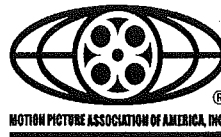




Independent
Film & Television
Alliance



NATO

18 May 2010

David Stawick, Secretary
Office of the Secretariat
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

**Re: Application of Cantor Futures Exchange, L.P. for Approval to Offer Trading of
Futures Contracts in Four Weeks of Motion Picture Box Office Receipts**

Dear Mr. Stawick:

The Directors Guild of America, Inc. ("DGA"), the Independent Film & Television Alliance ("IFTA"), the International Alliance of Theatrical Stage Employees ("IATSE"), the Motion Picture Association of America, Inc., and its member companies, 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., and the National Association of Theatre Owners ("NATO") – collectively, the motion picture industry – respectfully file this comment letter in opposition to the application of Cantor Futures Exchange, L.P. ("Cantor") for approval to offer trading of futures contracts in four weeks of motion picture box office receipts (the "Cantor Contracts" or "Contracts") under the Commodity Exchange Act, as amended, 7 U.S.C. § 1, *et seq.* ("CEA"). Our Coalition filed a separate comment letter dated April 16, 2010 on Cantor's application for Commission designation as a contract market ("DCM") under the CEA. Cantor has represented that it has received expressions of support for its applications for Commission approval of it as a DCM and of the Cantor Contracts, but as this comment letter and our earlier comment letter reflect, the motion picture industry opposes both applications.

In brief, as we explain in greater detail below, the Commission should not approve the Contracts because: (1) the Contracts do not serve the public interest purposes of legitimate futures – they do not provide price discovery and will not be used for hedging; (2) the Contracts would effectively circumvent anti-gambling laws; (3) the box office receipts numbers that will be used to settle the Contracts are only estimates that, if wagering is permitted based on those estimates, will be subject to manipulation by third parties; and (4) the Contracts will harm the motion picture industry. Significantly, Rentrak's terms of use on its website expressly cautions that its tabulations should not be used as primary research for "investment decisions": "*The Rentrak.com Data and the Rentrak.com Website are not intended to be used (a) in connection with research where the primary use of such data or site is for making investment decisions, or (b) for reporting or calculating royalties or other fees based on usage . . .*" (see page 11, *infra*).

Cantor's own marketing materials for the Contracts make clear that Cantor has expressly designed the Contracts to convert the contracts now traded on Cantor's HSX online website for

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fantasy betting on motion picture box office receipts to “real money” betting instruments by having the Commission approve them as futures contracts:

You’ve been waiting to make some real money trading movies.

Well, here’s your chance!

Cantor Exchange anticipates receiving final regulatory approval by April 20, 2010, and will commence trading of DBOR Movie Futures shortly thereafter. Your trading experience on HSX.com will give you a jump-start on learning how to trade in this real - money futures market. Register now to get your account ready for the launch!

* * *

You must sign up to participate in this promotion. If you are not currently registered, please register now. Invite your friends to join, too!

Practice trading is also a great way to sharpen your skills and get ready for the launch of real-money futures trading in April.

See <http://www.cantorexchange.com/Landing/Welcome-HSX-Traders.aspx> (last viewed 5/16/10) (emphasis in original). See “Hollywood Stock Exchange Is Becoming A Real Money Exchange in April. Seriously,” *TechCrunch* (Feb. 23, 2010), <http://techcrunch.com/2010/2/23/hollywood-stock-exchange-real-money/>. Cantor’s HSX contracts currently must be limited to fantasy betting only because money bets would violate the Wire Act, 18 U.S.C. § 1084(a), which makes it a crime to exchange money as a result of online betting.

There are no regulated futures contracts traded on motion picture box office receipts. The Irish website Intrade is an online wagering site for “prediction markets” that must block actual money bets on motion pictures from the United States to avoid violation of the Wire Act. Intrade is owned and operated by Trade Exchange Network, Ltd., a limited liability company registered in Ireland. A 2005 Commission settlement order against Trade Exchange Network found that it violated the Commission’s ban on over-the-counter options in Regulation 32.11, 17 C.F.R. § 32.11, by offering to U.S. residents options that were not excepted or exempted from the ban. *In the Matter of Trade Exchange Network*, CFTC Docket No. 05-14, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) § 30,135 (September 29, 2005). The trading of such contracts on the Iowa Electronic Market (“IEM”) involves only nominal sums for the purpose of aiding the reliability of academic research and operates under no-action relief from the Commission staff that restricts IEM’s trading to academic uses only. But for those facts, trading for IEM contracts with more than nominal sums would violate U.S. gambling laws.

The fact that gambling on movie box office receipts occurs outside the United States, however, does not warrant granting a federal license to trade such contracts as futures contracts, any more than wagering outside the United States on the Super Bowl would provide a legitimate rationale for granting a federal license to trade such contracts under the CEA.

A. The Cantor Contracts

As more fully discussed below, the Cantor Contracts are complicated, and to some degree uncertain, trading instruments, and their material terms can vary from one motion picture title to another and even without notice to traders at the time trading commences.¹ Generally, however, the Cantor submission states that its Contracts would provide a means to bet on gross domestic box office receipts (“DBOR”) of select motion pictures released in the United States and Canada, “as compiled by Rentrak Theatrical and/or Nielsen EDI and published in *Variety Magazine* (or such other publicly available source or sources *as may be designated* by the Exchange from time to time).”² This description is confusing because, as explained in Section G below, the information about gross box office receipts *as published by Variety Magazine* is not the same as the information “compiled by Rentrak” *from exhibitors*. (Rentrak’s compilations from exhibitors do not account for 100% of gross box office receipts, and the percentage of the total box office receipts reflected in the figures it collects from exhibitors can materially vary from motion picture to motion picture.)

The Cantor submission states that each motion picture will be the subject of its own separate contract, and Cantor will decide in its discretion the motion pictures for which it will list futures contracts on its platform.³ The Cantor Contracts will call for traders to bet on the gross DBOR over the “DBOR Determination Period.” The DBOR Determination Period runs from the date of the motion picture’s initial theatrical release until four weeks after the motion picture first qualifies for “wide release” status as defined by the Cantor rules.⁴ Those rules define “wide release” status to occur once a motion picture is shown simultaneously on the same day in 650 theaters.⁵ The “Final Settlement Price” will be a fractional equivalent of the gross DBOR over the DBOR Determination Period.⁶ Problematic aspects of these terms are discussed in Section E below.

¹ See Cantor Rule I-1, Definition, “First Trading Day” (noting First Trading Day “will be specified in each DBOR Contract”); Cantor Rule II-3(b) (discussing fluid DBOR Determination Period).

² See Cantor Rule I-1, Definitions, “DBOR” and “Rentrak Theatrical.” (Emphasis added.) Rentrak Theatrical is a unit of the Rentrak Corporation. See www.renrak.com. Nielsen was acquired by Rentrak and no longer separately reports motion picture box office receipts. Accordingly, our comment letter will address reporting by Rentrak only.

³ Cantor Rule II-10.

⁴ If the motion picture fails to achieve wide release status prior to the end of the 12th Release Week, the DBOR Determination Period will conclude at the end of the 12th Release Week. Cantor Rule II-3(b).

⁵ Cantor Rule I-1, Definition, “Wide Release.”

⁶ Each Contract will be settled at the equivalent of one millionth of the gross DBOR for the United States and Canada showings over the DBOR Determination Period – *i.e.*, if the gross DBOR over the DBOR Determination Period are \$56 million, the Final Settlement Price of the Contract would be \$56. Cantor Rule II-3(a). Upon settlement, each buyer of Cantor Contracts who holds them to maturity will be entitled to receive, and each seller will be obligated to pay, one millionth of the gross DBOR for the DBOR Determination Period. Cantor provides the following example in Rule II-13(a): If an underlying motion picture title has earned a DBOR of \$56,455,000 during the DBOR Determination Period, the Final

B. The Public Interest in Futures Trading Requires That Contracts Meet the CEA's Public Interest Tests

Section 3(a) of the CEA, 7 U.S.C. § 5(a), provides that legitimate futures contracts serve the public interest "by providing a means for managing and assuming price risks, discovering prices, or disseminating price information." CEA Section 3(b), 7 U.S.C. § 5(b), declares that it is the "purpose of this Act to serve the public interests described in subsection (a)." It is service of these public interests – which effectively require that futures contracts have legitimate economic uses beyond pure speculation – that distinguishes legitimate, lawful futures contracts from gambling contracts that are either proscribed as crimes by the federal Wire Act, 18 U.S.C. § 1084(a), or regulated by state gaming authorities. Indeed, CEA Section 4(a), 7 U.S.C. § 6(a), expressly condemns excessive speculation and authorizes the Commission to prohibit it.⁷ Acknowledging the essential economic purpose of futures contracts, the Commission has often declared that futures prices must reflect the "legitimate forces of supply and demand" in the relevant cash market.

Consistent with the foregoing statutory requirements and Congressional mandate, an application for new products should be denied unless the applicant can demonstrate that its proposed contracts would in fact be used for hedging or price discovery. It is, therefore, incumbent upon any applicant to show that the contracts for which it is seeking approval serve these public interest purposes of price discovery, managing price risks (*i.e.*, hedging), or disseminating valid pricing information, and this application is void of such demonstration.

The proposed Cantor Contracts cannot serve these public interests. They do not and cannot provide a means of price discovery. Because there is no "cash market" in a motion picture or its box office receipts, there is no cash market price to be discovered. Indeed, Cantor's submissions do not even attempt to explain the price discovery purpose of its Contracts. Nor, as discussed below, will the proposed Contracts in fact be used for hedging. Rather, they are simply another outlet for speculative pursuits. Such activity should not receive the sanction of the federal government or take up any of the government's scarce regulatory resources, especially when, as in this instance, the Contracts would be harmful to the industry they purport to serve. Accordingly, Cantor's application for approval to offer trading of futures contracts motion picture box office receipts should be denied.

Settlement Price would be calculated by dividing \$56,455,000 by 1,000,000 (equaling \$56.455), and then rounding such amount to \$56.46.

A trader's profit or loss on a long position held until contract expiration will equate to the difference between the contract price when the contract was entered into and the Final Settlement Price. Using the example above, if the buyer enters into a futures contract at a price of \$50 and holds the contract until expiration, the buyer's profit would be the difference between \$50 and \$56.46. The seller of such a contract at the price of \$50 would lose the difference between \$56.46 and the \$50 contract price. If a trader liquidates his or her contract position prior to contract expiration, his or her profit or loss will be the difference between the opening and liquidating contract prices.

⁷ We respectfully submit that the Commission's current proposed rulemaking to adopt hard, federal speculative position limits in certain energy contracts inherently recognizes that the CEA requires much more than a *theoretical* hedging use to sanction trading of a futures or option contract.

C. Motion Pictures and Box Office Receipts Are Not Commodities

A motion picture, unlike commodities governed by the CEA, is a unique artistic work that derives value not from any intrinsic utilitarian use, but from public reaction to a motion picture's artistic or entertainment merit, which are subjective judgments and by their very nature, unpredictable and not verifiable facts. Further, a motion picture's box office receipts are not a commodity – they are not bought and sold, there is no market in them. Consequently, trading in Cantor Contracts has nothing to do with a commodity market. Cantor Contracts are no different in kind from bets, some of which would be made *before any deliveries occur*, on how much wheat from one farm will be accepted for delivery in the market as meeting deliverable grade for four or twelve weeks, where the standard for deliverable grade wheat is based on subjective standards of taste and the bettor does not know the farm's acreage or the quality of its wheat. Such bets would have *no legitimate economic purpose* and would surely be disallowed by the Commission if anyone sought approval to trade in such contracts. The same should be true for Cantor Contracts.

The definition of "commodity" enacted as part of the CEA in 1936 included only specifically enumerated agricultural commodities, all of which fell within the ordinary definition of commodity. When Congress amended the definition of commodity in 1974 to include "all other goods and articles, except onions..., and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in," it still intended to capture only services, rights and interests for which there was an underlying cash market. This is clear from Congress's description of

"contracts for future delivery" as "futures transactions" that are carried on in large volume by the public generally and persons engaged in the business of buying and selling commodities and the products and byproducts thereof in interstate commerce. The prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries *as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof . . . and to facilitate movements thereof in interstate commerce.* Such transactions are utilized by shippers, dealers, millers and others engaged in handling commodities and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price.

CEA Section 3, 7 U.S.C. § 5 (Supp. 5 1994) (emphasis added). This description clearly describes contracts in products that have cash markets. Consistent with this, the submission of an application for approval of a new futures or option contract requires a description of the cash market for the underlying commodity. Commission Regulation 40.3(a)(4)(iv), 17 C.F.R. § 40.3(a)(4)(iv).

In 2000, Congress passed the Commodity Futures Modernization Act ("CFMA"). In the CFMA, Congress enacted a host of exclusions and exemptions from the CEA for transactions in "excluded commodities" that rendered such transactions, in most circumstances, entirely unregulated by the CEA, and in others only lightly regulated under the CEA. This regulatory shift was based on the premise that "excluded commodities" were a class of commodities that were not readily susceptible to manipulation. The definition of "excluded commodity" in CEA Section 1a(13), 7 U.S.C. § 1a(13), includes certain commodities "with no cash market."

Consistent with that concept, the CFMA struck the language quoted above from CEA Section 3. However, it should be noted that, reading the statute as a whole, the only rights, goods, interests, or services with no cash markets that would be within the CEA's definition of "commodity" are those that are within the definition of "excluded commodity."

The motion picture box office receipts that would be the subject of the Cantor Contracts are not within the CEA's definition of "excluded commodity." CEA Section 1a(13) defines "excluded commodity" to mean:

- (i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure;
- (ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—
 - (I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or
 - (II) based solely on one or more commodities that have no cash market;
- (iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or
- (iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—
 - (I) beyond the control of the parties to the relevant contract, agreement, or transaction; and
 - (II) associated with a financial, commercial, or economic consequence.

The Cantor Contracts are not within any of these terms. They are contracts that are designed to predict the "extent of an occurrence" – that being the level of box office receipts for a particular motion picture for a particular period of time. They do not satisfy the terms of subsection 1a(13)(iv), however, because such receipts would be within the substantial influence or control of many different participants in the motion picture industry. A relatively small number of entities (the studio, the exhibitors, and marketers) have inordinate impact on the potential for box office numbers in the opening weekend and beyond for any particular motion picture. Their private decisions as to release dates, opening locations, number of theaters, number of screens, size of screens, and marketing budgets can significantly impact box office numbers in the early weeks of showings. Those decisions can be in flux up to the opening release and beyond, and much of the information regarding those decisions is closely held and protected from public dissemination. These decisions also can fluctuate based on the nature of the releasing and distribution company.

The Cantor Contracts would not be within the terms of subsection 1a(13)(ii)(II) concerning commodities with no cash market because they would be governed by the terms of subsection 1a(13)(iv). However, Rentrak and studio estimates of movie box office receipts are not within the intended meaning of "any other rate, differential, index, or measure of economic or commercial risk, return, or value" in any event. Reading Section 1a(13) as a whole, those terms clearly contemplate rates, differentials, indices, and measures that are beyond the control

of any person or narrow group of persons, as well as the parties to any futures contract based upon them. Section 1a(13) therefore contemplates such broad measures as the Consumer Price Index for a contract based on it or heating degree days that could be the measure of weather contracts. Any other reading would be nonsensical. Reading the definition as a whole, Congress clearly did not intend to create a loophole to allow measures subject to the control of small groups of participants to be the subject of a futures contract and, indeed, to qualify to receive the lightest regulation under the terms of the statute. We note also that, in response to the Commission's Concept Release on the Appropriate Regulatory Treatment of Event Contracts ("Concept Release"), 73 Fed. Reg. 25669 (May 7, 2008), published two years ago, the Chicago Mercantile Exchange ("CME") commented that futures contracts should not be permitted on such things as celebrity marriages, a specific farmer's crop yield, or sporting events, because these events can be controlled by one or a small group of individuals and are therefore susceptible to manipulation. The initial theatrical release of a motion picture and its box office receipts are akin to the events cited by the CME.

Another commenter on the Concept Release, Mr. Jason Ruspini, who stated that he was a vice president of Conquest Capital Group LLC and had previously worked for Goldman Sachs & Co. and at the New York Mercantile Exchange, focused upon the other criterion of CEA Section 1a(13)(iv), whether an event is "associated with a financial, commercial, or economic consequence." Mr. Ruspini stated that "it would be appropriate for the CFTC to only assert jurisdiction over those event contracts satisfying 'economic consequence' criteria, which would include the price discovery aspect of the former economic purpose test." He went on to state that the Commission "may find that only broad-based events or measures affecting an entire population, industry or significant percentage thereof would satisfy the economic consequence criteria." As examples of markets that have little bearing on the broader economy and asset prices in general, Mr. Ruspini cited markets predicting: "(1) the revenue of a particular product, published title, *film* or performance series, (2) the launch or completion date of a particular product or project, and (3) the success of a particular approach applied to certain problem." (Emphasis added.) As Mr. Ruspini aptly noted, such narrow markets also present issues from manipulation and insider-trading perspectives.

In addition, we respectfully submit that implicit in the CEA's public interest tests for legitimate futures contracts is the requirement that every futures contract in fact be material to valuing a cash commodity, even for contracts in those excluded commodities that do not have their own cash markets. Thus, for example, although there is no cash market in weather, weather futures pricing is material to the cash market valuation of other commodities, such as natural gas or heating oil. Similarly, the Consumer Price Index is used as a measure to adjust wages in numerous contracts and for various government payments to retirees, Social Security beneficiaries, etc. The same cannot be said of motion picture box office receipts. Settlements between exhibitors and distributors of shares of motion picture box office receipts are determined by the *actual receipts received*, not by the numbers supplied by Rentrak or the estimates of the studios, which would be the basis for any Cantor-declared box office receipts number.

Further, to the extent the Commission would entertain sweeping Cantor Contracts into the definition of "excluded commodity," it should first resolve the issues it raised in its Concept Release. The Commission's release thoughtfully identified a number of concerns and dilemmas surrounding event contracts. The Cantor Contracts clearly implicate those concerns and dilemmas. The public interest is better served in concluding the process initiated with the Concept Release before establishing in a piecemeal fashion event contract precedents. This is especially important given the ability of registered contract markets to self-certify new contracts without prior Commission approval.

D. The Cantor Contracts Would Not Provide Any Legitimate Price Discovery Because They Would Be Traded in an Informational Vacuum Without Any Reliable Economic Grounding

Any “pricing” of motion picture box office receipts by transactions in Cantor Contracts will be arbitrary and could never “reflect the legitimate forces of supply and demand” because trading in Cantor Contracts might occur only for four weeks of a motion picture’s release, when bettors generally will not have viewed the motion picture they are gambling on. Whether a motion picture will connect with an audience has proven quite difficult to predict, and in some instances positive sentiment for a motion picture can prove to be quite fleeting. There is no set formula for success, which depends upon the totality of such things as the contributions of creative talent, including dialogue, performance, production design, cinematography, editing, musical composition, the overarching directorial vision and other artistic intangibles, marketing, release date, opening locations, and the national mood, fears, and fascinations at a particular time. For bettors to recklessly try to assess those intangibles without even seeing the motion picture is a fool’s errand and harmful to the motion picture industry.

Significantly, none of the means used to assess the legitimacy of futures pricing based on supply and demand would exist for the Cantor Contracts. During the trading period, which may only last for about four weeks, there is no cash market pricing, no additional months of futures market pricing, and no actual cash market transactions against which to measure the legitimacy of the futures price. In addition, unlike all other industries that use futures contracts, the motion picture industry has no constituents that would be natural long hedgers – no one has a risk of loss if a motion picture is wildly successful. Accordingly, there is no natural price competition between longs and shorts in any purported “market” for box office numbers.⁸

Further undermining any reliability of Cantor Contract pricing is the fact that much of the material information affecting such box office numbers is non-public. Bettors would not have access to much of the material information affecting a motion picture’s first four weeks of box office performance (*e.g.*, marketing budgets, distribution agreements, private focus group screenings), because it generally is not publicly available. Trying to forecast box office receipts without the benefit of the non-public information that is closely held by studios and other motion picture industry insiders is arbitrary.⁹

Non-public business decisions regarding motion picture marketing and distribution plans that affect box office numbers can and do occur up to and throughout the release of the motion picture, with studios constantly adjusting their distribution patterns and marketing spend to take account of consumer acceptance of a film. Although a preliminary plan is prepared in advance of approving a motion picture for production (*i.e.*, well before a release date is scheduled), the plan remains subject to change and in fact is continually adjusted until the motion picture is released and beyond. Marketing changes generally can be made within a day and in some cases

⁸ The Commission Staff informed us during a meeting on March 30, 2010 that Cantor has admitted that there are no natural sellers of opening weekend box office receipts.

⁹ Marketing and distribution plans are never made public. Prior to release, traders could see trailers, TV spots, and print, online and outdoor advertisements. However, the marketing spend itself and the breakdown of spend by media are not public and would be difficult to determine as an outside observer, particularly as marketing varies by location.

almost immediately, in terms of altering marketing materials, their placement, or their relative frequency of use.¹⁰ The distribution plan for a motion picture (which is distinct from, though complementary to, the marketing plan) changes continually and is not final until the day of print shipment. State laws may also influence the distribution of a motion picture, because many states mandate offering a screening of a motion picture to all exhibitors in the state prior to commencing negotiations for any licensing deal and such a screening may not be available until a week or two before opening.

The research of Thomas S. Gruca, a marketing professor at the University of Iowa's Tippie College of Business, provides empirical evidence of the arbitrariness of motion picture box office futures pricing. His research disclosed that the average percentage error in predicting motion picture box office receipts is 38 percent for IEM and 31 percent for the HSX.¹¹ The research failed to find any significant improvement over time. The research also showed that using real, as opposed to play, money did not improve results, and indeed the error rate was greater for the real-money IEM compared to the play-money HSX.¹²

E. Cantor Contracts Would Not Be Used for Hedging

The Cantor Contracts, like Cantor's current HSX fantasy wagering contracts, clearly are structured for the retail bettor to make small bets – even under \$100.¹³ Any trading in them by an industry participant involved in a motion picture would at best be described, not as a “hedging,” but as a “side bet” that in fact can *increase, rather than hedge risk*. While the Contracts would provide an alternative venue in which an industry participant could make *or lose* money on the motion picture apart from the motion picture's actual box office revenue, the trading in the Contracts will always be a *speculative* activity because, in contrast to legitimate futures contracts, there is no correlation between the profit or loss one would make in one of the Contracts and the profit or loss the trader would make on the motion picture from the receipt of actual box office receipts. The Contracts have the potential even when going short to create trading losses *that will exceed* any profits earned from the actual box office receipts and, when a

¹⁰ The press does report the number of screens on which a motion picture will be released (but usually only within a week of release) and may report changes in screen count earlier if it becomes known that the scope of release has been significantly increased or decreased for a motion picture, but this information alone without knowledge of other material, non-public information is wholly inadequate to reasonably predict opening weekend box office numbers.

¹¹ In contrast, the IEM's presidential vote share market has an average error of only 1.8 percent. *See* Iowa Offers Lessons in Box Office Prediction Markets, University of Iowa News Release (April 12, 2010), which is accessible at <http://news-releases.uiowa.edu/2010/april/041210IEM-boxoffice.html>.

¹² Gruca, Thomas S., Berg, Joyce E. and Cipriano, Michael, *Incentive and Accuracy Issues in Movie Prediction Markets*, The Journal of Prediction Markets, Volume 2, Number 1, May 2008, pp. 29-43, University of Buckingham Press. Ms. Berg is a professor of accounting, Tippie College of Business, and Mr. Cipriano is an assistant professor of accounting at the College of Charleston in Charleston, S.C.

¹³ Once a retail customer has qualified for an account with access to this exchange, they could get into a long position for under \$100: a single contract on a movie expected to make \$100 million would likely cost somewhere between \$80 and \$120 and would only require that amount in margin. *See* Cantor Rule II-6(a).

motion picture generates a loss based on poor box office performance, short contracts rather than offsetting the loss could *create additional losses*.¹⁴

The Contracts' high margin requirements and 300,000 contract position limit for hedging render them prohibitively expensive and ineffective for hedging. For example, the total margin requirement for a 300,000 contract position when a trader's short contract price is \$50 and the contract is trading at \$50 would be *\$7.5 million*. Even if the market price dropped 40% to settle at \$30, the trader would at best earn a profit of only *\$6 million* – an inconsequential gain for (1) the capital required to make the bet, (2) a less than even dollar-for-dollar return, (3) the risk of loss, and (4) the inconsequential potential profit for major motion pictures that can cost over \$100 million to produce. Similarly, if the trader shorted at a market price of \$100 on 300,000 contracts, its margin requirements would be *\$15 million* and, if the contract settled 20% lower at \$80, its profit would still be only *\$6 million*.

Moreover, the motion picture industry does not intend to use and, in light of the anti-insider trading rules, cannot use any Cantor Contract for hedging purposes. The proposed Contracts thus cannot satisfy the public interest criterion of hedging. Indeed, trading of the Contracts will interfere with the existing risk mitigation strategies that have been and are prevalent in the industry. Studios mitigate their financial risk by a host of techniques, including partnering with other companies to share the risk, diversifying projects across different segments of the viewing audience, selling downstream rights early to cover costs, and raising capital in private and public markets to effectively syndicate the risks. Studios further mitigate their financial risk by balancing their slate of motion pictures with a variety of types of pictures (new films and remakes; low budget and high budget; teen and adult; comedy, drama and horror, etc.).

Independent producers mitigate risk by utilizing, among other things, a "presale" financial model. Prior to production, the independent producer seeks financial and distribution commitments from distributors worldwide, and once enough territories are licensed, those distribution agreements may also be combined with governmental production incentives and are then collateralized by a bank. The bank then loans the independent producer funds, subject to an assignment to the bank of copyright in the motion picture until loan repayment. Because the U.S. theatrical release is only one piece of worldwide distribution, independent producers must rely on the international revenues for the majority of revenues and to repay their production loans and other equity investors. Negative press stemming from hedging of the U.S. theatrical release could doom worldwide exploitation of the film by local distributors who have already paid minimum guarantees for the license of the motion picture and are unlikely to engage in a U.S.-based futures market. Additionally, independent producers in many cases would not have access to marketing and distribution plans of the U.S. distributor, which is a separate or entirely unrelated corporate entity from the independent production company.

The Contracts are inherently flawed as hedging vehicles because they provide no opportunity to hedge investment risks at the pre-production and production stages when the real financial risks are taken in funding a motion picture, and this is especially true for the pre-sale financing model used by independent production companies. Worse still, Cantor Contracts would *imperil* the massive investments that studios and independent producers have made in a motion picture by starting to trade at the very time when they could have the maximum potential harm to the reputation and public acceptance of a motion picture. The substantial risk of reputational harm and damages they would create far outweighs any theoretical hedge.

¹⁴ Cantor Rule II-4(b).

Selling a motion picture “short” after production would invite damaging collateral consequences, both for the particular film’s success and for the trader’s future relationships with financiers, directors, actors, exhibitors and others. Commercial interests invested in a motion picture will not run the risk of negative publicity by creating even the potential for accusations or rumors that it was “betting against” the success of its own picture by “shorting” it in a futures market. Moreover, there is a legal concern that such shorting transactions could generate claims of violating standard mutual covenants in industry contracts with exhibitors, directors, actors and others that prohibit disparagement of the work. Further, any theoretical financial offset from a hedge on a single motion picture would not compensate for the harm to artistic and business reputation as well as relationships with other industry participants including the worldwide network of local distributors, if futures prices negatively influenced U.S. box office performance.

Further, an independent producer is unlikely to bet against its own film for the same reasons that a studio would not bet against one of its own films, as described above. Moreover, any decision to hedge by a U.S. theatrical distributor could have enormous negative consequences on independent producers and distributors, which rely on international distribution to provide financing and distribution for their films. For independent producers and their worldwide distributors and equity investors, whose films are often released in the United States by the major studios, which may control marketing and release plans, mitigating financial risk is even more difficult but is accomplished by established financial models. As we have stated, independent producers secure financing on a film-by-film basis with different investors for each film and rely heavily on the distribution commitments of foreign distributors before production of the film even begins. Those minimum commitments, along with any government incentive programs, are collateralized by financial institutions and other investors, which loan the producer the production budget. Independent producers rely on the proceeds of foreign distribution to pay back the production loan, and therefore any hedging by U.S. distributors could harm not only independent producers, but also the dozens of financial and commercial partnerships they must build worldwide to secure financing for each film. Without those partnerships and investors, independent films such as this year’s Academy Award-winning Best Picture, *The Hurt Locker*, could not have been made.¹⁵

Theater owners similarly have no incentive to bet against a motion picture as a hedging strategy. They do not want to be perceived as betting against the product they will be offering and they have other means to mitigate risk. Motion picture rental is paid as a *percentage* of the gross numbers of tickets sold. The fact that exhibitors negotiate with distributors on a film-by-film basis makes it less likely that exhibitors would ever want to use futures contracts to hedge. Why book and negotiate one movie, and then bet against it?

Underscoring the fallacy that the proposed Contracts are legitimate futures contracts, Cantor’s contract rules effectively prohibit trading by studios and other insiders, thus precluding any potential for hedging whatsoever. These anti-insider trading rules are unique among all futures contracts. They bear witness to the fact that the proposed Contracts, unlike legitimate futures, do not in fact price “commodities” that are traded in a market, but, rather, are bets on a *single event* for a *single product* (the motion picture), which can be substantially influenced through the actions of even a few insiders. Cantor’s rules requiring the use of an “Information Barrier” as a means to avoid the proscription of insider trading provide no assistance in permitting hedging. Such a barrier requires futures traders for a studio to be cordoned off from any information within the studio that would provide the basis for determining hedging needs and strategy. Studio and other industry insiders who have the ability to materially affect the

¹⁵ See *Hard Money*, Los Angeles Lawyer, May 2010 issue at page 8.

level of box office numbers also likely would be wary of trading in the proposed Contracts in any event, because doing so increases the potential of incurring significant legal costs in having to respond to inquiries from governmental investigations or private claims if futures prices gyrate.

As a practical matter, any decisions by a studio to hedge any risk would need to be cleared with senior management, who necessarily have intimate knowledge of all financial and contractual information relating to a motion picture and under Cantor's rules would not be permitted to interact with traders. In this connection, box office numbers data are very important and sensitive, and such information is shared within a studio by, among others, key mid-level marketing personnel, the General Counsel's Office, and senior management. No studio is arranged or intends to reorganize itself so as to separate the management and reporting lines of persons with access to the box office numbers data and the persons who compile or compute those figures. It makes no sense to do so and would prevent a studio from utilizing the box office numbers data in the most efficient manner. This would be even more pronounced for independent production companies and individual filmmakers.

The foregoing reveals a legal impediment for approval of the Cantor Contracts. To the extent persons with substantial influence or control over the level of box office receipts are banned from entering into the proposed Contracts, the Contracts do not meet the public interest tests for hedging. To the extent the individuals and entities that can exercise substantial influence or control over the level of box office receipts are permitted to enter into the contracts, agreements and transactions, motion picture box office receipts do not fit within the definition of "excluded commodity."

F. The Cantor Contracts Are Susceptible to Manipulation and Insider Trading

1. Cantor, the Motion Picture Industry, and the Commission Do Not Have Adequate Resources to Detect and Deter Potential Manipulation

As described above at page 8, the lack of any legitimate economic measure for validly pricing box office receipts before the Rentrak numbers are announced prevents any ability even to identify a manipulated price. But even if, solely for the sake of argument, there were a means to determine the economic validity of a pre-release futures price, collecting sufficient information to do that credibly and reliably in the context of the complexity of the motion picture industry and the box office performance of motion pictures would require extensive new surveillance resources virtually dedicated to the Cantor Contracts alone and new, broad information-gathering powers.

The potential box office receipts for a motion picture can be materially affected by individual industry participants in a variety of different ways. Individuals working for exhibitors who contribute to the Rentrak numbers could, either intentionally or accidentally, misreport their data. A distributor's employee could determine during the period immediately preceding or just after a motion picture's release to decrease or increase the number of theaters that would show the motion picture for the first four weeks. A distributor's employee for a variety of reasons could determine to substantially reduce or expand its marketing budget, which can materially affect box office receipts for the first four weeks. A major exhibitor's employee could determine to show the motion picture on smaller or larger screens, which can materially affect audience interest and capacity.

Futures prices also are susceptible to manipulation by false market rumors. In the specific circumstances of the motion picture industry, it would be virtually impossible to identify

the sources of such rumors or to prosecute any alleged manipulation by false rumors because such rumors would typically be based on opinions relating to a motion picture's artistic merit or entertainment value rather than verifiable facts. There already are many pre-release rumor mills with respect to the quality of motion pictures. These rumors are generated by (1) reviews by members of the public who have attended screenings, (2) press reports relating to rumored or perceived "trouble" on motion pictures (multiple writers, talent defections, re-shoots, postponed release dates, etc.), and (3) reports of the quality of a motion picture's footage that may have been released without authorization pre-release. There is no effective way to police such rumors or reliably determine their source. These sorts of rumors can depress or spur box office performance. Therefore, the ability to profit from rumors by trading in the Cantor Contracts would intensify any incentive to spread false rumors in a manner that Cantor could neither detect nor control.

Cantor's rules fail to address compliance issues with insider trading proscriptions of the federal securities laws. Where a motion picture's first weekend box office success is material to the market value of a distributor's publicly traded securities, trading in the Cantor Contracts could be used by insiders as a surrogate for trading in their companies' securities in order to profit from inside information. Cantor's rules fail to adequately anticipate or prevent this.

2. The Terms of the Cantor Contracts Are Not Sufficiently Defined and Their Vagueness Invites Gaming and Manipulation

When trading on Cantor Contracts will commence is not clear from the Cantor rules; it appears that, at Cantor's discretion, it could commence anytime between a year and one day before a motion picture's release and presumably start dates could vary from contract to contract.¹⁶ The time period of the DBOR Determination Period might not be knowable at the time trading commences – that period could span from four to twelve weeks, depending on if and when a motion picture first qualifies as a "wide release."¹⁷ Accordingly, at the time trading commences, traders would not even have notice of the terms of their bets. It also is unclear when trading will end. The chart accompanying the latest Cantor Contracts submission (for "The Expendables") states that "The longest trading period for a DBOR Contract is a period of four "Release weeks." If trading must cease no later than four Release weeks after the opening, trading could be limited to a shorter time period than the DBOR Determination Period. For example, theoretically trading would end *four weeks* after the opening, but the DBOR Determination Period could be the first *six weeks* following release, if a motion picture fails to qualify as a "wide release" until the third week after its release. This can cause substantial

¹⁶ It is not clear when trading will commence in relation to the opening release, but it appears that there will be an Opening Auction on the first trading day to determine an "Equilibrium Price" for the commencement of trading. Cantor Rule II-11. The description of the Opening Auction has changed during various iterations of the DBOR Contract, and it is unclear exactly how the auction will work. While a contract is open for trading, traders will be permitted to execute trades 24 hours a day, seven days a week. Cantor Rule II-12.

¹⁷ See Cantor Rule II-3(b). For example, if a motion picture is released in 500 theaters in Week 1, but is shown in 650 theaters in Week 2, the DBOR Determination Period will be six weeks long, because "wide release" status will not have occurred until the second week, and the Determination Period will conclude at the end of the fourth week after wide release is achieved. If a motion picture never achieves "wide release" status, the DBOR Determination Period will be the full first twelve weeks following the opening, and the Final Settlement Price will be based on the DBOR over the full twelve week period.

uncertainty for pricing and perhaps invite gaming. In contrast, the definition of “Last Trading Day” in the Contract Terms and Conditions states that “the Last Trading Day shall under no circumstances be any earlier than the Tuesday following the close of the DBOR Determination Period.” Pursuant to this definition, trading could last as long as twelve weeks for a motion picture that fails to achieve wide release status. Significantly, under this definition, trading potentially could extend beyond the DBOR Determination Period – *after the settlement price is known publicly or by those with inside information.*

G. Reports of Box Office Numbers Are Not Free From Error

As we have noted above, there are numerous objections to the Cantor Contracts, and the Contracts would be problematical even if they relied upon a foolproof data source. Although Rentrak provides a useful service, there are inherent limitations in any system that attempts to gather box office numbers prior to the formal tabulation of actual receipts by exhibitors and distributors, which occurs weeks after Rentrak reports its numbers. Rentrak itself recognizes these limitations in its terms of use. Rentrak’s contract states on its website that its data are not intended to be used in connection with “making investment decisions” or for reporting or calculating royalties or other fees based on usage.¹⁸ Where, as here, the purveyor of data warns that it should not be used in connection with investment decisions, there is no proper basis for the Commission to license a financial instrument based on such data.

The practice in the motion picture industry is to report *estimates* of weekend gross box office numbers on Sunday, based on projections informed by numbers received for Friday and Saturday showings. *Variety* publishes those estimates on Monday, as do many major newspapers and media sources. Those estimates, which are generated by the studios, are based in part on non-public and undisclosed projections and assumptions that can vary from motion picture to motion picture and from studio to studio. *Variety* provides this disclaimer about the information it publishes:

“Variety publishes data compiled by Rentrak Theatrical, which collects *studio reported data* as well as box-office figures from North American theatre locations. Any information provided by Rentrak has been obtained from sources believed to be reliable.

However, Rentrak does not make any warranties as to the accuracy, completeness or adequacy of this information and data.

¹⁸ The second paragraph of the Rentrak Terms of Use agreement states as follows (emphasis added):

“Use of the Rentrak.com Website and Data. Rentrak hereby grants User, on the terms of these TOU and the Service Agreement (if applicable), the non-exclusive right to access the Rentrak.com Website and view and use the Rentrak.com Data solely for User’s internal business purposes. *The Rentrak.com Data and the Rentrak.com Website are not intended to be used (a) in connection with research where the primary use of such data or site is for making investment decisions, or (b) for reporting or calculating royalties or other fees based on usage, and any use of the Rentrak.com Data or the Rentrak.com Website for such purposes shall be at User’s sole risk.* User shall not have the right to display, publish, distribute, disseminate or otherwise make public any Rentrak.com Data without Rentrak’s prior written consent. User acknowledges that all Rentrak.com Data is “Confidential Information” subject to Section 6 below and that in all events User may not rely on the accuracy of the Rentrak.com Data in making representations to advertisers or similar parties concerning the usage of content.”

The user of this data agrees Rentrak, its officers and employees will have no liability arising from the use or disclosure of this information and data. To submit any questions to Rentrak, please email: boxofficeinfo@rentrak.com.”

See: http://www.variety.com/index.asp?layout=b_o_layout&dept=Film (emphasis added). Those estimates, as with estimates of all types, can be flawed, although traders might rely on them – see the articles from *Variety* about errors in estimates of weekend box office numbers for the second and third weekends in April 2010, which are attached hereto as Attachments A and B. These corrections were voluntary and, although made on the Mondays following those weekends, could have been made later in the week instead (after Cantor would have declared the settlement price for its Contracts).

The box office receipt information Rentrak compiles from the exhibitors that have agreed to provide that information to Rentrak is itself incomplete, and we understand that the percentage of the total box office numbers that is reported by exhibitors to Rentrak can vary materially from motion picture to motion picture (*e.g.*, 12%) depending on how many exhibitors within its universe of reporting exhibitors are showing a particular motion picture. We understand that many exhibitors record box office numbers electronically and then provide the aggregate information to Rentrak through an electronic feed, but also that many exhibitors tabulate their numbers manually. However, *some exhibitors never report to Rentrak, either automatically or manually.*

Typically, studios, upon receiving Rentrak exhibitor-based figures, in turn conduct their own information gathering and analysis to develop their estimates that may be publicly announced in the press. As *Variety's* disclaimer indicates, the studios' Sunday announcements of weekend motion picture box office numbers information in *Variety* include the studios' estimates. The studios' information gathering and analysis may vary from one company to another and is closely held proprietary information, but it can include, for example, communicating with some of the exhibitors that are not included in the Rentrak figures and even those exhibitors that are included in the Rentrak figures if their information appears to be potentially inaccurate or incomplete.

Even the studios' box office estimates announced subsequent to the Sunday estimates are unaudited and never capture 100% of box office numbers. None of the data reported to *Variety*, the Rentrak compilations, or the studio estimates are used to settle transactions between exhibitors and distributors. Those transactions are settled between the contract parties using actual gross box office receipts, and the process is subject to the parties' contractual accounting and audit rights and obligations. In addition, it should be noted that neither Rentrak nor studio figures adjust for U.S./Canadian exchange rates. Further, studio-announced figures may include data reported to the studio by a third-party distributor where U.S. and Canadian theatrical rights are held by different entities. Further, box office numbers for motion picture showings in Puerto Rico do not always open on the same date as in the U.S., and Puerto Rican theaters do not report to Rentrak. Thus, while studios include Puerto Rican receipts in their estimates, the numbers for Puerto Rico may be “best guess” estimates only.

H. The Cantor Contracts Will Harm the Motion Picture Industry

Currently, studio estimates of box office numbers do not impact anyone; they are of no consequence to the public's interests. However, the Commission's approval of the proposed Contracts will *create*: (a) burdens for motion picture financing by creating new, but unreliable and non-economic, prognostications of a motion picture's success; (b) conflicts of interest for

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studio employees and independent contractors by creating a means to bet against the success of motion pictures; (c) a potential for studio employees and independent contractors to use inside information or manipulate box office numbers to profit from betting on the performance of a motion picture; (d) new legal risks for studios in, among other things, announcing estimates of box office numbers and having to police the use of inside, non-public information affecting box office numbers that could be material to bettors' trading decisions; and (e) irreversible damage to the worldwide distribution network, financial institutions and other investors utilized by independent producers.

The pricing on the proposed Contracts creates a greater risk of depressed box office numbers because such pricing, although lacking any reliable economic basis, could harm a motion picture's prospects by negatively affecting audiences' perception of it. Because the ultimate breadth of distribution can be revised up to the time of release and afterward, the proposed market could affect distributors' ability to secure screens if the pricing of contracts signals a sentiment of negative box office results. The harmful effect of negative publicity is not limited to theater showings. Many prices for downstream licenses and other sources of revenue are driven in part by actual box office receipts. Motion pictures slated to open in limited theaters (which can easily meet the 650 threshold requirements of the proposed Contracts) and then broaden based on word of mouth could be ruined by futures pricing that casts them in the false light of a "failed" opening.

The impact of piracy could be amplified by these Contracts because trading in the proposed Contracts also creates a new means to try to profit from theft of studios' confidential motion picture materials, thereby increasing the likelihood of such theft and exacerbating our industry's existing widespread motion picture piracy problems. For example, a person who steals a motion picture or motion picture creative materials, in finished or unfinished form, before its release could short the Contract and then post it on the Internet to hurt box office numbers. Similarly, a person armed with critical inside information might use it to profitably trade in the proposed Contracts. Nothing in Cantor's publicly available materials about its Contracts begins to suggest how it will be able to detect and prevent such manipulative conduct. Given the rise of the Internet and other technologies, piracy and leaks of confidential information are growing threats to the motion picture industry. The Commission should not provide any additional incentives for motion picture piracy and stealing intellectual property by approving the proposed contract applications.

Approval of the Cantor Contracts also creates a whole host of new financial and legal costs and burdens that do not now exist. Once a contract is traded in box office numbers estimates, the announcement of such estimates has consequences for bettors. This, in turn, creates legal risk for studios in announcing their estimates – where none exists now. Mistakes that are currently meaningless could now be portrayed as impacting bettors' financial results from their contracts, thus giving rise to private claims for damages for negligence, misrepresentation or even manipulation. The cost of litigating unmeritorious claims could be substantial and cause studios to cease or significantly alter the practice of public announcements.

Approval of the proposed Contracts also will require studios and all other industry participants that have the power to affect futures pricing to institute and police anti-insider trading compliance regimes for the proposed Contracts. Even if the Cantor Contracts do not meet the promoters' projections for acceptance in the marketplace, the Contracts would be available and force the motion picture industry to incur very real and substantial costs to maintain an anti-insider trading program. It is problematic when any prohibition on insider trading would need to take into account inside information held by persons who are not subject to the control of the studios and other producers and distributors. There are many industry

participants who have access to material, non-public information and could try to use that information to profitably bet on the proposed Contracts. There are many insiders, for example, in studio marketing and distribution departments and upper management or that are hired as outside vendors by marketing departments and in exhibitors' finance, marketing and contracting departments, who have access to such material, non-public information as actual box office data, internal forecasts, advertising strategies and spending, and release patterns.¹⁹ Exhibitors also have a right to see a motion picture prior to licensing it in the United States.²⁰

Even if a studio's compliance system is designed and executed to perfection, it is possible that, at some point, the Commission or the Department of Justice will investigate a suspicion of possible manipulation of the proposed Contracts, causing large legal expenses for the industry. The studios would be put to great expense to comply with the investigation. Moreover, studios and other industry insiders would be natural targets for strike suits by disappointed traders. Further, the negative publicity that could flow from rumors or announcements of an investigation and from strike suits would be damaging to the industry parties involved. These are risks and costs that do not now exist and the industry will receive no benefits from the Contracts to offset these substantial risks and costs.

¹⁹ Other insiders who could possess material, non-public information range from financiers and their advisors, potential distribution partners, talent, crew, agents and other representatives, special effects and other post-production vendors, trailer houses, festival screening committees and the employees, families, and friends of all these people. Insider trading also could implicate insider trading proscriptions of the federal securities laws, where a movie's box office success could be material to the market value of its producer's publicly traded securities. Also, the rise or fall of an independent production company's release could have a material impact on its future ability to function; trading in such a picture's prospects could doom not only that picture, but future pictures and, in the worst case, the entire company. The proposed contracts thus could be used by insiders as surrogates for their companies' securities in order to profit from inside information.

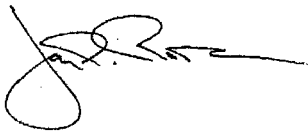
²⁰ Although certain members of the public may see a motion picture prior to its theatrical release, and their reactions may become public through social media and social networking technologies, much of this information remains non-public.

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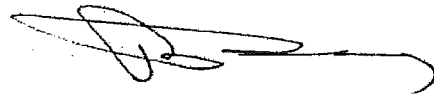
I. Conclusion

For the reasons set forth above, we respectfully and strongly recommend that the Commission deny the application of Cantor to offer trading of futures contracts in motion picture box office receipts. We thank the Commission for its consideration of this comment letter. On behalf of this Coalition, please contact Greg Frazier of the MPAA, at 202-378-9107 or Greg_Frazier@mpaa.org, if you have any questions or need further information.

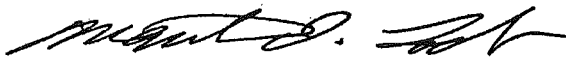
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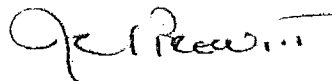
Jay D. Roth,
National Executive Director
Directors Guild of America, Inc.



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



Matthew D. Loeb,
International President
International Alliance of Theatrical Stage
Employees



Jean M. Prewitt,
President and Chief Executive Officer
Independent Film & Television Alliance



John Fithian,
President and Chief Executive Officer
National Association of Theatre Owners

cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Scott O'Malia
Commissioner Jill Sommers
Commissioner Bart Chilton
Mr. Richard Shilts
Thomas Leahy, Jr.

ATTACHMENT A



April 13, 2010

'Titans' victorious at weekend box office

Final figures put 3D epic on top of 'Date Night'

By ANDREW STEWART

When the dust settled on Monday, Warner Bros.' 3D epic "Clash of the Titans" had edged out 20th Century Fox's "Date Night" domestic B.O. debut.

Preliminary estimates had "Date Night" winning the weekend, with \$27.1 million; Fox revised the figure downward to \$25.2 million.

Meanwhile, "Clash" earned a revised \$26.7 million, down slightly from Warner's \$26.9 million estimate. The 3D epic dropped 56% in its sophomore week and has cumulated \$110.2 million.

Paramount and DreamWorks Animation's "How to Train Your Dragon" followed closely, with \$24.9 million. The toon slipped only 14% in its third frame, for a total haul of \$92.1 million.

"Dragon" scored 65% of its weekend take from 2,165 total 3D locations, while "Clash" saw approximately 50% from 1,632 3D runs. "Clash," which isn't playing on Imax 3D screens, was able to top the box office even with a substantial number of filmgoers opting for the 2D version.

Fox originally had predicted a 34% drop for "Date Night" from Saturday to Sunday, but said the comedy ended the weekend with a steep 49% decline. Studio attributed the drop to the final day of the Masters on Sunday, saying the golf tourney siphoned audiences from the comedy's targeted older demo.

Most of the frame's other adult-oriented films, including Lionsgate's "Why Did I Get Married Too?" and "The Bounty Hunter" also took steep hits on Sunday.

The Masters played heavily to older audiences, skewing toward male viewers, but also with a surprisingly strong female audience. The "Date Night" demo was similar, with 52% females to 48% males, and about 60% of the audience over 25.

Despite its second place finish, "Date Night" is off to a solid start, with the popularity of stars Tina Fey and Steve Carell helping it exceed "The Bounty Hunter's" \$20.7 opening weekend on March 19.

Family pics like "Dragon" fared best on Sunday, with the toon slipping 38% that day. "Dragon" may lose auds as kids head back to school after spring break, but Par said it expects the toon to hold steady until the studio launches 3D "Shrek Forever After" on May 21.

ATTACHMENT B

'Kick-Ass' slays 'Dragon' Another swap at B.O. top By ANDREW STEWART



Despite early estimates, 'Kick-Ass' took the top spot at the B.O.

For the second consecutive week, the top two spots at the domestic box office have swapped places, with this week's No. 1 position going to Lionsgate's superhero comedy "Kick-Ass." Pic's revised weekend figures held steady on Monday at \$19.8 million, while Paramount and DreamWorks Animation's 3D toon "How to Train Your Dragon" dropped from its estimated \$20 million to a revised \$19.6 million.

The B.O. shuffle comes a week after Warner Bros.' "Clash of the Titans" was renamed the B.O. champ with its weekend actuals, ousting 20th Century Fox laffer "Date Night."

In its soph sesh, "Date Night" saw a solid hold of 34%, claiming the No. 3 spot with \$16.7 million, while actuals for "Clash" totaled \$15.5 million. Cume for "Date Night" stands at \$48.7 million; "Clash" has reached \$132.6 million in its third frame.

Without any major tentpole releases entering the market in the past two weeks, solid holdovers have been pitted against aud-specific debuts like "Date Night" and "Kick-Ass."

"Kick-Ass," about an average teenager who dons a superhero persona, played best among young males, with a 60%-40% male-female split. The pic's healthy launch could bode well for "Kick-Ass" in repeat frames, as Lionsgate hopes fanboy enthusiasm will help fuel strong word of mouth among wider demos.

"'Kick-Ass' is fantastic, highly original entertainment, and our marketing and distribution teams have brilliantly positioned it for a long and successful run," Lionsgate prexy Joe Drake said in a statement. "That kind of run is precisely what we are seeing on the international front, where 'Kick-Ass' has demonstrated a very strong hold at the box office."

The film has grossed some \$13.8 million internationally, since its early bow overseas April 2. Meanwhile, "Dragon" saw a strong hold in its fourth frame, slipping just 21%. The toon's 3D component helped boost holdover potential, which accounted for 65% of the weekend take on 56% of the total location count.

"Dragon," whose cume reached \$158.3 million as of Monday, should have a clear playing field until Par/DWA's "Shrek Forever After" is released May 21.