U.S. COMMODITY FUTURES TRADING COMMISSION
ENSURING THE INTEGRITY OF THE FUTURES & OPTIONS MARKETS

Commodity Futures Trading Commission
Office of Public Affairs • Three Lafayette Centre • 1155 21st Street, NW • Washington, DC 20581
(202) 418-5080 • www.cftc.gov

Testimony

Testimony of Richard Jaycobs, President, Cantor Futures Exchange to the Commodity Futures Trading Commission

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I. Introduction

Chairman Gensler, Commissioners Dunn, Sommers, Chilton and O'Mailia, thank you, I appreciate the opportunity to appear today and to submit written testimony on the application of the Cantor Futures Exchange, L.P. ("Cantor Exchange") to trade Domestic Box Office Receipt Contracts ("DBOR") and to discuss the public utility, transparency, and risk management benefits of these contracts. Cantor Exchange's futures contracts are designed to bring risk management, transparency and financial flexibility to a wide range of participants in the film industry, similar to the role regulated futures market play in other sectors of the economy and marketplace.

II. Background on Cantor Exchange

I am here today in my capacity as the President of the Cantor Futures Exchange. Our parent company is Cantor Fitzgerald, which began as an investment banking and brokerage business in 1945. Cantor Fitzgerald has been a major participant in the futures markets and has previously operated a futures market. Cantor Exchange's affiliation with Cantor Fitzgerald underscores Cantor Exchange's capability and expertise to professionally operate, finance and monitor a well-run, efficient, federally regulated futures exchange.

III. DBOR Contracts

a. Contract Specifications

Cantor Exchange has submitted an application to the CFTC to establish a futures market for contracts linked to the domestic box office receipts ("DBOR") of upcoming film releases. DBOR contracts are not a direct investment in film, but rather a straightforward hedging vehicle. These contracts will be listed approximately 6 months before a movie release and cash-settled at a value that is directly indexed to the dollar value of movie tickets sold in the US and Canada that consumers purchase over a period of approximately the first four weeks a movie is in theaters. DBOR Contract

Terms and Conditions establish the value of each contract as 1/1,000,000 of the Gross Domestic Box Office Receipts earned during that period. Additionally, speculative position limits have been set at 10,000 contracts, equal to 1% of a film title's domestic box office gross receipts.

To determine the final settlement value of each DBOR contract, Cantor Exchange relies on the distributor reported number. We have chosen this value because it is reported daily, calculated to the nearest dollar, and widely accepted within the industry as an accurate measure of box office receipts. However, Cantor Exchange validates this number on a weekly basis against the actual box office receipt totals captured by Rentrak Theatrical. For example, the recent hit movie "Iron Man 2" was reported by Paramount as having earned $159,159,871 from 4380 theaters in its first theatrical week. Cantor's estimate based on Rentrak's electronic reporting for the same period was $159,370,376. The difference of $210,505 is less than 0.15% of the total and also less than the $250,000 minimum tick increment of the DBOR contract. In short, electronic reporting has enabled box office receipts to be determined with material accuracy.

It should be noted that the DBOR contract is a representative index of box office receipts, but DBOR is not intended to be an absolute measure of box office. Certain estimates and approximations are inherent in the index's calculation. For example, revenue earned by non-reporting theaters is estimated as a percentage of reporting theaters and the U.S. dollar/Canadian dollar exchange rate is assumed to be exactly 1.0000. Inasmuch as all futures contracts exhibit basis variations with the underlying cash market, these approximations do not invalidate DBOR's use as a hedging vehicle.

Box office receipts are a specific measure of the underlying economics of a motion picture. In 2007, the CFTC allowed a DCM to self certify contracts where the underlying economic metric was the narrowly defined accounting measures of "revenue" and "earnings per share" for specific stocks (e.g. Disney, Time Warner, and others). Cantor Exchange believes that box office receipt data is in this same category of economic measure.

b. Overview of Movie Industry and MPAA

The Motion Picture Association of America (the "MPAA") represents the 6 largest studios in Hollywood. Together these studios largely control the distribution of films and are uniquely able to fund the large advertising budgets so crucial to a film's box office success. However, it is important to point out that the film industry consists of many participants. In addition to the major studios, they include mini-majors and other smaller studios, independent producers and distributors, theater owners and investors.

In recent years over $10 billion dollars of film financing capital has come from non-MPAA sources representing approximately 30% of film production costs. Even so, declining sources of capital resulted in a 12% decline in 2009 film production.

Recently the 6 major studios have abandoned many of their boutique divisions that distributed independent film, focusing instead on blockbusters. Indeed, the market for film distribution is stratifying with the larger studios focusing on “mega hits” and franchise properties that have the ability to impact the financial statements of their parent companies. In this environment, smaller films are finding it more difficult to gain theatrical distribution due to the high cost and difficulty of financing the advertising needed to have a successful theatrical run.

The DBOR contract will assist the independent film producers and others in the motion picture industry by expanding the breadth and depth of financing sources available to the industry by allowing lenders and investors to hedge risk. Enlarging the potential sources of film financing will lower the cost of making a film, help create American jobs, and contribute to stabilizing large and small members of the industry alike as they face the challenge of raising financing in the high risk endeavor of filmmaking. We believe that a critical element in this effort is a public, transparent, and appropriately regulated futures market.

c. Specific Uses for DBOR Futures

Throughout the application process Cantor Exchange has discussed hedging uses for its DBOR contract with CFTC staff and has provided examples in writing. But more importantly, many diverse commercial participants have submitted letters to both the CFTC and Congress regarding their support for these contracts. These include a studio, investment firms, motion picture industry professionals and academics. Today, you will hear from several witnesses on this issue.

In response to questions at the April 22 House Committee hearings, it was discussed that MPAA’s members did not need a futures contract to secure financing for film. We accept this on its face; studio divisions of major corporations have alternative risk mitigation opportunities. However, for smaller studios, equity investors and producers of film that do not have large corporate parents and no control over the marketing and release plans of a film, a public futures market provides an effective means to mitigate the risks of their investment.

While the MPAA represents an important industry segment, it is important to note that there are many firms not represented by these associations that have commercial exposures that can be hedged through a futures contract on box office receipts. These commercial risks are varied and represent a large cross section of enterprises.

In the examples below, Cantor Exchange presents pro forma hedging examples. These examples are intended to highlight various risks that correlate with box office receipts and possible hedges that could be implemented to mitigate those risks; actual examples will vary according to the specific commercial or investment risk borne by the hedging entity.

i. P&A Budgets

Approximately six months before a motion picture is released, the distributor of that motion picture needs to finance the Print and Advertising ("P&A") budget for the film. The P&A budget is substantial, typically ranging from $20MM to $100MM and often equals or exceeds the cost of the film's production budget.

While some distributors finance their own P&A budgets, many seek external financing. This however can be difficult because distributors and financial institutions have no way to determine the box office potential of the film. Therefore, financial institutions rely on the historical film performance of comparable films (e.g. genre, ratings, talent, season of release) to determine the value of the film. Because this is a highly speculative exercise, financial institutions will typically provide financing at a relatively low "loan to value" ratio. Often times, this leaves the distributor unable to finance the entire P&A budget with financial institutions.

Moreover, there is no way to ensure that additional P&A expenditures will generate increased DBOR values. Although distributors have developed internal guidelines to assist with the P&A decision process, the existence of DBOR futures contracts would enable distributors to explicitly quantify and offset the risk and cost of an increased P&A spend.

By way of example, a simplified transaction would proceed as follows:

Six months before a film's theatrical release, a distributor expects that a P&A budget of $20MM might generate DBOR of $50MM; however, if the P&A budget is increased to $25MM, then the distributor believes the film may gross $70MM or even more. However, before spending the increased amount, the distributor would like to have some assurance that added P&A will not expose them to any additional risk.

On the first day of trading (also called the "Initial Contract Offering" date) the distributor offers to sell 250,000 contracts at a price of $70.00. By so doing, the distributor (or its financial institution) has locked in a total return that justifies the additional $5MM P&A expenditure.

If the film underperforms at the box office, the distributor knows that the added P&A expenditure will be offset by gains in the futures market. For example, if the film grosses only $50MM at the box office, then $5M of the P&A expenditure would have been recovered from the futures market (250,000 contracts x [$70.00-$50.00] = $5MM)

If the film over performs at the box office, the distributor will take a loss on the futures contracts but this loss will be covered by revenue in excess of the $70MM target rate. Since the distributor remains substantially long the underlying film, the $5MM loss is more than made up by the higher value of the underlying receipts.

This hedge example is simplified: specifically the example does not give consideration to financing the initial margin requirement, daily variation margin effects, or the box office split with theater owners.

In summary, DBOR futures contracts address this problem by providing a marketplace where distributors and financial institutions could directly determine the underlying value of the film and effectively lock in a guaranteed box office result. This is expected to (1) lower financing costs because financial institutions will have greater transparency as to the film's value; (2) provide high loan to value ratios and increased funding because any risk of a film underperforming at the box office has been hedged away and (3) provide an offset to incremental increases in P&A spending.

ii. Film Funds

Film funds co-invest with film production companies and distributors to finance film production and distribution. Each investment is typically sized between $250MM and $1 billion, deployed over a 3-5 year period, and produces an average of 5-25 films.

Significantly, these funds are typically aligned with a single studio. Furthermore, the film fund makes its commitment without knowing the pipeline of film titles that will be made. Film funds, therefore, are largely dependent on their partner studio film selection expertise to be successful.

Because film funds are locked into a single studio partner, and because the individual films are unknown at the time of investment, film funds have no ability to manage their 'film portfolio'. DBOR futures contracts provide a vehicle for film funds to diversify their film portfolios after their films are made and the theatrical release schedules for the competing films are known.

For example, in 2008 "The Love Guru" (Paramount) and "Get Smart" (Warner Bros) were both released on June 20. These two comedies were competing for the same audience and neither film was well received by critics. The co-finance partners of Paramount and Warner were both concerned about the relative performance of their film; notwithstanding the fact that the typical June 20 weekend box office gross for new comedies was expected to be about $60MM. In other words, although the finance partners were optimistic that the weekend would be strong, neither was confident that their film would show well competitively against the other. Therefore, diversification would have been a risk minimizing strategy.

DBOR futures contracts would have enabled the film finance partners to diversify their holdings quickly and inexpensively. By effecting an intra commodity spread between these two films, it would have been possible for the film finance partners of the studios to diversify their holdings and create a better average risk/return ratio for their funds than simply holding their single movie title.

A sample transaction could have been each finance partner exchanging 10% of its interest in their film for 10% of the competing film:

Paramount's partner: buy 100,000 "Get Smart", sell 100,000 "Love Guru"

Warner's partner: sell 100,000 "Get Smart", buy 100,000 "Love Guru"

As it turned out, "Get Smart" ($112MM) substantially outperformed "Love Guru" ($30MM) for the four week period ended July 17, 2008. The intra commodity spread would have greatly reduced the variance for the studios co-finance partners.

It is a common occurrence for different films to compete for the same audience either on the same or successive weekends. DBOR futures would for the first time ever enable a film fund to develop a week to week portfolio diversification strategy as much as six months in advance.

iii. Theater Owners

The number of moviegoers and theater screens/seats on any given day is finite and creates a competition between film titles and film exhibitors (aka movie theaters). The problem of exhibitor competition is most pronounced for exhibitors that are constrained to allocate too many or too few screens/seats to a particular film title.

For example, in 2010, the highest grossing pictures have been presented in the 3D format. Because the cost of 3D display technology is relatively high this presents a problem for smaller exhibitor chains that have a smaller percentage of their theaters converted to the 3D format than their larger competitors. These theater owners would like to economically benefit from a greater share of the 3D market than their 3D seating capacity enables because 3D ticket prices are generally $2 - $5 higher than for traditional format (non-3D) films.

Consider this specific case: a small theater chain that generally has 1% of the exhibition market may only have 0.5% of the exhibition market for 3D format films. In these cases, the theater owner loses market share in 3D format films like "Avatar" and "Alice in Wonderland" to its larger competitor because it simply does not have enough seats to sell.

DBOR futures allow the exhibitor to manage this seat inventory problem. If a film like "Avatar" or "Alice in Wonderland" is a runaway success, the small theater suffers an 'opportunity cost' that can be offset by the purchase of contracts.

By way of example, a simplified transaction would proceed as follows:

The theater owner above has 1% of the exhibitor market, but only 0.5% of the 3D format market and is concerned that his business will be negatively impacted if the film earns more than the $200MM that the market currently expects. Indeed, if “Alice” earns $300MM, his theaters will be sold out of “Alice” and that extra value means that many moviegoers will not be coming to his theaters to view his regular format films.

To protect against this outcome, this theater owner purchases 5,000 “Alice” DBOR contracts (5,000 contracts * [1/1,000,000] = 0.5%). If “Alice” does outperform current market expectations and earns $300MM, then this theater owner will have offset $500,000 of his opportunity cost due to lost seat sales (5,000 contracts x [$300.00-$200.00]=$500,000).

It is worth noting that the theater owner might have achieved a similar financial offset by establishing short hedges on the films he’s showing in his theaters. For example, if “Shutter Island” is negatively impacted by “Alice”, the theater owner could choose whether the hedge is best affected by purchasing DBOR contracts in “Alice” or shorting DBOR contracts in “Shutter Island”. This decision would be largely based on the relative value of each film: if the market price of “Shutter Island” reflects an “Alice” discount, then purchasing “Alice” might be the correct choice; conversely, if the market price of “Alice” reflects a 3D premium, then shorting “Shutter Island” might be the correct choice for this theater owner.

Because exhibitors receive approximately 50% of all box office revenue, the ability to manage seat inventory is a valuable financial tool irrespective of whether the hedge is effected using a long hedge (restricted seat inventory) or short hedge (excess seat inventory) method.

iv. Equity Portfolio Holders

Like other commodity futures, DBOR futures can be used to synthesize “pure play” commodity investments in an institutional portfolio. For example, an institutional investment portfolio currently holds stock in Disney, but the investment manager is concerned that a recession will cause declines both in Disney’s stock multiple as well as Disney’s theme park attendance. However, the investment manager is convinced that Disney’s 3D movie slate will outperform current market expectations due to the counter-cyclical nature of movie attendance and an increase in the number of 3D screens available to show Disney movies. Furthermore, Disney’s recent films such as “Alice in Wonderland” have continued to outperform market expectations.

Therefore, the investment manager decides to liquidate its Disney stock holdings and instead use DBOR futures to create a synthetic index of Disney 3D movies. This will give the manager a “pure play” in the box office results of Disney’s 3D films.

To implement this strategy, the investment manager first liquidates $12MM of Disney stock and then looks to see which Disney 3D films are currently listed for trading at the Cantor Exchange. The manager sees that there are three such films, each being released at different times of the year – a summer release, an October release and a holiday season release. The manager decides to allocate his $12MM equally among the three films by investing $4MM in each.

For the purpose of our example, let's assume that the summer, October and holiday releases have DBOR contract prices of $200.00, $50.00 and $100.00 respectively. The manager is able to quickly calculate that he needs to purchase 20,000 contracts of the summer release ($4MM/$200.00=20,000 contracts), 80,000 contracts of the October release ($4MM/$50.00=80,000) contracts, and 40,000 contracts of the holiday release ($4MM/$100.00=40,000 contracts).

Because these contract quantities exceed the speculative position limits for the respective DBOR contracts, the investment manager must apply for a 'hedge exemption' with Cantor Exchange. After interviewing the investment manager and documenting his synthetic index program, Cantor Exchange's compliance department grants the exemption and the investment manager is now able to implement his program.

d. Other Examples of DBOR in Hedging Transactions

Examples of other expected hedging uses are as follows:

1. A cable television company has entered into a licensing agreement to purchase the rights to a new film prior to its theatrical release. Its direct cost under the licensing agreement is tied to the dollar amount of box office receipts, although its revenues from its own showing of the film are fixed. To hedge its risk the cable company would buy the futures contract. If the box office receipts are high, the cable company would exit the futures position at a profit, offsetting the higher cost that it is obligated to pay under its (cash) licensing agreement.

2. A fast food restaurant chain has entered into a licensing agreement with a film distributor that is based in part, on box office receipts. Its revenues may not increase above a certain amount from the sale of meals regardless of how large the box office receipts are. The fast food restaurant would sell the futures contract in order to hedge its direct exposure of higher box office receipts.

3. A restaurant that is located immediately next to a movie theater has a historical and predictable pattern of serving 10% more meals during the opening weekend of a popular film. The restaurant owner sells the box office future. If the box office receipts futures contract declines in value, the restaurant owner earns a profit on its futures position off-setting the loss that it suffered due to decreased after-movie diners.

It is clear from the above examples that there are a variety of commercial interests that could reasonably be expected to use the DBOR contracts for hedging purposes.

IV. Regulatory Issues

a. Core Principle 3: Are The Proposed Contracts And Their Underlying Settlement Values Not Readily Susceptible To Manipulation?

DBOR, as a cash-settled contract, is not readily susceptible to manipulation. Commission Guideline No. 1 instructs that a market applying for approval of a cash-settled contract must demonstrate that "cash settlement of the contract is at a price reflecting the underlying cash market, will not be subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely."

Opponents of box office receipt contracts have raised several objections under the general rubric that listing the DBOR contracts would violate the Act because the contracts are readily susceptible to manipulation. Opponents state that "the complete lack of any legitimate economic pricing before the Rentrak numbers are announced prevents any ability to even identify a manipulated price." However, in the case of many contracts, centralized futures trading is the best, or only, indicator of the price of the commodity prior to settlement.

As in any other futures market, the price is discovered through the trading of individual traders who may have particularized information or market opinion. That is translated in the market to a price. That is the price discovery mechanism and why futures markets are used for price basing. In this regard, there are a host of sources of information available to individual traders, including views on film genre, participating talent, release calendar, weather patterns, ticket prices, general economic, demographic and attendance trends, as well as the historical performance of comparable films. The trades of many market participants with different views on these factors, trading in a centralized market, result in a price being discovered.

The final settlement value of a DBOR contract represents the movie ticket purchases of millions of American consumers over a period of approximately four weeks. These purchases are reported by movie theaters, tabulated by Rentrak Theatrical, and published by studios. Therefore any effort to manipulate the DBOR contract's final settlement value would require tens of thousands of ticket sales to be under or over reported. It is hard to accept that such a large scale reporting gap could go undetected by all these commercial entities. For example, studios compare pop-corn and soda sales to ticket sales as a check against under reporting. Even if such a fraud was attempted using box office futures, the beneficiaries of any such manipulation of the final settlement value would be quickly detected by Cantor Exchange, the NFA, and the CFTC. As Lionsgate's Mr. Burns indicated in his letter to the House Agriculture Committee, "Lionsgate is comfortable that the market for futures on box office receipts can be adequately policed regarding material non-public information and attempted market manipulation. The Cantor Exchange, under the CFTC's rules, will restrict trading by those with material non-public information relating to film releases."

Opponents also state, “exhibitors . . . could either intentionally or accidentally misreport their data.” However, that is always the case where a cash settlement price is constructed using data accumulated from various sources. The NFA and the Commission have experience in market surveillance to address such a situation should it develop.

Importantly, the DBOR contract is settled to a verifiable cash settlement price that is calculated by an independent, third-party information aggregator. The cash settlement price is determined by consolidating actual box office revenues. The resulting price is subject to audit and verification if there is a dispute as to its accuracy.

Cantor Exchange has shared its weekly verification methodology with Commission Staff. Since this process has begun, Cantor has been able to verify that the distributor reported box office number is within a single tick ($250,000) of Cantor’s independent box office estimate based solely on Rentrak’s electronically reported numbers. This documented process gives us confidence that distributors do report box office results with material accuracy and that these numbers are not subject to an arbitrary determination at the sole discretion of the distributor.

Manipulation is often associated with trading on material, non-public information. Clearly, certain institutions that may have an economic interest in hedging with DBOR contracts will have access to material non-public information relating to the underlying film title. This is not different from the situation in other public markets where trading activity is walled off from those who have material non-public information.

Currently, the entertainment industry has no such barriers and has expressed concern about how such barriers might impact their operations. Cantor Exchange would like to emphasize three key points on this issue: (1) information barriers will not be required unless an entity is actively using the market; (2) having knowledge of the artistic content or prior viewing of a film does not constitute material non-public information; and (3) Cantor Exchange will work to assist any firm that wishes to prohibit its employees from trading. For example, Cantor Exchange does not permit trading by any employee of a FINRA or CFTC regulated entity unless that employee has the written permission of his employer’s compliance department.

b. Core Principle 5: Are Position Limits Or Position Accountability Limits Necessary And To What Degree?

Cantor Exchange has always maintained that position limits are an integral part of the DBOR contract design.

The DBOR Contract Terms and Conditions places limits on the number of Contracts that may be held by hedgers at 30% of the underlying position on which such hedge exemption is based and under no circumstances shall any hedge exemption be granted that would permit a Participant to hold a position exceeding 300,000 DBOR Contracts.

In this way, Cantor Exchange does not allow those with a controlling long interest in the underlying film titles to convert their interest through DBOR Contracts such that their net exposure was short.

c. Cantor Exchange Compliance and Surveillance

Much of the exchange's market surveillance activity takes place as part of a contextual review process and is conducted directly by the Compliance Department on a daily basis. The objective of the contextual review is to assimilate data from Cantor Exchange's reporting systems and determine if further inquiry is required. Cantor Exchange has reviewed its proposed compliance and surveillance procedures with Commission Staff. Although specific details of the exchange's compliance and surveillance process remain confidential, the Cantor Exchange will monitor industry news, trading by industry affiliates, unusual trading patterns, position concentrations, and hedging activity on a regular basis to ensure that market integrity is not compromised.

Cantor Exchange has also entered into a regulatory services agreement with the National Futures Association (the "NFA") under which the NFA will conduct trade practice surveillance and market surveillance with respect to DBOR's contracts. It is important to note that the NFA is a self-regulatory organization with many years of experience conducting surveillance for market manipulation and trade practice abuses. Nothing in the DBOR contract suggests that the cash settlement price of the contract is readily susceptible to manipulation or that the NFA will not be able to perform the regulatory surveillance appropriate to the market or the particular products proposed to be listed thereon.

The Cantor Exchange market surveillance team is tasked with identifying any 'information imbalances' that may exist in the DBOR futures market by (1) pre-identifying abusive trading opportunities and then correlating these opportunities with actual trading behavior and (2) identifying trading behaviors that on their face indicate the possibility of an information imbalance even if an underlying cause has not been pre-identified.

In September 2009, Cantor Exchange shared with Commission Staff 15 different instances where an information imbalance exists in the underlying film titles of DBOR contracts. These correspond to those times where Cantor Exchange has pre-identified abusive trading opportunities. The Cantor Exchange market surveillance team in Los Angeles identifies the underlying events daily and then sends this information to the Cantor Exchange electronic compliance repository. This information can then be correlated as needed with the underlying trading data. Any trading patterns identified by either the NFA or Cantor Exchange that appear to be consistent with this information can be correlated and investigated. Note that no abuse will have occurred unless a Participant executes a trade or holds a position in an attempt to benefit from the information imbalance.

The 15 items were ranked as to the significance of their impact on market pricing. Although specific items that Cantor Exchange expects to examine remain confidential, the exchange has publicly stated that it will examine trades that occur from the release of a film through the first 'official' statement of opening weekend box office results; any short positions held prior to the announcement of a reduced P&A budget or delayed release date; short or long positions held in case of an unexpectedly small/large theater count for a film about to be released.

V. DBOR Contract Effects on the Motion Picture Industry

Opponents to DBOR contracts raise a number of objections that the motion picture industry will suffer harm from the listing of the DBOR contracts. For example, the opponents to the DBOR contract state that trading in the contract might "negatively affect financiers' and audiences' pre-release perception." It continues that because the breadth of distribution can be revised, the DBOR contract could affect the distributor's ability to secure screens. However, it is just as likely that an increase in price in the DBOR futures could contract lead a distributor to increase the number of screens. This is the benefit of price discovery—economic allocation of resources can be made based upon the anonymous pricing information that is revealed through trading in a centralized market.

The argument that box office receipt contracts could negatively affect audiences' pre-release perception completely ignores the enormity of other pre-release information in which the potential viewing audiences is already immersed. Media coverage for motion pictures is overwhelming both during production and prior to a film's theatrical release. Moreover, many online ticket sales outlets expose moviegoers to critical websites such as "Rotten Tomatoes" and unedited fan reviews at the point of sale. These reviews directly address a moviegoer's viewing experience. Given these other information outlets, it strains credibility to believe that the reported price of a futures contract could significantly alter audience perceptions.

Opponents also object that if such a contract is approved, distributors will be required to police their employees for insider trading. However, many firms have employee codes of conduct that prohibit the misuse of company confidential information and every publicly traded company has programs to address trading by employees. These costs are a common cost of doing business and are not unique to the motion picture industry.

Finally, opponents object to the possible "legal risk and expense for an industry that does not intend to use the Contracts" from "strike suits by disappointed traders" and from Commission or Department of Justice investigations. It is clear that every business would prefer to operate in an environment where it need not be concerned about potential investigations or law suits. However, Congress has provided clarity with regard to the nature of and remedy available for damage suits brought by private parties for a violation of the Act. Under section 22 of the Act, a private right of Act may be brought for damages suffered as a result of a violation of the Act by a person: 1) who receives a fee for rendering trading advice; 2) who acts as a futures intermediary; or 3) who purchases or sells a contract the price of which he has manipulated. The damages in such an action are limited to actual damages proximately caused by the violation. Due to the guidance provided in section 22, “strike suits by disappointed traders” has not heretofore been a problem commonly observed in the futures industry. There is no reason to assume that contracts on box office receipts will depart from that pattern.

Furthermore, there is no particular reason to assume that investigations by the Department of Justice or the Commission would be undertaken without an adequate factual predicate supporting the government’s commencement of an investigation.

VI. Summary

Based on the above, Cantor Exchange believes that the DBOR futures contracts that it proposes to list meet the criteria under the Act for approval by the Commission. In this regard, Cantor believes that although futures contracts on box office receipts are innovative, they offer many in the motion picture industry the ability to hedge their commercial risks and will be used for price discovery purposes. Although not all interests in the motion picture industry may be inclined to trade the contracts for these purposes, others stand to benefit greatly from their availability. This has often been the case at the time that a new class of futures contracts has been introduced.

Enlarging the potential sources of film financing will lower the cost of making a film, help create American jobs, and contribute to stabilizing large and small members of the industry alike as they face the challenge of raising financing in the high-risk endeavor of film making. A marketplace that enables film makers to raise capital at a known price will reduce risk and increase the likelihood of bringing their product to market.

We therefore respectively request that the Commission approve our application for Contracts on Domestic Box Office Receipts.