

## **Concurrence of Commissioner Bart Chilton**

**To the**

**Application of Media Derivatives , Inc. for**

**Designation as a Contract Market**

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I reluctantly concur in the Commission's action to designate Media Derivatives, Inc. (MDEX) as a contract market pursuant to Sections 5 and 6(a) of the Commodity Exchange Act (CEA) and Part 38 of the Commission's Regulations.

I regret that strictures within the CEA force the Commission to act on the eve of a Congressional hearing in this matter. I believe that the agency would benefit from the hearing's fulsome and comprehensive deliberation, in a public arena, on the significant concerns surrounding this matter.

The CEA, however, requires that the agency approve or deny, within a specific time period, an application for contract market designation. If an entity satisfies all designation criteria required in the Act, and represents that it can comply with all core principles, there is no legal basis for denial of such application. In this instance, MDEX has adequately satisfied such criteria and representations. The statutory time clock has run on the contract market application, and accordingly, the Commission has no other recourse, legally, than to approve the contract market designation.

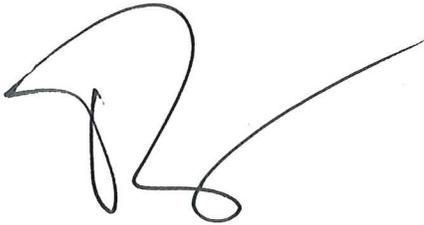
That is, however, a very different question from whether or not the Commission will approve the contracts that MDEX has indicated it intends to offer. On March 9, 2010, MDEX submitted for agency approval certain "box office return" contracts. Under Commission regulations, the agency currently has until June 7, 2010 to approve or disapprove those contracts. Disapproval is contingent upon an affirmative Commission finding that the contract violates a provision of the Act or Regulations.

While I certainly promote innovation in futures markets, I remain adamant that I will not cast a vote to approve a contract that I believe serves no legitimate risk management purpose, that cannot be used to effectively price a commodity, or

that is inherently susceptible to manipulation,. Unless and until I am sure that a contract satisfies the fundamental requirements under the Act, I won't vote for it.

First and foremost, while the Commodity Futures Modernization of 2000 deleted the "economic purpose" test that had erstwhile been required of contract approvals, that Act (importantly) did not change the fundamental mandate of the CFTC that we are to oversee markets that provide a means for "managing and assuming price risks" and "discovering prices." Nor did it alter the Commission's core function of protecting consumers against price manipulation. The application filed by MDEX for "box office return" contracts raises significant concerns for me in each of these critically important areas.

At this point in time, I have not heard any arguments to persuade me that "movie futures" generally can overcome some fundamental design flaws. I am open to reasonable debate on the issue, but at a minimum these issues would have to be addressed in order for me to approve any such a contract.



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Bart Chilton, Commissioner

4/16/10

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Date