

May 27, 2010

House Committee on Agriculture
Chairman Collin C. Peterson
1301 Longworth House Office Building
Washington, D.C. 20515

House Committee on Agriculture
Ranking Member Frank D. Lucas
1301 Longworth House Office Building
Washington, D.C. 20515

A comment on the ban on Box Office Futures included in the Financial Reform Legislation

Dear Chairman Peterson and Ranking Member Lucas

However sceptical towards, or unfamiliar with, Box Office Futures you may be, I urge you to take a moment to consider the commentary below. I am neither affiliated with nor have any economic interest in either proposed futures exchange. I merely have an interest in seeing political process applied democratically, and a desire not to see the financial reform bill being the cause of a new wrong, when its scope and ambition should be to correct past ones.

What has triggered the need for Financial Reform Legislation (the Bill)?

The Bill is intended to be the legislation needed to curb the excesses of Wall Street, promote the stabilization of and recovery of the US economy and address flaws in the financial system exposed in the lead up to and during the recent financial crisis.

How did Box Office Futures contribute to the financial crisis?

They didn't. Box Office Futures have yet to be approved and commence trading, and therefore played no part in causing or perpetuating the financial crisis. Developers of the two futures exchanges believe that given a fair opportunity to operate, the proposed markets will offer the wider film industry a legitimate, transparent and regulated financing, price discovery and risk management tool in the same way futures exchanges are commonly used in other industries.

If Box Office Futures didn't contribute to the financial crisis, is the inclusion of a ban on Box Office Futures based on evidence that other similar exchange traded futures contracts did contribute?

This can not be a justification. There is no evidence exchange traded futures contracts of any kind contributed to the financial crisis. In fact, it is widely accepted that futures markets and the regulatory framework within which they operate performed flawlessly in the recent financial crisis, causing no harm to the US financial sector or economy.

What financial products did contribute to the financial crisis?

There were many contributing causes but Credit Default Swaps and other unregulated derivatives instruments certainly played a major part. Typically these products are over-the-counter contracts, subject to no regulation or oversight and which offer no transparency or visibility to outside parties.

Presumably the Bill also bans these products?

No it doesn't.

What other futures contracts/derivative products have been banned by the Bill?

None.

Instead, the Bill may require certain derivatives to be traded on regulated, transparent exchanges. Ironically, the Box Office Futures being proposed already comply with this trading model and standard and include protections and safeguards above and beyond the requirements of the existing or proposed law.

Given the above, why can't Box Office Futures be judged within the existing regulatory framework in place for futures contracts - is there a suggestion that the Commodities and Futures Trading Commission (CFTC) have not performed their role adequately with respect to other futures contracts?

No one (including the lawmakers who added the ban language) has offered an explanation on this. There is no evidence or suggestion that the CFTC has not previously performed its role correctly. It is not clear why the Bill is drafted to send the message that the CFTC can not be trusted to regulate correctly in this particular case.

What is the rationale in specifically identifying Box Office Futures (rather than say music revenue futures, TV ratings futures or DVD sales revenue futures, which could all presumably be offered by new exchanges tomorrow)?

No one (including the lawmakers who added the ban language) has offered an explanation on this.

US Treasury Secretary Tim Geithner has even expressed doubts about taking such an arbitrary, piece meal approach to legislation: he says it should not be the job of Washington politicians to gaze into a crystal ball and predict whether a new example of financial innovation may or may not prove risky. Instead of arbitrary restrictions, he advocates that law and regulation provide a strong framework against which financial innovation (including Box Office Futures) and markets can be judged, overseen and regulated.

Why then, out of all the derivative and futures contracts that exist now or could possibly exist in the future, is it only Box Office Futures that are being banned by the Bill?

Given the above facts, it is hard to see how this can be justified objectively - particularly when not even Credit Default Swaps have been considered sufficiently risky to warrant a ban.

Certain industry players (who do not, as they contend, represent the entire industry or the full scope of parties who could use such products) have raised objections. Certain lawmakers have responded to these objections by adding this language prior to holding any public debate on the topic and prior to the existing CFTC regulatory process being allowed to run its course. These lawmakers have added this language without hearing the full story, or the views of the wider industry, or stress testing and validating any objections raised.

The full story involves a near two year dialogue between the developers of these two exchanges and the CFTC, addressing the intricacies of the approval process through meetings, product design and cooperation. The full story involves the current objectors ignoring the public comment period and the invitations to be involved in the consultation and product design process.

The full story involves the products and exchanges being subjected to an unprecedented level of scrutiny by the CFTC as a result of the abovementioned lobbying campaign, and to date passing all regulatory tests relevant to them.

Most importantly, the full story involves an increasing number of parties and broader industry participants coming out in support of such products as more and more of them learn of and understand better, the function, utility and security of the products in question.

What are the consequences of this language being included?

- Aside from the fact this topic distracts from what should be the true focus of the Bill, it is undemocratic that the language was added prior to the completion of the CFTC regulatory process that such products are entitled to be judged against. No lawmaker can support a situation that, on the one hand allows the objectors to ignore the statutory timeframe for public comment on the CFTC process and at the same time denies the proponents of these exchanges the opportunity to conclude a full and fair regulatory process.

- Including this language in the Bill is unnecessary. The rules and regulations against which these products should be judged already exist, and the CFTC are the experts who alone should decide if a product complies with these existing rules and regulations - if a product does so, it should be for a market environment to determine the utility of the products. This language undermines the role of the CFTC and their ability to regulate within their existing mandate.

- Including this language in the Bill is extreme and irresponsible. The language in the Bill imposes a permanent, outright ban on any form of Box Office Futures product before any such products have had an opportunity to trade and prove their value and function to the industry: the implications of this should not be underestimated or accepted lightly.

- It permanently deprives all users of such products (and not just those parties objecting) of access to what numerous independent industry parties and experts have publicly stated offers a genuine risk management and price discovery tool.

- It denies the developers of the exchanges the opportunity to educate sceptics to the advantages of the exchanges and their products: something that history has shown time and again is necessary when futures markets are introduced to new industries/sectors, even those sectors which are considered standard users of futures today.

- It sets a series of dangerous precedents: (i) at a time when we are inspired by the President of the United States of America taking a public stand against lobbyists, there is a sad irony in the fact that the most curious, unnecessary and out of place provision of the Bill, exists as a testament to the power and influence of lobbyists; and (ii) an American person or business who invests time and money embarking upon a new venture in an honest and law abiding manner should be entitled to expect that such effort will receive a fair and level regulatory playing field.

- It denies the developers of the exchanges the opportunity to craft the products to meet the needs and concerns of the various participants (including those objecting): which should surely be the logical next step in a situation like this rather than imposing an outright ban.

Request to lawmakers

Lawmakers should remember that the Bill, in the President's words, is intended to '*target the root problems that led to the turmoil in our financial sector and ultimately in our entire economy*' and not to cause markets to be '*stymied by onerous rules that suppress enterprise and innovation*'.

In this context, lawmakers should consider whether it can be justified that the only product or financial instrument proposed to be banned by the Bill is one that played no part in the financial crisis and which has yet to receive the complete regulatory assessment it is entitled to.

Before even contemplating approving a ban, lawmakers should respect the time and effort invested in adhering to the existing regulatory process (one tellingly, unaffected by the Bill) and allow the products to be judged by the regulators appointed for such a purpose and against the system of checks, balances and safeguards that the spirit of the Bill promotes.

It sits uneasily that had this example of financial innovation been proposed tomorrow instead of two months ago, it would receive a different treatment and full access to the CFTC regulatory process. That is not an efficient or reliable system.

A lawmaker's responsibility is to consider each issue objectively, observe and uphold due process and act fairly to all parties.

To this end, lawmakers should be confident they have discharged their duty to: (i) consider each parties submissions and the CFTC's conclusions on the subject; and (ii) understand the developers vision for these products, in each case away from outside influence. A lawmaker should not approve a ban until it has discharged this duty and verified the arguments of those both against and in favour of these products.

Whilst the entitlement of each and every single person to voice an opinion is supported, the identity and influence of those voicing them should never be allowed to divert the issue away from the facts and the balanced and democratic debate it deserves. It should not be allowed to overshadow the fact the developers of these exchanges have a right to prove how these products address all the objections, are in the public interest, how they offer risk management and price discovery opportunities and how the products can and will be used by many more parties than just the influential few objecting.

I urge you to consider the above commentary and contact the relevant parties and the regulators if you are in any doubt about its content or the potential effects of the language identified.

Act objectively. Act responsibly. Act fairly.

Kind Regards



Stephen Woods

cc: Commodity Futures Trading Commission
Chairman Gensler
Commissioner Dunn
Commissioner O'Malia
Commissioner Sommers
Commissioner Chilton