



# NYSE Arca WEEKLY BULLETIN

January 9, 2009 WB-09-02

The Bylaws and Rules of NYSE Arca<sup>sm</sup> Exchange ("Exchange"), in certain specific instances, require the Exchange to provide notice to all OTP Firms and OTP Holders (collectively "OTPs") and ETP Holders ("ETPs"). To satisfy this requirement, a copy of the *Weekly Bulletin*, including *Regulatory Bulletins*, is provided to all OTPs and ETPs on a weekly basis.

Pursuant to Exchange Rules, all OTPs and ETPs are reminded to promptly report business, home and mailing address changes, telephone number changes, and e-mail address changes to [crs@nyx.com](mailto:crs@nyx.com) or Client Registration Services at (888) 689-7739, option 3.

## NYSE Arca Equities

**NEWLY APPROVED ETP HOLDERS\***  
(none)

**NEWLY APPROVE MARKET MAKER/ETP HOLDER**  
VTrader Pro LLC

**TERMINATED ETP HOLDERS**  
Investin Securities Corporation

**Total ETP Holders** 594  
**Total MM/ETP Holders** 50

## NYSE Arca Options

**NEWLY APPROVED OTP FIRMS AND HOLDERS\***  
Gottlieb, Ophir – Market Maker for Cutler Group LP  
Susquehanna Securities – Broker Dealer and OTP Firm  
Gilbert, Stacey B. – Office Nominee for Susquehanna Securities

**TERMINATED OTP FIRMS AND HOLDERS**  
(none)

**Total OTP Holders** 108  
**Total MM/OTP Holders** 35

\* for current week (as of 8 a.m. today)

**Total ETP & OTP Holders** 93  
**Total ETP Only Holders** 499  
**Total OTP Only Holders** 15

For updated information regarding NYSE Arca Options plan for the OCC Symbology Initiative visit: [www.nyse.com/optionssymbology](http://www.nyse.com/optionssymbology)

## IMM ASSIGNMENTS

IMM assignment for QQQQ: J05A B36-OPTVF 01/19/08 to 01/23/09  
IMM assignment for IWM: N50 C80-SLGOA 01/19/08 to 01/23/09  
For more information visit:  
[http://www.nyse.com/pdfs/Issues\\_No\\_LMM.pdf](http://www.nyse.com/pdfs/Issues_No_LMM.pdf)

## OTP POSTINGS

The following applicants have applied for OTP status at the Exchange and are being posted for a period of three business days, during which time interested OTPs may submit written comments with respect to the qualifications of the applicants. Admission of applicants will become effective after applicants have been cleared and approved for OTP status pursuant to the policies of the Exchange.

(none)

## REPORTS DUE TO THE EXCHANGE

### Focus Report Due Dates – SEC Rules 17a-5(a) & 17a-10

*FOCUS Reports must be submitted electronically and received by the NYSE Arca Financial & Operational Compliance Department on or before the following due dates:*

**Monthly FOCUS Reports** are required from all NYSE Arca Market Makers and NYSE Arca Lead Market Makers:

**January 2009 Monthly FOCUS Report**  
**Due: Wednesday, February 25, 2009**

**Quarterly FOCUS Reports** are required from all Clearing OTPs and DEA Broker-Dealers subject to the SEC Net Capital Rule:

**4th Quarter 2008 FOCUS Report**  
**Due: Tuesday, January 27, 2009**

### Annual Audited Financial Statements – SEC Rule 17a-5(d)

*OTPs and ETPs are reminded to file their Annual Reports with the NYSE Arca Financial & Operational Compliance Department by the following due dates:*

OTPs and ETPs with FYE November 30, 2008 ..... January 29, 2009

OTPs and ETPs with FYE December 31, 2008 ..... March 2, 2009

OTPs and ETPs are reminded to submit Annual Audited Financial Statements, Material Change Forms, Financial Arrangement Disclosures, and SIPC payments to the following address:

NYSE Euronext  
Attn: [Firm's NYSE Coordinator]  
20 Broad Street, 21<sup>st</sup> Floor  
New York, NY 10005  
Fax: (212) 656-5748

## REGULATORY BULLETINS/NOTICES IN THIS ISSUE

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**REGULATORY  
INFORMATION  
BULLETIN**

**RB-09-02  
January 8, 2009**

**TO: All DEA OTP Firms and OTP Holders  
All DEA ETP Holders**

**FROM: NYSE Regulation**

**SUBJECT: Submission of FOCUS Reports and Annual Compliance Forms**

NYSE Arca, Inc. has contracted with FINRA as its agent to perform certain regulatory responsibilities on behalf of NYSE Arca, Inc. All OTP Holders, OTP Firms, and ETP Holders for which NYSE Arca, Inc. and/or NYSE Arca Equities, Inc. (collectively "NYSE Arca") is the Designated Examining Authority ("DEA") must file the financial and operational compliance notices and reports noted below with the Risk Oversight and Operational Regulation ("ROOR") Division of FINRA.

Any questions regarding this bulletin should be directed to the broker-dealer's Finance Coordinator.

**I. FOCUS Reports Submission Information**

All broker-dealers are required to file a FOCUS Report-Part IIA and a FOCUS Schedule I for the year ending December 31, 2008.

Those broker-dealers subject to SEA Rule 15c3-1 are required to submit a Quarterly FOCUS Report for the quarter ending December 31, 2008 to the Exchange by **Tuesday, January 27, 2009** (17 business days after the close of the calendar year pursuant to SEA Rule 17a-5). Those broker-dealers claiming an exemption to SEA Rule 15c3-1 are required to file an Annual FOCUS Report by **Tuesday, January 27, 2009** (17 business days after the close of the calendar year pursuant to SEA Rule 17a-10).

All FOCUS Reports are required to be submitted electronically via the FINRA e-FOCUS system.

**2009 FOCUS Report Filing Due Dates:**

Financial report due dates for 2009 are as follows:

**REPORT**

**DUE DATE**



The “Annual Compliance Acknowledgement Form” is available for download at <http://www.nyse.com/regulation/about/1161857573238.html>. The Annual Compliance Acknowledgment Form is required pursuant to NYSE Arca Rules 11.3, 11.18 and 11.19 and NYSE Arca Equities Rules 6.3, 6.17 and 6.18. The “Annual Compliance Acknowledgement Form” must be submitted to NYSE Arca by **Tuesday, January 27, 2009**. All “Annual Compliance Acknowledgment Forms” received by NYSE Arca after the filing due date or in an incomplete fashion will be considered late and subject to a \$500 fine pursuant to NYSE Arca Rule 11.3(b) and NYSE Arca Equities Rule 6.3(b).

### **III. Annual Audited Financial Statements**

All broker-dealers with a fiscal year ending December 31, 2008 are required to submit Annual Audited Financial Statements for the year ending December 31, 2008 to NYSE Arca by **Tuesday, January 27, 2009** pursuant to SEA Rule 17a-5(d).

The Annual Audited Financial Statements and Annual Compliance Acknowledgement Form may be submitted to the following address:

NYSE Arca, Inc.  
c/o FINRA  
attn: Paul Rice  
20 Broad St., 22<sup>nd</sup> Floor  
New York, NY 10005  
Fax: 212-656-5748



## REGULATORY INFORMATION BULLETIN

**RB-09-01**  
**January 7, 2009**

**TO: ETP Holders**

**SUBJECT: Direxion Shares ETF Trust**

Compliance and supervisory personnel should note that, among other things, this Information Bulletin discusses the need to deliver a prospectus to customers purchasing shares (“Shares”) of the four exchange-traded funds (“Funds”) listed below issued by the Direxion Shares ETF Trust. Please forward this Information Bulletin to other interested persons within your organization.

The following securities have been approved for Listing on NYSE Arca and will commence trading on January 8, 2009:

<b><u>Exchange-Traded Funds</u></b>	<b><u>Symbol</u></b>
Mid Cap Bull 3X Shares	MWJ
Mid Cap Bear 3X Shares	MWN

### Background Information on the Funds

As more fully explained in the Registration Statement (No. 333-150525 and 811-22201) for the Trust, the Trust is a registered open-end management investment company currently consisting of separate investment series, i.e., the Funds. The Funds are investment companies registered under the Investment Company Act of 1940, as amended (“1940 Act”), and commonly referred to as “exchange-traded funds.” The Trust currently consists of 36 separate series.

The Mid Cap Bull 3X Shares seeks daily investment results, before fees and expenses, of 300% of the price performance of the Russell MidCap<sup>®</sup> Index (the “Mid Cap Index”). The Mid Cap Bear 3X Shares seeks daily investment results, before fees and expenses, of 300% of the inverse (or opposite) of the price performance of the Mid Cap Index.

Rafferty Asset Management LLC serves as the investment adviser to the Funds. Foreside Fund Services, LLC (the “Distributor”) is the distributor for the Funds. Bank of New York Mellon is the custodian, administrator, transfer agent and fund accounting agent for the Funds.

As described more fully in the Trust’s Prospectus and Statement of Additional Information (“SAI”), each Fund issues and redeems shares at their net asset value (“NAV”) only in large blocks

of 50,000 Shares (each block of 50,000 Shares called a “Creation Unit”). Creation Units of the Bull Funds are issued and redeemed principally in-kind for securities included in the relevant underlying index and an amount of cash. Creation Units of the Bear Funds are purchased and redeemed for cash. Shares of the Funds will trade on the Exchange at market prices that may differ from their NAV. Except when aggregated in Creation Units, the Shares may not be redeemed with a Fund.

Each Fund pays out dividends from its net investment income, and distributes any net capital gains, to its shareholders at least annually. Each Fund is authorized to declare and pay capital gain distributions in additional Shares thereof or in cash; if a Fund declares such a distribution, a holder of Shares will receive additional Shares thereof unless it elects to receive cash.

The Depository Trust Company (“DTC”) serves as securities depository for the Shares, which may be held only in book-entry form; stock certificates will not be issued. DTC, or its nominee, is the record or registered owner of all outstanding Shares.

Each Fund’s NAV is determined shortly after 4:00 p.m. Eastern standard time (“ET”) on each day that the New York Stock Exchange (“NYSE”) is open for business (a “Business Day”). The NAV is available from the Trust and the Exchange and is also available to National Securities Clearing Corporation (“NSCC”) participants through data made available from NSCC.

The Trusts registration statement describes the various fees and expenses for the Fund’s shares. For a more complete description of the Funds and the Indexes, visit [www.direxionshares.com](http://www.direxionshares.com).

### Purchases and Redemptions in Creation Unit Size

ETP Holders are hereby informed that procedures for purchases and redemptions of Shares in Creation Units are described in the Trust’s Prospectus and Statement of Additional Information and that Shares are not individually redeemable but are redeemable only in Creation Unit aggregations or multiples thereof. As described in the Prospectus, Creation Units of the Bull Funds are issued and redeemed principally in-kind for securities included in the relevant underlying index and an amount of cash and Creation Units of the Bear Funds are purchased and redeemed for cash.

### Principal Risks

Interested persons are referred to the Trust’s Prospectus for a description of risks associated with an investment in the Shares. These risks include, but are not limited to, the risk that each Fund’s investment strategy may subject such Fund to greater changes to the value of portfolio holdings and imperfect correlation to the relevant Underlying Index. Each Fund may also not correlate to the relevant Underlying Index for a number of reasons including the incursion by the Fund of operating expenses and costs associated with the use of leveraged investment techniques. Over time, the cumulative percentage increase or decrease in the NAV of a Fund may diverge significantly from the cumulative percentage increase or decrease in the multiple return of the Underlying Index due to the compounding effect of losses and gains on the returns of a Fund. In

addition, as noted in the Prospectus, the Shares trade at market prices that may differ from their NAV. The NAV of the Shares will fluctuate with changes in the market value of the Fund's holdings while the market prices of the Shares will fluctuate in accordance with changes in NAV as well as the supply and demand for the Shares.

#### Exchange Rules Applicable to Trading in the Shares

The Shares are considered equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

#### Trading Hours

The value of the Indexes underlying the Shares will be disseminated to data vendors every 15 seconds during the Exchanges Core Trading Session. The Shares will trade on NYSE Arca in the Opening, Core and Late trading sessions or from 4:00 a.m. ET until 8:00 p.m. ET in accordance with NYSE Arca Equities Rule 7.34(a). The trading increment for the Fund's Shares will be \$0.01.

#### Extended Hours Trading

ETP Holders are reminded of NYSE Arca Equities Rule 7.34(e) regarding Customer Disclosure and that trading in the Funds Shares during the Exchanges Opening and Late Trading Sessions may result in additional trading risks which include: (1) that the current underlying index value may not be updated during the Opening and Late Sessions, (2) the intraday indicative value may not be updated during the Opening and Late Trading Sessions, (3) lower liquidity in the Opening or Late Trading Sessions may impact pricing, (5) higher volatility in the Opening or Late Trading Sessions may impact pricing, (6) wider spreads may occur in the Opening or Late Trading Sessions, and (7), since the intraday indicative value is not calculated or widely disseminated during the Opening and Late Trading Sessions, an investor who is unable calculate an implied value for an ETF in those sessions may be at a disadvantage to market professionals.

#### Trading Halts

The Exchange will halt trading in the Shares for a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because dissemination of the intraday indicative value of the Shares and/or the underlying value of the index has ceased and /or the daily public website disclosure has ceased. Further, the Exchange will halt trading in the Shares in accordance with NYSE Arca Equities Rule 7.12 ("Trading Halts Due to Extraordinary Market Volatility"). The Shares will be traded following a trading halt in accordance with NYSE Arca Equities Rule 7.35(f) ("Re-Opening After Trading Halts").

#### Suitability

ETP Holders are reminded of their obligations under NYSE Arca Equities Rule 9.2(a)-(b) whereby the ETP holder shall use due diligence to learn the essential facts relative to every

customer prior to trading the Shares or recommending a transaction in the Shares that an investment in the Shares is suitable for the customer. ETP Holders should adopt appropriate procedures for the opening and maintaining of accounts, including the maintaining of records prescribed by any applicable regulatory organization and by the rules and regulations of the Commission.

#### Delivery of a Prospectus

Consistent with the requirements of the Securities Act and the rules thereunder, investors purchasing Shares in the initial public offering and anyone purchasing Shares directly from a Fund (by delivery of the designated securities) must receive a Prospectus. In addition, ETP Holders are required to deliver a Prospectus to all purchasers of newly-issued Shares (i.e. during the initial public offering). ETP Holders purchasing shares from a Fund for resale to investors will deliver a Prospectus to such investors.

Prospectuses may be obtained through the Fund's website. The Prospectus does not contain all of the information set forth in the Registration Statement (including the exhibits to the Registration Statement), parts of which have been omitted in accordance with the rules and regulations of the Commission. For further information about a Fund, please refer to the Registration Statement.

In the event that a Fund relies upon an order by the Commission exempting the Shares from certain Prospectus delivery requirements under Section 24(d) of the 1940 Act and makes available a written product description, NYSE Arca Equities Rule 5.2(j)(3) Commentary .01(h) requires that ETP Holders provide to all purchasers of Shares a written description of the terms and characteristics of such securities, in a form prepared by the Trust, no later than the time a confirmation of the first transaction in the Shares, is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to the Shares that is provided to customers or the public. Any other written materials provided by a ETP Holder to customers or the public making specific reference to the ETF Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of ETF Shares of the Fund has been prepared by the Trust and is available from your broker. It is recommended that you obtain and review such circular before purchasing Shares of the Fund. In addition, upon request you may obtain from your broker a prospectus for Shares of the Fund."

An ETP Holder carrying an omnibus account for a non-ETP Holder is required to inform such non-ETP Holder that execution of an order to purchase Shares for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this rule.

Upon request of a customer, ETP Holders shall also provide a copy of the Prospectus.

## Exemptive, Interpretive and No-Action Relief Under Federal Securities Regulations

The Commission issued a letter dated October 31, 2008, ("No-Action Letter") granting exemptive or no-action relief from certain rules under the Securities Exchange Act of 1934 for the Funds

### Regulation M Exemptions

Generally, Rules 101 and 102 of Regulation M prohibit any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in Regulation M. The provisions of the Rules apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities.

The Commission issued a No-Action Letter by which persons participating in a distribution of shares of a fund may engage in secondary market transactions in such shares during their participation in such a distribution, despite the requirements of from Rule 101 under Regulation M. In addition, the SEC has permitted persons who may be deemed to be participating in the distribution of shares of a fund (i) to purchase securities for the purpose of purchasing creation unit aggregations of fund shares and (ii) to tender securities for redemption in Creation Unit Aggregations. Further, the Commission has clarified that the tender of fund shares to the Fund for redemption does not constitute a bid for or purchase of any of the Funds' securities during the restricted period of Rule 101. The Commission has issued a No-Action Letter to paragraph (e) of Rule 102 under Regulation M which allow the redemption of fund shares in creation unit aggregations during the continuous offering of shares.

### SEC Rule 14e-5

The Commission has permitted any person acting as a dealer-manager of a tender offer for a component security of fund (1) to redeem fund shares in creation unit aggregations from the issuer that may include a security subject to such tender offer and (2) to purchase fund shares during such tender offer. In addition, a No-Action has been issued under Rule 14e-5 states that if a broker-dealer acting as a dealer-manager of a tender offer for a security of the Fund purchases or arranges to purchase such securities in the secondary market for the purpose of tendering such securities to purchase one or more creation unit aggregations of shares, it must be made in conformance with the following:

- (i) such bids or purchases are effected in the ordinary course of business, in connection with a basket of securities in which any security that is the subject of a distribution, or any reference security, or
- (ii) purchases are effected as adjustments to such basket in the ordinary course of business as a result of a change in the composition of the underlying index; and

- (iii) such bids or purchases are not effected for the purpose of facilitating such tender offer.

Section 11(d)(1); SEC Rules 11d1-1 and 11d1-2

Section 11(d)(1) of the Act generally prohibits a person who is both a broker and a dealer from effecting any transaction in which the broker-dealer extends credit to a customer on any security which was part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction. The Commission has clarified that Section 11(d)(1) does not apply to broker-dealers that are not authorized participants (and, therefore, do not create creation unit aggregations) that engage in both proprietary and customer transactions in shares of a fund in the secondary market, and for broker-dealer authorized participants that engage in creations of creation unit aggregations. This relief is subject to specific conditions, including the condition that such broker-dealer (whether or not an authorized participant) does not, directly or indirectly, receive from the fund complex any payment, compensation or other economic incentive to promote or sell the shares of a fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830 (I)(5)(A), (B) or (C). See letter dated November 22, 2005 from Brian A Bussey, Assistant Chief Counsel, SEC Division of Market Regulation, to Barclays Global Investors, N.A., dated November 22, 2005. The Commission has issued a No-Action Letter under Section 11(d)(1) of the Act states that broker-dealers may treat shares of a fund, for purposes of Rule 11d1-2, as "securities issued by a registered open-end investment company as defined in the Investment Company Act" and thereby extend credit or maintain or arrange for the extension or maintenance of credit on shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule.

SEC Rule 15c1-5 and 15c1-6

The Commission has issued a No-Action letter with respect to Rule 15c1-5 and Rule 15c1-6 as to the required disclosure of control by a broker or dealer with respect to creations and redemptions of fund shares and secondary market transactions therein.

**This Information Bulletin is not a statutory Prospectus. ETP Holders should consult the Trust's Registration Statement, SAI, Prospectus and the Fund's website for relevant information.**

Inquiries regarding this Information Bulletin should be directed to Timothy J. Malinowski, Director, ETF's and Indexes, at (312) 442-7886.



## REGULATORY INFORMATION BULLETIN

**RBE-09-01**  
**January 5, 2009**

**TO: All OTP Holders and ETP Holders**

**FROM: NYSE Arca Regulation**

**SUBJECT: Electronic Communications - Record Retention Requirements**

NYSE Arca, Inc. and NYSE Arca Equities, Inc. (“Exchange”) would like to remind all OTP Holders and ETP Holders of their record keeping obligations with respect to e-mail and instant messaging.

NYSE Arca Rule 11.16(a) and NYSE Arca Equities Rule 2.24 states that each OTP Holder or ETP Holder must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Exchange Act and the rules and regulations thereunder. In addition, SEC Rule 17a-4(b)(4) mandates that all exchange members (OTP Holders and ETP Holders) maintain originals of all communications received and copies of all communications sent, relating to the their business activities on the Exchange. Accordingly, OTP Holders and ETP Holders must retain all e-mail and instant messaging communications both sent and received. Retention requirements apply regardless of whether the communication was from a proprietary e-mail system or a third party web-site (i.e., Yahoo, g-Mail). Electronic records of e-mails and instant messages must be preserved in a non-rewriteable and non-erasable format. All written and/or electronic records, retained by OTP Holders and ETP Holders to comply with SEC and Exchange rules, must be maintained for 3 years, 2 of which must be in a readily accessible place. Additionally, OTP Holders and ETP Holders are required to provide this information to the Exchange upon request. No OTP Holder or ETP Holder may refuse to make available to the Exchange such books, records or other information as may be called for under the Rules or as may be requested in connection with an Exchange investigation.

OTP Holders and ETP Holders must supervise the use of instant messaging and e-mail consistent with the supervision requirements for other forms of electronic communications. OTP Holders and ETP Holders are encouraged to review their supervisory policies and procedures to help ensure that such policies and procedures adequately address the retention requirements applicable to e-mail and instant messaging.

Failures by OTP Holders or ETP Holders to comply with the books and records requirements regarding retention of electronic communications may result in formal disciplinary actions.

Additional information regarding retention of e-mails and instant messages, and the supervision of such, may be found in Regulatory Informational Bulletin RB-08-386.<sup>1</sup> For questions regarding this bulletin or general information on retention of books and records, please contact Ed Cody at [ecody@nyx.com](mailto:ecody@nyx.com).

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<sup>1</sup>A complete copy of RB-08-386 may be found at; <http://www.nyse.com/Regulation>



## REGULATORY INFORMATION BULLETIN

**RBO-09-01**  
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