

Statement of Commissioners Scott D. O'Malia and Jill E. Sommers on Media Derivatives, Inc.  
Order of Designation as a Contract Market

April 16, 2010

We concur with the granting of this Order to approve Media Derivatives, Inc. (MDEX) as a Designated Contract Market and we support the conditions that require Commission approval of all future classes of contracts proposed for trading on this exchange instead of allowing the exchange to self-certify future products. We have serious concerns regarding the trading of media contracts and we support a very thorough review of all of these first-of-a-kind products to ensure they will provide a useful commercial hedging tool and are free from fraud and manipulation.

Commission staff, based on its review, has concluded that MDEX has satisfied the specific criteria for contract market designation set forth in Section 5 of the Commodity Exchange Act and Part 38 of the CFTC Regulations. In addition, the Commission has acted within the timeframe allotted under Section 6(a) of the Commodity Exchange Act, including extensions of the statutory deadline requested by the applicant. Consistent with the Guidance on Compliance with Designation Criteria set forth in Appendix A to Part 38, we are following staff's recommendation that MDEX has met the criteria.

The Commission is considering approval of the contract market and the contracts that would trade on MDEX separately. Therefore, the Commission will soon be presented with a first-of-a-kind contract related to box-office receipts. MDEX has represented that this contract is intended to manage the large commercial risk associated with the production and distribution of motion pictures and related commercial endeavors. While the Act would allow for self-certification of these types of contracts on an approved designated contract market, this Order specifically conditions designation of the MDEX on a separate review of each and every class of contract to be listed. Due to the first-of-a-kind nature of these contracts, we believe the conditions in the Order are necessary.

We expect that Commission staff's product review will inform the Commission as to whether the box-office receipts contract satisfies the conditions set forth in CFTC Regulation 40.3 and Appendix A to Part 40. Specifically, we expect that Commission staff will review and have a thorough understanding of: (1) whether the contract provides a useful hedging tool for a variety of industry participants and investors with commercial exposure on both the long and short side of the contract; (2) whether the contract is susceptible to manipulation or distortion; (3) whether the cash settlement of the contract is at a price reflecting the underlying cash market; and, (4) whether the price is based upon a cash price series that is reliable, acceptable, publicly available, and timely. These conditions are relevant to the approval of both a traditional cash settled futures contract and a novel cash settled futures contract, such as the box-office receipts contract proposed by MDEX. If MDEX's contracts fall short of these conditions, then it is our opinion that approval is not permitted under the Act.