



MOTION PICTURE ASSOCIATION OF AMERICA, INC.

1600 I Street NW
Washington, D.C. 20006
202.293.1966

March 23, 2010

Dear Chairman Gensler:

Re: Pending Movie Futures Contracts

The Motion Picture Association of America, Inc. (“MPAA”)¹ is writing to oppose the approval by the Commodity Futures Trading Commission (“CFTC” or “Commission”) of two pending movie futures contracts. One contract, the Domestic Box Office Receipt Movie Futures Contract (“DBOR”) has been submitted to the CFTC by the Cantor Futures Exchange, L.P. (“CFEX”) in connection with its application to be a designated contract market (“DCM”) pursuant to Section 5 of the Commodity Exchange Act (“CEA”). The second contract is expected to be filed by Media Derivatives, Inc. (“MDEX”), which has also applied for designation as a contract market.

MPAA questions whether the DCM applications should be approved because they appear to be inextricably tied to movie futures contracts that may be inherently vulnerable to price manipulation. Even if the DCM applications are approved, MPAA requests the Commission not approve for trading the movie futures contracts themselves.

MPAA understands some futures contracts are submitted for CFTC approval and some futures contracts may be self-certified by a DCM as complying with the CEA. The CFTC’s web-site does not reveal which avenue has been pursued by CFEX or MDEX. MPAA urges the CFTC not to allow any movie futures contracts to be listed for trading unless the CFTC grants prior approval of the terms and conditions of such contract. Self-certification by the DCM should not be available for contracts that raise important public policy issues.

Maintaining the reputation and integrity of the movie business is of critical importance to the MPAA and its members. In our view and based on the materials available in the public record, the reputation and integrity of our industry could be tarnished by allowing trading in the movie futures contracts in a manner which allows

¹ For the record, MPAA serves as the voice and advocate of the American motion picture, home video and television industries. MPAA is a leader and advocate for major producers and distributors of entertainment programming for television, cable and home video systems. Its members include Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

them to be viewed as the economic equivalent of legalized gambling on movie receipts. We can see no public purpose in allowing these contracts to be the subject of interstate commerce. In addition, MPAA and its members fear that it will be untenable for our members and related parties such as movie theatres, banks, financial investors, producers, advertising partners, research companies, members of the public who view test screenings and all others involved to ensure compliance with the kinds of safeguards that may be necessary in light of these contracts.

Moreover, neither of the movie futures contracts would seem to serve the congressionally-defined public interests in futures trading in CEA §3(a): As the Commission itself has observed, “[c]ustomarily, hedging and price basing have been identified as the two critical functions of the commodity derivative markets.” 73 Fed. Reg. 25669, 25672 (May 7, 2008). In terms of hedging, the DBOR contract will bar virtually all hedging contrary to claims we understand CFEX to have made. By rule, major studios will be prohibited from hedging their financial risk in a particular movie because they possess material non-public information about the movies they fund and produce (see CFEX DBOR Rule IV-12(a)²). Many parties may possess such material non-public information and it will be virtually impossible for the exchanges, the Commission or the studios to enforce compliance. In terms of price basing, it is unrealistic that any commercial transactions will be based on the exchange-published prices for a movie’s potential box office prospects. In fact, MPAA is not aware of any commercial transactions that are today based on the weekly movie box office totals that are published and widely-quoted in the media.³

Instead of serving any commercial purpose, movie futures will simply allow the public to bet on whether a movie will be successful at the box office. MPAA submits that unbridled gambling, no matter how clothed, is not in the public interest which Congress found to be served by futures trading regulated under the CEA. MPAA respectfully requests the Commission not allow movie futures contracts to be traded unless or until a DCM can demonstrate that the hedging or price basing purposes of its movie futures contract.

MPAA is aware that in 2008 the CFTC published an Advanced Notice of Proposed Rulemaking (“ANPR”) on Event Contracts (73 Fed. Reg. 25669). The issues raised above with respect to movie futures contracts overlap with the public policy issues raised by the Commission itself in its ANPR that the CFTC has not resolved for event

² The MDEX contract may also ban hedging but its contract’s terms and conditions are not available on the CFTC’s web-site. If the MDEX contract does not ban hedging like the CFEX contract, it would be unclear how MDEX purports to police possible insider trading in the contract to ensure that the contract will be traded fairly and will not be susceptible to manipulation. Section 5(d)(3) of the CEA requires any DCM to list for trading only contracts that are not susceptible to manipulation.

³ The MPAA is not suggesting that it believes studios should be allowed to participate; however, absent that, the MPAA sees no commercial reality behind these instruments.

contracts nor has it sought public comment in the Federal Register on the movie contracts or other event contracts.

Given the nature of the movie contracts, MPAA respectfully requests that the Commission, at a minimum, seek public comment on these issues by publishing the terms and conditions of the movie contracts in the Federal Register. Opening these issues up to transparent public comment is the least the Commission could, and should, do under the circumstances.

MPAA would be happy to meet with you, your fellow Commissioners or your staff at your convenience to discuss these issues and our strong concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Pisano". The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

Robert Pisano
Interim Chief Executive Officer
Motion Picture Association of America, Inc.

The Honorable Gary Gensler, Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D. C. 20581

cc: Commissioner Dunn
Commissioner O'Malia
Commissioner Sommers
Commissioner Chilton