

Commercial entities across the professional performance ecosystem — sponsors, brand partners, licensing counterparties, and performance-linked compensation administrators — routinely carry performance-contingent obligations on their balance sheets with no regulated mechanism for risk transfer. The structure of these obligations is uniform: a counterparty owes a payment, a bonus, or a variable cost whose amount is determined by the future performance of an identified professional. The amount is unknowable in advance, the performance is outside the payor's control, and no regulated instrument currently exists to hedge the exposure.

This gap is not theoretical. It is the operating reality for any commercial entity that has entered a performance-contingent agreement — a sponsorship with milestone bonuses, a licensing deal with performance escalators, or a compensation structure with outcome-linked components. These entities bear unmanaged idiosyncratic basis risk on their balance sheets, with no mechanism to transfer or distribute that exposure in a regulated market.

B. PPBS as a Hedging Instrument — Contingent Liability Smoothing

PPBS contracts resolve this gap directly. The binary settlement structure — settling at par on achievement of a defined performance threshold and at zero otherwise — converts an open-ended contingent liability into a hedged position. A sponsor holding a performance bonus obligation can hold a corresponding PPBS position that pays out if and only if the bonus obligation is triggered. The net economic exposure is reduced or eliminated. Commercially, this is Contingent Liability Smoothing: the transfer of idiosyncratic performance risk from corporate balance sheets to organized, transparent capital markets. Crucially, this binary, all-or-nothing payoff profile fundamentally limits its appeal for granular, short-term retail speculation, while maximizing its utility for institutions seeking a precise, discrete hedge against a fixed contingent payment obligation.

Furthermore, by aggregating the forward-looking expectations of market participants, the PPBS market establishes a verifiable, transparent price discovery function for the Commercialized Value of human performance, satisfying a core statutory criterion for DCM-listed products.

This is a recognized and economically legitimate hedging function. It mirrors the logic of weather derivatives, catastrophe bonds, and other instruments designed to transfer idiosyncratic, non-financial risk to capital markets — instruments the Commission has previously recognized as serving legitimate economic purposes. PPBS applies the same logic to the class of risk created by performance-contingent commercial agreements, a class that is large, documented, and currently without a regulated hedging channel of any kind. It is worth noting that instruments of this type routinely emerge from identified bilateral commercial demand rather than pre-existing market depth: weather derivatives, now a mature market, originated from specific commercial hedging relationships before standardized listed products developed. The Commission's product approval process appropriately evaluates economic function and demonstrated commercial demand — which this submission addresses directly — rather than requiring evidence of liquidity that can only develop after a regulated market exists.

C. Confirmed Institutional Demand

Vitruvitas has conducted direct commercial engagement with institutional market participants across multiple competitive performance categories. That engagement has confirmed documented hedging demand from brands and commercial operators with direct performance-contingent financial exposure: entities that have experienced recurring balance sheet variance attributable to unhedged performance risk and that have identified a regulated PPBS market as a solution to that exposure.

Additionally, national governing bodies that administer performance-based compensation programs — including per-event cash award structures for elite competitive performance — represent a structurally analogous category of end-user. These entities carry quantified contingent liabilities tied directly to competitive outcomes and currently bear that exposure entirely on their own balance sheets. A regulated hedging instrument would allow such bodies to smooth their liability profile without reducing athlete compensation commitments.

Detailed evidence of institutional demand, including commercial documentation and practitioner statements organized across three evidentiary pillars, will be submitted in the accompanying confidential Market Evidence Summary under 17 CFR § 145.9. This evidence directly demonstrates that PPBS contracts serve the public interest by expanding legitimate corporate sponsorship and marketing activity through greater financial precision, directly countering any assertion that the product is contrary to the public interest.

V. Specialist Integrity and Outcome Entropy

A. Technical Specialists as Service Providers

This architecture is further reinforced by Vitruvitas' rigorous Material Non-Public Information (MNPI) Guardrails, consistent with CEA Rule 180.1, which contractually prohibit Technical Specialists and their affiliated parties from trading on proprietary performance data or strategic state information prior to public disclosure.

The most significant consideration for individual performance markets is the manipulation concern: that a professional whose performance serves as a settlement reference could intentionally alter that performance to generate a financial gain on a position held by an affiliate or coordinating party. The PPBS architecture addresses this concern through three independent structural mechanisms that operate simultaneously and without reliance on regulatory discretion.

First, Technical Specialists — the professionals whose performance metrics serve as PPBS settlement references — are service providers and data reference subjects. They are not parties to any PPBS contract. They hold no position, receive no payout contingent on settlement outcome, and execute no contract on either side of the market. A Technical Specialist's only relationship to a PPBS contract is as the source of the underlying performance data. This distinction eliminates the direct financial incentive that is the necessary precondition for performance manipulation.

B. The Performance Data Licensing Fee

Second, Vitruvitas may elect to implement a non-directional Performance Data Licensing Fee as an additional integrity measure for specific Technical Specialist categories. Where Vitruvitas implements this fee, Technical Specialists receive fixed, activity-based compensation that is identical regardless of competitive outcome. The fee compensates the Specialist for the commercial value of their performance data as a settlement reference — and does so in a manner that is entirely insensitive to whether the relevant PPBS contract settles at par or at zero. This structure maximizes outcome entropy by ensuring the Specialist's financial position is unchanged by the settlement result.

C. Aggregation Over Extended Performance Windows — Staff Advisory 26-08 Compliance

Third, and most critically for the Commission's regulatory analysis, PPBS contracts settle against cumulative Human Capital Index metrics aggregated over an extended Performance Window — a multi-day tournament, a defined competitive cycle, or a sustained period of professional activity. Settlement is not based on a single event, a single decision, or a single moment of performance.

This structure directly satisfies the Commission's Staff Advisory 26-08 (March 12, 2026), which identified single-actor, single-event contracts as presenting elevated manipulation risk because a single decision by a single individual can determine settlement. Aggregation over extended Performance Windows eliminates this concern by requiring that settlement reflect a sustained body of competitive output. No single act of deliberate underperformance is sufficient to move the settlement value of a properly structured PPBS contract.

Manipulation under CEA § 9(a)(2) requires establishing that an actor had the ability to influence prices, that an artificial price existed or was attempted, and that the actor specifically intended to create that condition. The PPBS architecture addresses each element structurally. Service provider status eliminates the financial incentive that is the necessary predicate for specific intent — a Technical Specialist has no directional interest in settlement outcome and therefore no basis for the intent element. Extended Performance Window aggregation eliminates the practical ability to influence settlement value through any single act — no individual decision within a multi-day or multi-event window is sufficient to move a cumulative Human Capital Index-based settlement. The discretionary licensing fee, where implemented, eliminates any residual directional interest that could otherwise inform intent. The result is a settlement structure in which no individual actor with knowledge of the framework has both the financial incentive and the practical ability to alter performance in a manner that predictably affects settlement — satisfying the Commission's manipulation resistance standard under Core Principle 3.

VI. Objective Adjudication Source Governance and Technology-Neutral Data Infrastructure

The integrity of PPBS settlement depends on the quality, independence, and stability of the data sources used to determine settlement values. Vitruvitas' Objective Adjudication Source (OAS) certification framework governs this function through a six-criterion compliance standard that is applied Exchange-side, without requiring formal agreements with data publishers.

The first three criteria address source integrity: (1) Independence — the data source must be free of financial relationships with Vitruvitas that create settlement-outcome-contingent compensation, and the source administrator and its principals must have **no ownership interest, employment relationship, or control** by the Technical Specialist or any affiliated parties whose performance is referenced by the contract; (2) Methodological Transparency — the source's methodology must be publicly accessible in sufficient detail for market participant due diligence; and (3) Methodological Stability — methodological changes must follow a documented, non-retroactive governance process with advance notification to Vitruvitas.

The remaining three criteria address operational reliability: (4) Publication Regularity — the source must publish on a defined, predictable cadence; (5) Historical Data Availability — a minimum of three years of historical data must be accessible for contract design and back-testing; and (6) Data Integrity — the source must maintain documented manifest error correction procedures governing the identification and resolution of transmission errors, without authority to challenge or revise underlying competitive results.

Data sources satisfying these criteria across competitive performance disciplines — including established competitive performance ranking bodies in golf, tennis, chess, and racket sports — may be certified as OAS under Vitruvitas' compliance process. The framework is explicitly technology-neutral: it evaluates the functional properties of a data source, not its underlying technical architecture or the specific competitive discipline it covers. This design allows Vitruvitas to certify novel data sources as they emerge without regulatory re-filing for each new contract category — consistent with the Commission's Future-Proof Initiative goal of building durable, forward-compatible regulatory frameworks that do not require constant amendment to accommodate technological and market evolution.

The settlement process itself is governed by a Redundant Consensus Settlement Protocol that requires verification from multiple, independent validation nodes (e.g., The Official Governing Body Scorecard, a Certified Independent Data Publisher Feed, and an Audited External Data Aggregator) before finality is declared. This multi-layered redundancy ensures that settlement integrity is not dependent on any single data feed, which significantly exceeds the standard requirement for non-manipulability. The protocol operates via an efficient, non-discretionary Consensus Check with Tie-Breaker system: settlement is declared upon consensus between two of the three certified data sources, with the third source serving as an automated tie-breaker to resolve non-convergence and prevent manual manifest error correction.

The independence criterion is enforced by Vitruvitas through Market Participant Eligibility Rules that prohibit data source administrators and their affiliates from holding positions in contracts referencing that source. This mechanism does not require formal agreement with the data source and operates regardless of whether the data source is aware of its use as a settlement reference. Proprietary operational detail of the OAS Certification Standard — including operational mode definitions, fallback protocols, and the full certification process — will be submitted under 17 CFR § 145.9 as a confidential exhibit.

VII. Automated Pattern Detection and AI-Powered Trade Surveillance

Core Principle 4 requires Vitruvitas to maintain a trade surveillance program capable of detecting and deterring manipulation and disruptive trading practices in real time. Vitruvitas' Automated Pattern Detection (APD) system fulfills this requirement through continuous, non-discretionary algorithmic analysis — a model the Commission has identified as the benchmark for modern supervisory infrastructure.

A. DBSCAN Cluster Detection

The APD system employs DBSCAN (Density-Based Spatial Clustering of Applications with Noise) to identify coordinated account behavior in real time. DBSCAN analyzes three primary features simultaneously: temporal proximity of order placement, geolocation signals including IP subnet clustering and GPS coordinate concentration, and directional correlation across accounts active in the same contract. The system flags what Vitruvitas designates as "Cluster Trading" — statistically anomalous patterns of coordinated directional positioning that deviate from normal market activity. High-density clusters in single IP subnets or specific geographic coordinates are subject to elevated scrutiny given their statistical association with coordinated account behavior.

B. Z-Score Anomaly Detection

Z-score anomaly detection operates in parallel with cluster analysis, monitoring volume and position concentration for each specific Technical Specialist contract against a 24-hour rolling baseline. The system flags any contract where activity deviates beyond the established threshold relative to that baseline. This mechanism is designed to catch non-linear volume spikes that may indicate information-driven front-running, coordinated accumulation, or other anomalous positioning patterns that do not present as geographic clusters but nonetheless deviate from statistically normal market behavior.

C. Non-Discretionary Escalation and Calibration Confidentiality

The APD system operates continuously and without human discretion. Flagged events are automatically escalated through a defined compliance workflow — no manual trigger is required and no Vitruvitas personnel can suppress a flag without generating an auditable record. This non-discretionary design is intentional: regulators and market participants can rely on consistent, rule-based enforcement rather than case-by-case judgment.

This model is directly consistent with the Commission's stated supervisory preference for continuous, AI-enabled approaches that replace periodic manual review with real-time automated detection. The APD system is the operational instantiation of that approach for the PPBS market.

Specific calibration parameters, detection thresholds, and cluster classification constants are treated as proprietary and will be submitted under 17 CFR § 145.9. Their disclosure in the public record would undermine their effectiveness by enabling market participants to engineer activity patterns that avoid detection. Submission in confidence to Commission staff preserves both regulatory transparency and operational integrity. A full Technical Integrity Summary describing the data pipeline, chain of custody, and system architecture is included in the confidential submission.

VIII. Conclusion and Relief Requested

For the foregoing reasons, Vitruvitas respectfully requests that the Commission:

(1) Recognize Individual Performance Metrics as a Human Capital Index, constituting Exempt Commodities under CEA § 1a(9) and § 3(b), eligible for listing on a Designated Contract Market under the Commission's existing commodity authorization framework;

(2) Confirm that exclusive federal jurisdiction under CEA § 5 governs a DCM-designated exchange operating PPBS contracts, providing a uniform federal regulatory framework necessary to unlock institutional capital and mitigate state-level enforcement risk;

(3) Confirm that PPBS contracts referencing certified Objective Adjudication Source data are suitable for the **self-certification process** under 17 CFR § 40.2, consistent with the demonstrated compliance with Core Principles 3 and 4.

Commercial entities with direct performance-contingent hedging needs have engaged with Vitruvitas on this framework and have confirmed institutional demand for the regulated instrument described herein. The documentation of those relationships — including practitioner statements and commercial evidence organized across three evidentiary pillars — forms the foundation of the economic purpose demonstration required under CEA § 3(b) and will be submitted in the confidential Market Evidence Summary under 17 CFR § 145.9. This combined evidentiary package demonstrates that the framework structurally satisfies Core Principle 3 (Non-Manipulability) and that assertion of federal jurisdiction is the least burdensome regulatory action consistent with the public interest.

Confidential supporting materials — including the Objective Adjudication Source Certification Standard, Market Evidence Summary, Technical Integrity Summary, Market Integrity Declaration, and Data Lineage Diagram — will be submitted under 17 CFR § 145.9 as a confidential package.

Vitruvitas welcomes the opportunity to meet with Commission staff to discuss any aspect of this submission, provide supplemental information, or participate in any technical review the Commission deems appropriate. We are prepared to engage at the staff level on the commodity classification framework, the OAS certification architecture, and the trade surveillance infrastructure in whatever format is most useful to the Commission's review.

Respectfully submitted,

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