SUMMARY OF TESTIMONY OF SCHUYLER MOORE FOR SUBCOMMITTEE ON GENERAL FARM COMMODITIES AND RISK MANAGEMENT HEARING APRIL 22, 2010

1. I am an adjunct professor at the UCLA School of Law and the UCLA Anderson Business School, teaching film financing. I am the author of a book called The Biz: The Basic Business, Legal, and Financial Aspects of the Film Industry and a treatise called Taxation of the Entertainment Industry.

2. I may have started this box office exchange (the "Exchange") concept in an article I wrote titled "Raising Film Financing by Betting the Box," that was published in the Entertainment Law Reporter in May, 2003. A copy of that article is attached.

3. Value of the Exchange for Hedging for Studios

3.1 Hollywood has hedged performance risk a myriad of ways for many years.

(a) Co-Productions among studios (sharing the budget and splitting the world between domestic and foreign);

(b) Split-rights transactions, where all foreign rights are pre-sold to a consortium of foreign distributors;

(c) Pre-sales, where film rights are sold for up front fixed payments (and less on the back end); and

(d) Slate financing transactions, where investors co-finance 50% of the cost of a slate of films for 50% of the profits.

3.2 This Exchange offers a transparent, efficient hedging technique. It will vastly lower hedging transaction costs. Once the studios understand it, they will embrace it strongly in lieu of inefficient hedging techniques they currently use.

3.3 One of the submissions by the MPAA stated that the studios would not use the Exchange to hedge due to contractual and practical constraints on disparaging their own film, and hedging would be viewed as disparagement. However, this identical argument could be made with respect to every form of hedging, and as set forth above, the studios have used various hedging strategies for years.

4. Value of the Exchange for Investing in Hollywood

4.1 Investors have been taking the significant risk (for both profit and loss) of investing in films for many years:

(a) Investing in stock of film companies, including options, calls, etc.;

(b) Investing in particular films;

(c) Investing in slate financing transactions (over $10 billion of such investments were done from 2002-2008).

4.2 This Exchange offers a transparent, efficient investing technique. It will vastly lower investing transaction costs. Most importantly, it completely eliminates the fear of opaque "Hollywood accounting," even if unjustified. Just as an owner of public stock can look in the paper to see the value of their shares, the owner of a position on the Exchange could look at the box office results in the paper and know if the value of their investment.

4.3 The Exchange is not gambling, since investors can make informed decisions based on what they think of the prospects of a particular film. It is no more gambling than owning stock is.

5. True Reason for Studio's Objection to the Exchange

5.1 I believe that the real reason for the knee-jerk opposition of the studios to the Exchange is their fear that there will be widely publicized "criticism" of a film in the form of the quoted price on the Exchange. If a film is trading "low," the public might not want to go see that film.

5.2 The answer to this concern is that there is already widely available "buzz" (if not a roar) of public criticism (good and bad) on films, including numerous popular blogs (aintitcool.com and rottontomatoes.com) and, most importantly, the Hollywood Stock Exchange (hsx.com), which has run exactly this type of Exchange for years (but with no real cash), and Intrade runs this type of Exchange for actual cash. Thus, there has always been and will always be a plethora of publicly available criticism (both good and bad) on films. In all events, fear of bad buzz is not grounds for stymieing new, efficient means of investment.

5.3 In addition, any unwanted bad publicity from short positions on some films will be made up for by good publicity from long positions on other films.

6. Alleged Fear of Manipulation

6.1 The studios have mentioned fear of manipulation as a grounds for objection, but this can't be their real concern since they don't have to participate in the market at all, so they could be completely indifferent to manipulation. Indeed, when the issue is raised at all, the risk is that the studios, not the public, will manipulate the Exchange.

6.2 The only possible manipulation would be if a studio went short on the Exchange and then intentionally tanked its own film (e.g. "The Producers"). But this

will not happen in practice, since it is highly unlikely that the studio will make more profits on the Exchange than it loses on the film and in future good will (and its stock price).

7. Alleged Fear of Insider Trading

7.1 The studios have mentioned fear of insider trading as a grounds for objection, but once again, they don't have to participate in the market at all, so they could be completely indifferent to any alleged insider trading.

7.2 In any event, I don't believe that insider trading laws apply to futures exchanges, and for good reason; oil and studio executives really don't have much better information than what is otherwise widely known and available, and their guesses of future oil or box office prices are often wide of the mark. The truth is that no one knows how well a film will perform before it opens. As the great screenwriter William Goldman said, "No one knows anything," and that certainly goes for the prognostication of box office results.

7.3 If insider trader laws applied here, then farmers would not be able to trade corn futures, since they would be "insiders."

8. Alleged Fear of Increased Piracy

8.1 One of the objections raised was that someone buying a short position would attempt to pirate the film in advance and put it on the Internet to reduce box office results. The actual impact on box office results of such piracy are so miniscule that no one would be seriously tempted to attempt piracy for this reason.

RAISING FILM FINANCING BY BETTING THE BOX

Schuyler M. Moore

This article suggests a model for film companies to (a) limit their risk on films and (b) raise film financing. But first, some background: Many film companies want to reduce their risk on films, particularly large budget ones. Reducing risk avoids the company going down for the count if the film flops, and it permits the company to spread precious cash over a wider number of films. Perhaps the most common way to achieve risk reduction at present is to enter into split-rights transactions, where two or more companies co-finance a film, with one taking domestic rights, and one or more taking foreign rights. Even when these deals involve a sharing of profits between the two territories, the net result is to give valuable distribution rights, and about half the profits, to competitors. This approach has become widespread, including for "Titanic," "Cast Away," "The Hours," "Tomb Raider," "XXX," and "Terminator 3." While this approach achieves the desired goal, it is somewhat like selling off the family jewels as a hedge against volatility in the diamond market. Film companies are in the business of owning and exploiting film rights, and if there were a logical way to reduce risk while keeping the rights, they would jump at it.

Historically, a great way to hedge risk while retaining film rights was to raise equity through public or private film funds, starting with Silverscreen for Disney in the 1980's. But these funds have long gone the way of the dinosaur. While it is common to blame the demise of these funds on the loss of the tax deduction for "passive losses" under the 1986 tax act, the passive loss rules generally do not apply to corporate investors; if the transactions made sense, there would still be a well-funded market for them. The true reason for the absence of these funds is that most funds felt victimized by opaque Hollywood accounting. Just watch investment bankers shudder when you offer them a share of a film's net profits. Eddie Murphy's great quip – calling a share of net profits "monkey points" – best summarizes the vast public perception of what it means to invest in films. It is for this reason that the U.S. equity market for film financing has dried up.

Yes, there are still some equity investors out there, but they are far and few between, ranging from random rich star-struck investors to German or U.K film funds. But because of Adam Smith's immutable law of supply and demand, these equity sources often ask for more than film companies are willing to pay. It behooves film companies to come up with a solution that vastly increases supply, bringing prices down, rather than muddling through looking for needles in haystacks. The strong film companies can, of course, raise debt financing, but aside from outright default, debt does not shift risk. What is needed is equity financing.

So here's a suggestion for an approach that might revitalize the U.S. equity market for films: End the accounting miasma, and tie the investors' return directly to a

percentage of the gross domestic box office receipts to the theaters ("Domestic Box") for the film. This approach raises the curtain of negativity and doubt that surrounds Hollywood accounting and leaves a spotlight on the glamour and thrill of "owning a piece" of a film. Talk about transparent accounting – all the investor would have to do is open the trades. Accounting statements and audits would be history. The film company would pay the investors the specified percentage of Domestic Box, even though there is only an indirect link between Domestic Box and the film company's ultimate net profits. From the film company's perspective, this transaction hedges risk, which is exactly what it wants to do. To some extent, the transaction resembles a simple wager about the box office results of a film, and this is something everyone can understand to the point of being common coffee klatch chatter, so it would open the investment door to the general public. There is even an on-line service (BetWWTS.com) that allows the public to place bets on the Domestic Box of large films, and film companies should be tapping into this potential financing source. It could be done across a slate of films or film-by-film, with investors placing their bets on particular films of their choice. Once the market became efficient, investors could place their bets and invest up to perhaps the day before a film's release.

A simple example may best illustrate this suggestion: Assume that a studio wants to produce a $100 million film, but it wants to limit its risk to $50 million. One approach would be to sell off all foreign rights to one or more other film companies for $50 million, but it will lose foreign rights forever to competitors and with it about half the potential profits from the film. Instead, it raises $50 million of equity with a film fund that provides the investors with a payment equal to 50% of the Domestic Box. If the film flops and comes in with a Domestic Box of $10 million, the studio pays the investors $5 million, keeps the $45 million balance of the investment, and is happy. If the film has a Domestic Box of $100 million, the studio pays the investors a break-even payment of $50 million, and the studio is happy because it will keep worldwide rights and profits to a successful film. If the film scores big and has a Domestic Box of $200 million, the studio will pay the investors $100 million, and the studio is *still* happy because paying an extra $50 million to the investors is cheaper than losing all foreign rights and half the profits on this blockbuster forever to competitors, which was the alternative.

More good news all around is the accounting and tax treatment of the transaction. For accounting purposes, the investment will be treated either (a) as a reduction in the cost of the film, with any payment owed to the investor being added to the cost of the film when accrued or (b) as equity, thus lowering the film company's debt/equity ratio, which is an even better result than off-balance sheet financing, which has no impact on the company's debt/equity ratio. For tax purposes, the investment should be treated as a tax-free equity contribution. There is some risk of the transaction being treated as a taxable sale of a future income stream, but this result can be avoided by structuring the transaction as a partnership for tax purposes with the film company. Any loss should be deductible to the investors as an ordinary loss, although any profit should be taxable as ordinary income, not capital gain.

In all cases, the transaction will be treated as the offering of "securities" by the film company, so it must be careful to comply with the securities laws. This is the one significant hurdle to creating enough volume for an efficient market. In the beginning, the easiest approach is to use only "private offerings" to "accredited investors." If the market and size of the offering justifies it, the next step would be to do a registered offering, perhaps even with public trading. (Imagine having to add "Film Futures" to the Chicago Exchange.)

In order for these transactions to work, the investment must be refundable with interest if the film does not end up with the promised key cast and director or does not get a theatrical release on a minimum number of screens by a specified date. Because the film company will be required to make payments to the investors (whether due to the film not meeting the promised conditions or based on Domestic Box) regardless of actual net profits received by the film company, the company will have to either (a) have a strong enough balance sheet to make the investors happy or (b) hold the investment in escrow until the Domestic Box results are in, precluding the investment from being used to cash flow production. Even if the investment is escrowed, the investors still will be relying on the film company to pay any amounts owed to them in excess of the investment if the Domestic Box is high enough. These factors militate toward making this transaction easier for the studios (the rich get richer), but it is not beyond the reach of well-heeled independents.

Would it work? Bet on it.

SUMMARY BIOGRAPHY

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EDUCATION

Legal: University of California, Los Angeles
Ranked first in graduation class of 1981
Order of Coif
Emphasis in tax

College: University of California, Los Angeles
B.A. Degree awarded in Psychology, June 1978
GPA: 3.9
Summa Cum Laude
Phi Beta Kappa
Psychology Honors Department
College of Letters and Science Honors Department
Dean's Honor List throughout college

ADJUNCT PROFESSOR:

UCLA Law School: Entertainment Law, 1997 to 2006; Motion Picture Financing, 2007 to present.

UCLA Anderson School of Management: Entertainment Law, 2003 to present.

UCLA Extension Program:
1995: The Biz: Basic Business, Legal, and Financial Aspects of the Entertainment Industry

University of San Diego Graduate Tax Program:
1986: Using Computers to do Tax Planning

AUTHOR:

Books:

The Biz: The Basic Business, Legal, and Financial Aspects of the Film Industry, published by Silman-James Press.
Taxation of the Entertainment Industry, treatise published by CCH.
What They Don't Teach You in Law School, booklet published by William S. Hein & Co.

Chapters:

- "The Film Industry," a chapter in Entertainment Law, published by New York Bar Association.
- "Taxation of Foreigners and the Entertainment Industry," a chapter in Tax Settlements and Negotiations published by Research and Markets.

Articles:

- "China's Inevitable Move into Hollywood" Viewpoint in Hollywood Reporter, January, 2010.
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- "The German Tidal Wave: German Investment in Hollywood Movie Production," Entertainment Law Reporter, July, 2000.
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- "Contingent Compensation for Talent," Entertainment Law & Finance, 1997 (two-part series).
- "Four Ways to Calculate Net Profits (Depending on Who's Asking)," Entertainment Law Reporter, May, 1997.
- "Accounting for Profits in the Movie Business," Entertainment Law Reporter, January, 1997.
- "Tax Issues in Movie Transactions," Entertainment Law & Finance, 1997 (three part series).
- "Creative Strategies for Debt Workouts," The 1997 USC Tax Institute on Federal Taxation.
- "A Practitioner's Primer on Natural Law," Southern California Interdisciplinary Law Journal, 1995.
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• "Protecting Your Salary From Tax Bites Abroad," The Hollywood Reporter, August 9, 1988.
• "Taxation of U.S. Owned Foreign Corporations," The Journal of Corporate Taxation, Winter 1988.
• "Saving Money Through Foreign Tax Planning," American Premiere, October 1988.
• "Form v. Substance," The Journal of Taxation, February 1987.
• "Application of Section 338 to the Purchase of a Corporate Partner after the Tax Reform Act of 1984," The Journal of Corporate Taxation, Summer 1986.
• "Analyzing the Complex New Proposed Regs on Imputed Interest and Original Issue Discount," The Journal of Taxation, July 1986.
• "Guidelines for Coping with the Final Section 704(b) Regulations," Journal of Taxation of Investments, Summer 1986.
• "Deferred Compensation," The Practical Accountant, January 1986.
• "Analyzing a Tax Shelter," The Practical Accountant, October 1985.
• "Imputed Interest and Original Issue Discount: The Logical Extreme of a Fundamentally Flawed Tax System," The 1986 USC Tax Institute on Federal Taxation.
• "Compensation Planning: A Mathematical Analysis and Reference Guide," The 1985 USC Tax Institute on Federal Taxation.
• "New Regulations Violate Regulatory Flexibility Act and Executive Order 12291," "A Proposal to Reduce the Complexity of Tax Regulations," "The Section 704(b) Regulations Are Invalid," "From Each According to His Ability," and "Does Progressive Taxation Violate Equal Protection?" Guest Editorials and Viewpoints for Tax Notes.

SPEAKER:

Academy of Television Arts & Sciences:
2006: Video on Demand

ALI-ABA:
2009: "The Film Deal – A Transactional Analyisis
2007: "Domestic and International Tax Planning for Film Companies"
2005: "Film-Related Provisions of 2004 Tax Act"
1997, 1998, and 2003: "Tax Planning for Talent"

American Film Marketing Association:
2001: "How To Put Your Movie Together"

Atlas Information Group International Film & TV Conference
2010: "Current State of Film Financing and Future Sources of Finance"
2009: "Where are the New Sources of Financing Coming From?"

2008: "Emerging Trends in Motion Picture Finance"

Beverly Hills Bar:
2009: "Entertainment Bankruptcies and Secured Transactions"
2009: "The Year In Review: Update on Entertainment Law and Business"
2008: "Raising Private Equity for Indie Films"
2004: "Entertainment Bankruptcies"
2003: "Sex, Lies, and the Right of Publicity"
1996: "LLC's, LLP's, LP's, Etc."
1994: "The Joy of Partnerships"
1993: "Drafting Partnership Agreements in the 90's"
1989: "Structuring Foreign Investment in the Entertainment Industry"
1987: "Motion Picture Financing"
1986: "The New OID and Imputed Interest Regulations"

California Continuing Education of the Bar:
1987: "Advanced Real Estate Tax Planning," "Choice of Entity," "Business Planning Under the Tax Reform Act of 1986," "Original Issue Discount and Imputed Interest"
1986: "Impact of the Final Partnership Allocation Regulations," "Lawyer's Computer Conference"

California Lawyers for the Arts:
2007: "How to Distribute and Protect Your Film"
2006: "Film Financing"
2005: "Understanding Contracts"
2004: "Equity Financing by Advertisers"
1998: "Film Financing"
1997: "Film and Video Seminar"

California Society of CPAs:
2008: "Tax Potpurri/Update"
2006: "Entertainment Tax Updates"
2003: "News From the Front: Legal Developments"
2002: "Annual Entertainment Tax Developments"
2001: "Hot Entertainment Tax Issues; The Only Certainty is Sex and Taxes"
2000: "Distribution of Films on the Internet"
1995: "IRS Hit List for the Entertainment Industry," "Employee v. Independent Contractor"
1994: "Handling IRS Tax Audits," "International Taxation of the Entertainment Industry"
1993: "Entertainment Taxation"
1992: "Protecting Licensors and Talent in Entertainment Bankruptcies"
1991: "International Film Financing"
1988: "Corporate Acquisitions, Liquidations, and Reorganizations"
1987: "Choice of Entity and How to Get There," "Taxation of Foreign Transactions by U.S. Persons," "The Final Partnership Allocation Regulations"

California State Bar:
2005: "Financing Films with Advertisers and Video-on-Demand"
1995: "Tax Aspects of the Entertainment Industry"

1993: "Drafting and Negotiating Selected Business Agreements"

California State University, Los Angeles:
1994: "Taxation of the Entertainment Industry"

Century City Chamber of Commerce:
2002: "Guerilla Film Financing"
2002: "Film Distribution"

Consumer Electronics Show
2010: "Venture Funding, Investment & Mergers" (on new media)

Digital Hollywood
2010: "Venture Funding, Investment, and Mergers"
2007: "Reinventing the Strategy, the Platforms, and the Revenue"

Film Finance Summit
2010: "Tax Planning for the Film & TV Industries"

Institute for International Film Financing
2006 "Emerging Trends in Film Financing"

International Law Association:
2003: "International Copyright"

IRS Entertainment Industry National Conference:
1995 and 1997: "Taxation of the Entertainment Industry"

Japanese American Business Association
2007: "Japanese Entertainment in Hollywood"

Los Angeles County Bar Association:
2009: "Economics – Do We Need a Bailout?"
2004 "Entertainment Tax Developments" for Annual Tax Night
2003: "The Future of Film Financing"
2001: "Producing Internationally: The Benefits, Hurdles, and Pitfalls"
2001: Keynote Speaker for Annual Tax Award Luncheon
2000: "If Hollywood and Silicon Valley are Allies, Why the Heavy Artillery?"
1998: "Film Financing"
1995: "Hot Tax Accounting Issues in Audiovisual Entertainment"
1992: "Entertainment Tax Audits," "New Developments in Entertainment Taxation"
1991: "Creative Film Financing," "Studio Pick-Ups," "Bank Loans and Completion Guaranties for Films"
1990: "Foreign Distribution of Films," "Film Financing," "Foreign Investment in the U.S Entertainment Industry," "Taxation of Interest," "Basic Partnership Taxation," "European Film Co-Productions: Now, 1992, and Beyond"
1988: "International Film Financing," "Tax Aspects of Motion Picture Production and Distribution," "Tax and Corporate Aspects of Corporate Buy-Outs and Defensive

Strategies," "Planning for Foreign Ownership of Commercial and Industrial Ventures"
1986: "Living With The Final Section 704(b) Regulations," "Partnership Developments"

Media Law Resource Center and Southwestern Law School
2007: "The Fair Use Defense in the Digital Age"

NAACP
2010: "Film Financing"
2009: "The ABC's of TV and Film Financing: Raising the Capital"

Networking Seminars
2008: "Production Seminar for Indies; Financing the Production"

Paul Kagan & Associates:
1999: "The Art of the Global Deal"
1998: "International Movie Financing"
1995: "Motion Picture Production & Finance"

Producers Guild of America:
2000: "Financial Planning for Producers"

Quest Forum
2008: "Broadband Rights and Distribution Content"

UCLA Entertainment Symposium:
2010: Keynote Moderator with Morgan Freeman and Lori McCreary
2009: "How the Entertainment Industry if Being Affected by Globalization"
2008: "Avoiding Pitfalls in Film Financing"
2005: "Film Financing"
2003: "Co-Productions"
1999: "Creative Financing of Studio Films"
1998: "Alternative Sources of Financing"
1996: "Financing and Distribution of Independent Motion Pictures"
1993: "International Film Co-Productions"

UCLA Extension Symposium on Entertainment Tax and Finance:
1997: "Recent Developments in Foreign Taxation"
1990: "Pushing The Envelope"
1988: "Foreign Production and Distribution"
1987: "Foreign Tax Planning for the Entertainment Industry"

UCLA Film School Producers' Program:
2002 through 2010: "Film Financing"

USC Entertainment Law Institute:
2005: "Globalization of the Entertainment Industry"
2000: "Emerging Financial Structures"

USC Law School Symposium on Natural Law:

1994: "A Practitioner's Approach to Natural Law"

USC Tax Institute on Federal Taxation (see under "Author" for four other presentations):
2005: "Film Financing Using Section 181"
2001: "Current Issues in Entertainment Industry Tax."
2000: "Current Issues in Entertainment Industry Tax."
1999: "Stump the Panel of Experts"
1989: "Current Motion Picture Industry Tax Issues"

Woodbury University Business of Entertainment Lecture Series
2010 "So You Wanna Make a Movie?"

EXPERT WITNESS:

Court/Arbitration Testimony:
For Warner Bros: Warner v. Golden Channels (licensing dispute) Federal Court, 2005.
For Warner Bros: Warner v. New Regency (film dispute). Arbitration, 2003.
For Disney: Wolf v. Disney (participant dispute). California Superior Court, 2005.
For Comerica: Comerica v. Greenlight (successor liability dispute). Arbitration, 2010

Depositions:
For all cases involving testimony, listed above, other than Comerica case.
For Disney on "Who Wants to be a Millionaire" litigation. 2007
For Intertainment in Intertainment v. Franchise. 2004

Reports:
For all cases involving court (but not arbitration) testimony or depositions, listed above.
For Bedford Falls on "The Last Samurai" litigation. 2007
For New Line on Peter Jackson "Lord of the Rings" litigation. 2007

Designations:
For all cases listed above.
For Miramax in licensing dispute.
For Paramount in Buchwald v. Paramount.

MISCELLANEOUS

Featured in article in Southern California Super Lawyer Magazine (February, 2010)
Chairman of the Entertainment Tax Subsection of the Los Angeles County Bar Taxation Section from 1988-1991
AV rated by Martindale-Hubbell
Admitted to Tax Court
Listed as one of top 100 Entertainment Lawyers by Hollywood Reporter, 2007-2009.
Listed as one of top 100 California Lawyers by Daily Journal in 2009.
Licensed for pilot, free-fall parachuting, and hangliding

Presidents Circle, Pacific Council

Committee on Agriculture
U.S. House of Representatives
Required Witness Disclosure Form

House Rules* require nongovernmental witnesses to disclose the amount and source of Federal grants received since October 1, 2007.

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Organization you represent (if any): N. A.

1. **Please list any federal grants or contracts (including subgrants and subcontracts) you have received since October 1, 2007, as well as the source and the amount of each grant or contract. House Rules do NOT require disclosure of federal payments to individuals, such as Social Security or Medicare benefits, farm program payments, or assistance to agricultural producers:**

Source:_____ **Amount:**_____

Source:_____ **Amount:**_____

2. **If you are appearing on behalf of an organization, please list any federal grants or contracts (including subgrants and subcontracts) the organization has received since October 1, 2007, as well as the source and the amount of each grant or contract:**

Source:_____ **Amount:**_____

Source:_____ **Amount:**_____

Please check here if this form is NOT applicable to you: X

Signature: [signature]

* Rule XI, clause 2(g)(4) of the U.S. House of Representatives provides: *Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by any entity represented by the witness.*

PLEASE ATTACH DISCLOSURE FORM TO EACH COPY OF TESTIMONY.