TESTIMONY OF SCOTT HARBINSON
ON BEHALF OF THE INTERNATIONAL ALLIANCE OF THEATRICAL AND STAGE EMPLOYES AND THE DIRECTORS GUILD OF AMERICA, INC.
BEFORE THE SUBCOMMITTEE ON GENERAL FARM COMMODITES AND RISK MANAGEMENT
COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES
ROOM 1300 LONGWORTH HOUSE OFFICE BUILDING
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Thank you Chairman Boswell and Ranking Member Moran for this opportunity to appear before you. My name is Scott Harbinson and I am an International Representative of the International Alliance of Theatrical and Stage Employes (IATSE). I am here today representing both IATSE and the Directors Guild of America. I hope my presence, along with that of others in the industry, will underscore the grave concern we have about the impact of the "movie futures contracts" which are pending before the Commodity Futures Trading Commission.

IATSE is the labor union that represents technicians, artisans, and craftspersons in the entertainment industry, including live theater, motion picture and television production, and trade shows. IATSE was formed in 1893 and has over 110,000 members. Through its international organization and its autonomous local unions, IATSE represents the behind-the-camera crafts on over 90% of all motion pictures with budgets over $1.5 million produced in the United States.

The Directors Guild of America represents over 14,000 directors, and members of what is called their directorial team, who work in feature films, scripted television, news and sports, commercials, documentaries, and in new media. DGA members live and work throughout the United States and abroad.

Ours is perhaps the most heavily unionized industry in the country, providing good, middle-class jobs with pension and health benefits for tens of thousands of Americans. Our industry is also one of the few that can be counted on to turn in an international trade surplus year-after-year.

However, the realities of our business are not easily deciphered by those outside of it. The glitz and glamour, the international blockbusters, can give rise to misperceptions about our industry. I fear that the misperception that there is easy money to be made in Hollywood is what we are addressing today. So let me begin with just a few of the realities, which I hope will help shed light on our concerns about the MDEX and Cantors Future Exchange applications.

First, the majority of people who work on the creative side of our industry, earning middle class incomes just like most of your constituents, do not work as regular full-time staff at a Monday through Friday job. Ours is a freelance business – people move from employer to employer and from production to production, often on a daily or weekly basis, and always with an eye on their next job. Our business model recognizes and accounts for the reality of significant uncertainty and insecurity by providing for another form of security to help people in-between jobs, either directly or through our industry health and pension plans. This takes the form of payments, called residuals, which come from the exploitation of our work in secondary markets such as DVDs, free television (including broadcast and basic cable), pay television, and most recently new media. Not surprisingly there is a high correlation between box office success and downstream revenues, and hence residuals, generated in these markets.

Unlike other business ventures, the commercial success of a motion picture defies quantification or reduction to a formula. Introducing a large new variable into the production equation poses a significant danger. The ability to trade on a film's box office receipts through movie futures exchanges – exchanges where the creation of a negative perception of a film can be extremely lucrative to those "shorting" it—puts the commercial success of the film at an even greater risk. And, this new risk would not be generated by the people who spent years and invested millions making the film, rather it would be generated by those who are likely to have no real stake in seeing the film succeed so they can share in the reward—their goal is to make money for themselves. Looking further down the line, if this "manufactured" negative perception succeeds in hurting the film's box office, then what follows will be diminished downstream revenues. When that happens, it is our members, the individual employees and their health and pension plans that suffer. Additionally lower film revenues dampen reinvestment which leads to decreased production and fewer jobs in the future. So, at the end of the line, people who have no stake in the vitality and economic health of the industry will make money and the working people who invested their talents will bear the greatest impact. The specter of speculators pillaging our business to the detriment of working men and women has an uncomfortably familiar ring to it in today's economy. We hope this will not be set in motion against our industry on your watch.

Second, a film on the screen—from conception to post production—is a complex and hard won process. The people who work on a film put a great deal of talent, craftsmanship, time and energy into making that motion picture. Let me offer some perspective on the roles of the director and the craftspeople and technicians. It is universally recognized that feature film is a director's medium and for that reason the director's investment is unique. Directors can spend years of their lives putting a film together, in collaboration with many other talented individuals. While the studios have a slate of films each year, the director only has his or her single film. So of course the success or failure of an individual film can have a huge impact on the director—not just economically but also in terms of their reputation and stature, both now and in the future. Outside of sports franchises, few businesses are so clearly identified with a single individual. So when derivatives are sold one identifiable person is not as greatly at risk as they are here.

From this perspective, it is highly improbable that a director would purposely seek to undermine his/her own work at the exact time when there is the greatest at stake in its success. And, most directors have no need to "bet the over" on their pictures because their personal services agreements generally contain provisions rewarding strong performance at the box office, whether in the form of box office bonuses or profit participation, or both. This is in addition to enhanced residuals income driven by better box office performance.

While other talented individuals who collaborate in the making of a motion picture might not have quite the same stake as the Director, most have a similar commitment to the final work. The Cinematographer who shot the film, the Editors who put hundreds of thousands of frames together, the Production Designer who brings the "look" of the film to life, just to name a few—the film is also a recognition of their talent and hard work as well. And, with the funding of their health and pension plan dependent on a film's success they too have little reason to "bet against" their work.

A film employs hundreds of people at any given point in time. Movies most closely resemble the military in terms of their precise, highly regimented structure. And, as you would expect with the process of creating something from nothing, there are disruptions all along the way … and most people have limited or incomplete information about what is going on. Movie making already has great appeal to "outsiders," and to introduce this new exchange into the mix you are simply encouraging mischief at best and criminal conduct at worst. It is not hard to envision certain people approaching individuals working on a film to try to secure potentially material non-public information – information they will use to shape the value they assign (or give others to assign) to that movie's contracts in the future.

In addition it is common industry practice to hold screenings/previews of a film to which members of the public are invited before the film is finished. Hundreds of people view the incomplete film and make comments. It is easy to see how a preview that does not go well can become a factor in "betting" on its box office—and tanking a film before it even gets to the screen.

It is the bigger movies—the very ones that will be on the most screens—that are the most likely to be worked on until the very last moment. The bigger the movie, the bigger the anxiety, the later the final okay is given. Because so much is riding on them and because of this they have a very high vulnerability. At the other end of the spectrum, the lower and mid-size budgeted films –the Junos, the Hurt Lockers, the Little Miss Sunshines—have a different but equally as important vulnerability. They have little margin of error—with tight financing and schedules, they face their own unique "ups and downs" throughout production and it is far easier to harm their financial success through misplaced rumors or perception that they are worth betting against at the box office. In short, the possibilities these exchanges create for mischief and even disruption of the filmmaking process are unlimited—and in our warp-speed Internet age—impossible to control.

Third, it is well understood in our business that there is no hard and fast "formula" for success regardless of the hard work and talent involved – in fact success for any motion picture is never a foregone conclusion. All of the percentages and numbers these two groups present to discuss the viability of their exchange obscure an important fact – a film is not a fully-formed object created in a vacuum. Each one is different and unique and nobody knows going in if it will connect with the audience. For every unexpected hit there is an unexpected miss. That is the accepted risk that both those who finance motion pictures and those who create them recognize and undertake with each and every film. But at least everyone involved in that risk has an actual relationship to the work and a stake in its success. Those involved in these exchanges will not. These exchanges are in effect the same as trading in wheat from a single farm. You bet against the farm and you burn it down. We are hard pressed to think of any other commodity for which the hedging actually threatens the underlying product itself.

Such futures contracts would be childishly easy to manipulate or corrupt to increase the value of short positions. This is particularly true for risky, low-budget motion pictures where there are many individuals who would be able to materially affect the success of the film. There is no such corollary in any other futures market that I am aware of.

We understand what the existing legal standard for the establishment of a future market is. As a matter of public policy, if the creators, craftspeople, theatre owners and producers – both large and small – have no interest in hedging their risk through a futures market, which also admittedly serves no price discovery function, then the government should not sanction it. If the commercial and creative interests in the film industry have no intention of participating in these futures markets, then the markets will be composed of gamblers – many of whom will be playing with a card up their sleeve –wagering against the success of a film. If the Commodity Futures Trading Corporation does not have the authority to deny the applications to create these two futures exchanges and contracts, we believe Congress should address this issue directly.
Thank you again for your consideration and for listening to our perspective.