

United States Senate

WASHINGTON, DC 20510

April 22, 2010

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

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OFFICE OF THE SECRETARIAT
C.F.T.C.

Dear Chairman Gensler:

We are writing to express our concern about futures contracts on movie box office receipts currently pending before the Commodity Futures Trading Commission (CFTC). We believe that CFTC should not approve such a controversial new derivative product while the United States Senate is actively considering significant amendments to the Commodity Exchange Act to reduce speculation, limit systemic risk, and increase transparency in derivatives markets.

As you know, the Congress is currently working to enact sweeping revisions to statutes that govern financial market oversight, including revisions to the Commodity Exchange Act that would reestablish CFTC's jurisdiction over financial swaps and commodity derivatives. While the Senate continues to debate the text of this bill, legislation now passed by the Senate Agriculture Committee would ban the creation of movie futures contracts. The rules governing CFTC regulated trading could change dramatically in the coming months. We therefore encourage the Commission to withhold judgment on the legality of movie futures contracts until the Senate completes its debate, and Congress has had an opportunity to modify the rules that govern derivatives product approval.

We are also concerned that this new derivative product may not serve a public purpose, and we encourage the Commission to seriously consider this question before approving these contracts. It appears that every major commercial interest in the movie industry that would potentially have an interest in hedging against the risk that a movie fails at the box office opposes the creation of movie futures contracts. In fact, representatives in the film industry have firmly expressed their belief that these contracts would increase their risk exposure by imposing new legal liability, not allow them to control their risk exposure.

Furthermore, we are not aware of a major commercial interest in the movie industry that has a financial interest in seeing a film fail at the box office. A futures market is not an insurance market. It provides public benefit by allowing trading between those with a commercial interest in seeing prices rise (the wheat farmer) and those with a commercial interest in seeing prices sink (the baker) in order to discover the fair future price of a commodity (wheat). Because no movie industry participant wants to see a movie fail, the marketplace's primary commercial function would be insurance, and we are concerned that CFTC lacks the expertise necessary to regulate insurance products.

We also note that at least one of the proposed movie futures contracts pending before the Commission would prevent the movie studios from participating, just as gambling halls prevent baseball players from betting on their own games. If commercial interests are excluded, the movie futures market would be far more like sports betting than commodities trading.

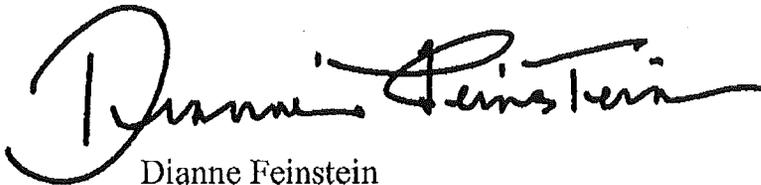
We have also long advocated moving derivatives trading onto fully regulated exchanges in order to increase transparency, establish monitoring for manipulation, and limit speculation, and we see a clear public benefit in bringing transparency, standardization, and oversight to customized, opaque bilateral derivative products currently in the marketplace. Therefore, if CFTC could establish that a regulated movie futures market would shine the light of transparency on a large and growing bilateral swaps market that bets on movie receipts, such a finding may constitute a public benefit. However, we are unaware of the existence of any such bilateral swaps marketplace.

The Commodity Exchange Act rests on the principle that futures contracts serve the public interest by providing commercial participants with the dual economic benefits of commodity price discovery and the ability to hedge commercial risks arising from commodity price fluctuations. We believe that the CFTC should not approve futures contracts until it demonstrates that new, exchange-traded futures contracts provide a public benefit by either providing commercial interests with a desired capacity to hedge their risk or bringing transparency, standardization, and oversight to customized, opaque bilateral derivative products currently in the marketplace. If CFTC cannot demonstrate that either of those public interests is served by the creation of futures contracts on movie box office receipts, we believe CFTC should not approve such contracts.

If CFTC lacks the clear legal authority to prevent the introduction of a futures contract that fails this public interest test, we ask that you inform us of this deficiency as soon as possible, so that Congress can properly consider whether to rectify this shortcoming during consideration of financial regulatory reform legislation.

Thank you for your continued work to improve our nation's financial regulatory regime. We look forward to working with you closely as the Senate considers a transformative change in how America's financial markets are regulated. If you have any questions, please do not hesitate to call.

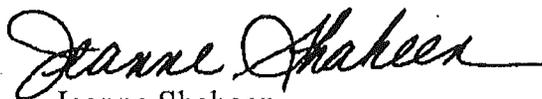
Sincerely,


Dianne Feinstein
United States Senator


Barbara Boxer
United States Senator


George LeMieux
United States Senator


Al Franken
United States Senator


Jeanne Shaheen
United States Senator

cc: Honorable Michael Dunn, CFTC Commissioner
Honorable Jill E. Sommers, CFTC Commissioner
Honorable Bart Chilton, CFTC Commissioner
Honorable Scott D. O'Malia, CFTC Commissioner