

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

09 CIV 8375

MILTON PFEIFFER, ON BEHALF OF  
HIMSELF AND ALL OTHERS  
SIMILARLY SITUATED,

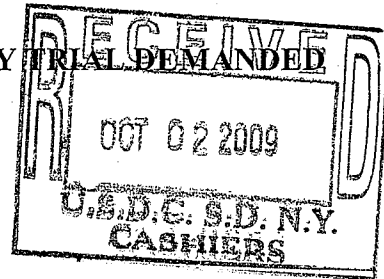
Civil Action No.

Plaintiff,

vs.

DIREXION SHARES ETF TRUST,  
DANIEL O'NEILL, TODD KELLERMAN,  
DANIEL J. BYRNE, GERALD E.  
SHANLEY, III, JOHN WEISSER AND  
RAFFERTY ASSET MANAGEMENT, LLC,

JURY TRIAL DEMANDED



Defendants.

CLASS ACTION COMPLAINT

Plaintiff Milton Pfeiffer, ("Plaintiff"), individually and on behalf of all other persons similarly situated, by its undersigned attorneys, alleges upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, based on, *inter alia*, the investigation conducted by and through its attorneys, which included, among other things, a review of the defendants' public documents, conference calls and announcements made by defendants, Securities and Exchange Commission ("SEC") filings, and press releases published by and regarding the Financial Bear 3X Shares Fund (the "FAZ Fund"), securities analysts' reports and advisories about the Company, and information readily obtainable on the Internet.

## NATURE OF THE ACTION

1. This is a class action on behalf of all persons or entities that purchased or otherwise acquired shares in the Financial Bear 3X Shares Fund (the "FAZ Fund") an exchange-traded fund ("ETF" or "Fund") offered by Direxion Shares ETF Trust ("Direxion Shares" or the "Trust"), pursuant or traceable to Direxion Share's materially false or misleading Registration Statement, Prospectus and Statement of Additional Information (collectively, the "Registration Statement") issued in connection with the FAZ Fund's shares (the "Class") during the period November 3, 2008 through April 9, 2009 (the "Class Period"). The Class is seeking to pursue remedies under §§11 and 15 of the Securities Act of 1933 (the "Securities Act"). This action asserts strict liability and negligence claims against Defendants.

2. Direxion Shares consist of a series of ETFs, including the FAZ Fund, regulated by the SEC under the Investment Company Act of 1940 (the "1940 Act"). ETFs, like the FAZ Fund, are funds that track a particular stock index and trade like stocks. Non-traditional, or so called "leveraged" and/or "inverse" ETFs, such as the FAZ Fund, offer investors alternative investment vehicle for an investor to make a bearish or bullish bet as to the performance of a particular index. Leveraged ETFs have become increasingly popular in recent years.

3. Direxion Shares ETFs are designed to provide daily investment results, before fees and expenses, that correspond to the performance of a particular index or benchmark. Funds with the word "Bull" in their name (collectively, the "Bull Funds") attempt to provide investment results that correlate positively to the return of an index or benchmark, *i.e.*, the Bull Funds attempt to move in the same direction as the target index or benchmark. Funds with the word "Bear" in their name (collectively, the "Bear Funds"), such as the FAZ Fund, attempt to provide investor results that move in the opposite or inverse direction of the target index.

4. The correlations sought by the Bull Funds and the Bear Funds are generally a multiple of the returns or the inverse of a multiple of the returns of the target index. For example, the benchmark for the Large Cap Bull Shares is 300% of the daily price performance of the Russell 1000 Index while the benchmark for the Large Cap Bear 3X Shares is 300% of the inverse, or opposite, of the daily price performance of the Russell 1000 Index. Thus, if on a given day, the Russell 1000 Index gains 1%, the Large Cap Bull 3X Shares is designed to gain approximately 3%, while the Large Cap Bear 3X Shares is designed to lose approximately 3%.

5. The FAZ Fund (the Financial Bear 3X Shares) seeks daily investment results, before fees and expenses, of 300% of the inverse (or opposite) of the price performance of the Russell 1000 Financial Services Index.

6. The FAZ Fund does not invest in equity securities. Under normal circumstances, it creates short positions by investing at least 80% of its net assets in financial instruments that, in combination, provide leveraged and unleveraged exposure to the Russell 1000 Financial Services Index, and the remainder in money market instruments.

7. The FAZ fund was advertised as being able to deliver triple the inverse return of the Russell 1000 Financial Services Index. That index fell approximately 12.6% from December 9, 2008 through April 9, 2009, ostensibly creating a 37% profit for investors in the FAZ fund. However, the FAZ Fund actually fell approximately 12% during this period. During the period November 19, 2008 through April 9, 2009 the Russell 1000 Financial Index gained approximately 6.7%. Thus, the FAZ Fund should have lost approximately 20% of its value during this period. However, the FAZ Fund actually fell approximately 92%.

9. The FAZ Fund reached an intraday high of \$201.86 per share in November 2008. On June 9, 2009, it closed at \$4.34 per share, a staggering loss of nearly 98%.

10. Given the spectacular tracking error (the divergence of the performance of the Fund from that of the benchmark or index) between the performance of the FAZ Fund and its benchmark index, the fact that Plaintiff and the Class sought to protect their assets by investing their monies on the correct directional play has been rendered meaningless. The FAZ Fund is, therefore, the equivalent of a defective product.

11. In its Registration Statement and Prospectus dated October 1, 2008, as supplemented on November 3, 2008, Direxion Shares states that “there is a special form of correlation risk that derives from these Funds’ use of leverage, which is that for periods greater than one day, the use of leverage tends to cause the performance of the Fund to be either greater than or less than the index performance times the stated multiple in the Fund objective, before accounting for fees and expenses. ... [F]or periods greater than one day, a leveraged fund is likely to underperform or overperform (but not match) the index performance times the stated multiple in the fund objective.” In its Prospectus, as supplemented on December 9, 2008, Direxion Shares states that “[t]he Funds are exchanged-traded funds that seek *daily leveraged* investment results. The funds are intended to be used as short-term trading vehicles. The pursuit of leveraged investment goals means that the funds are riskier than alternatives which do not use leverage. Further, the pursuit of *daily* leveraged investment goals means that the return of a Fund for a period longer than a single day will be the product of the series of *daily* leveraged returns for each day during the relevant period. As a consequence, especially in periods of market volatility, the path of the benchmark during the period may be at least as important to the Funds’ return for the period as the cumulative return on the benchmark for the relevant period.”

13. However, these statements failed to alert investors that holding the FAZ Fund for more than a day will almost certainly lead to enormous losses. In fact, Direxion Shares could not make that statement and remain in business with respect to Direxion Shares’ Funds. As Direxion

Shares knew, investors did not view ETFs as day trading investment vehicles and did not day-trade the FAZ Fund. Moreover, it would be virtually impossible for all FAZ Fund purchasers to sell out of their positions at the end of each day.

14. Furthermore, Direxion Shares does not market the FAZ Fund or its other ETFs as day trading vehicles. In fact, in response to an ETF warning issued by the Financial Industry Regulatory Authority after the close of the Class Period, Direxion Shares publicly stated that “[a] rational investor, considering all of the relevant factors and with a full understanding of the ETFs operation and performance characteristics, may decide to hold . . . [a leveraged or inverse leveraged] ETF for periods longer (and perhaps far longer) than a single day.” The Direxion Shares’ Registration Statement and Prospectus even provide hypothetical examples of fees that investors may encounter over one year and three year periods, indicating that long term investing in the FAZ Fund is a perfectly reasonable investment strategy.

16. On April 10, 2009, Direxion Shares began to alert investors regarding the true risks of its highly leveraged ETF products when it disclosed in its amended prospectus that *“return of each Fund for periods longer than a single day, especially in periods of market volatility, may be completely uncorrelated to the return of the Fund’s benchmark for such longer period...the Funds are not intended to be used by, and are inappropriate for, investors who intend to hold positions.”* (emphasis added). The Prospectus also for the first time titled Direxion Shares’ ETFs “daily funds” as exemplified by the new title given to the FAZ Fund, the “Direxion *Daily* Financial Bear 3X Shares.” (emphasis added).

17. On June 11, 2009, the Financial Industry Regulatory Authority (“FINRA”) issued Regulatory Notice 09-31 (the “FINRA Notice”). The FINRA Notice cautioned that *“inverse and leveraged ETFs . . . typically are unsuitable for retail investors who plan to hold them for longer than one trading session, particularly in volatile markets.”* (emphasis added). FINRA also

cautioned investment houses that sell shares in non-traditional ETFs that sales materials related to leveraged and inverse ETFs “must be fair and accurate.” Thereafter, FINRA spokesman Herb Perone stated: “Exotic ETFs, such as inverse, leveraged and inverse-leveraged ETFs, are extremely complicated and confusing products....”

18. FINRA issued additional warnings on July 13, 2009 by way of a podcast on its website. FINRA reiterated that most leveraged and inverse ETFs reset each day and are designed to achieve their stated objective on a daily basis -- but with the effects of compounding over a longer timeframe, results differ significantly from its benchmark.

19. Since FINRA’s warnings, Edward Jones & Company (“Edward Jones”) halted the sale of its non-traditional ETFs, such as the FAZ Fund. Edward Jones called ETFs, like the FAZ Fund, “one of the most misunderstood and potentially dangerous types of ETFs.”

20. UBS has also said it would not sell ETFs that use leverage or sell an asset short. Additionally, Ameriprise Financial and LPL Investment Holdings, Inc. have also prohibited sales of leveraged ETFs that seek more than twice the long or short performance of a target index.

21. On July 28, 2009, Charles Schwab (“Schwab”) issued a stark warning on its website to clients who buy non-traditional ETFs, noting that “while there may be limited occasions where a leveraged or inverse ETF may be useful for some types of investors, it is extremely important to understand that, for holding periods longer than a day, these funds may not give you the returns you may be expecting... *proceed with extreme caution.*” (emphasis added).

22. On August 18, 2009 the SEC staff and FINRA issued an alert entitled “Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-And-Hold Investors.” The alert was issued “because we believe individual investors may be confused about the performance objectives of leveraged and inverse exchange-traded funds (ETFs).” The alert advised investors that before investing in leveraged ETFs investors should ask:

**What happens if I hold longer than one trading day?** While there may be trading and hedging strategies that justify holding these investments longer than a day, buy-and-hold investors with an intermediate or long-term time horizon should carefully consider whether these ETFs are appropriate for their portfolio. As discussed above, because leveraged and inverse ETFs reset each day, their performance can quickly diverge from the performance of the underlying index or benchmark. *In other words, it is possible that you could suffer significant losses even if the long term performance of the index showed a gain.*

(emphasis in bold italics added).

23. In a news release dated August 18, 2009 the North American Securities Administrators Association (“NASAA”), “identified real estate investment schemes, leveraged ETFs, private placement offerings, natural resources investments, and Ponzi schemes as the greatest potential threats to investors this year.” With respect to leveraged ETFs NASAA stated:

Leveraged Exchange Traded Funds (ETFs). **This relatively new financial product has been offered to individual investors who may not be aware of the risks these funds carry.** The funds which trade throughout the day like a stock, use exotic financial instruments, including options and other derivatives, and promise the potential to provide greater than market returns as the value of the underlying assets rise or fall. **Given their volatility, these funds typically are not suitable for most retail investors.**

(emphasis added).

24. Direxion Shares’ disclosures in its Registration Statement failed to adequately warn investors of the risk involved in investing in its leveraged ETFs. Investors in Direxion Shares’ funds, including the FAZ Fund, were lured by the notion of directional investment plays. Investors were simply not warned that holding FAZ for more than one day would likely eviscerate any chance of successfully tracking the direction of the underlying benchmark.

25. The FAZ Fund did not go up when the Russell 1000 Financial Services Index went down. In fact in most cases, by its nature, the FAZ fund would not go up for periods longer than one day; and investors in the FAZ Fund have been shocked to learn that their supposedly safe hedges have caused them substantial losses. Defendants failed to disclose, among other things, the

following risks in the Registration Statement and Prospectus:

- Inverse correlation between the FAZ Fund and the Russell 1000 Financial Services Index over time would only happen in rare circumstances, and inadvertently, if at all;
- the extent to which performance of the FAZ Fund would inevitably diverge from the performance of the Russell 1000 Financial Services Index - - *i.e.*, the high probability, if not certainty, of spectacular tracking error;
- the consequences of high market volatility on the FAZ Fund's performance;
- the role the FAZ Fund plays in increasing market volatility, particularly in the last hour of trading;
- the FAZ Fund causes dislocations in the stock market; and
- the FAZ Fund offers a seemingly straight forward way to obtain desired exposure, but such exposure is not attainable through the FAZ Fund for periods greater than one day.

#### **JURISDICTION AND VENUE**

26. The claims asserted herein arise under and pursuant to §§11 and 15 of the Securities Act, 15 U.S.C. §§77k and 77o.

27. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and §22 of the Securities Act.

28. The Court has personal jurisdiction over this action because Defendants conducted business in this district and FAZ trades on the New York Stock Exchange ("NYSE") Arca.

29. In connection with the acts alleged in this Complaint Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

## PARTIES

30. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased shares of FAZ at artificially inflated prices during the Class Period and was damaged thereby.

31. Defendant Direxion Shares ETF Trust is a Delaware statutory trust and a registered investment company offering a number of separate exchange-traded funds (ETFs), including the FAZ Fund, to the public. Shares of the FAZ Fund trade on the NYSE Arca. Unlike conventional mutual funds, shares are not individually redeemable securities. Rather, each Fund issues and redeems shares on a continuous basis at net asset value (“NAV”) only in large blocks of shares called “Creation Units.” Until December 15, 2008 a Creation Unit consisted of 100,000 shares. Thereafter, a Creation Unit consisted of 50,000 shares. Creation Units of the Bear Funds are purchased and redeemed for cash.

32. Defendant Daniel D. O’Neill is the President and a Trustee of Direxion Shares. O’Neill signed the Registration Statement.

33. Defendant Todd Kellerman is the Treasurer and Controller of Direxion Shares. Kellerman signed the Registration Statement.

34. Defendant Daniel J. Byrne is a Trustee of Direxion Shares. Defendant Byrne signed the Registration Statement.

35. Defendant Gerald E. Shanley, III is a Trustee of Direxion Shares. Defendant Shanley signed the Registration Statement.

36. Defendant Rafferty Asset Management LLC (“Rafferty”) is the investment advisor for the FAZ Fund. Rafferty provides investment management services to the FAZ Fund. Rafferty was responsible for developing, implementing, and supervising the FAZ Fund’s investment program. Defendant O’Neill is the Managing Director of Rafferty.

## SUBSTANTIVE ALLEGATIONS

### Traditional ETFs

37. ETFs are investment companies that are legally classified as open-ended companies or unit investment trusts. ETFs are frequently considered low cost index mutual funds that trade like stocks. ETFs, however, differ from traditional mutual funds in the following ways:

(a) ETFs do not sell individual shares directly to investors and only issue shares in large blocks (of 50,000 shares, for example) that are known as "Creation Units";

(b) Investors generally do not purchase Creation Units with cash (although Creation Units in the FAZ Fund are purchased for cash). Instead, generally, investors buy Creation Units with a basket of securities that generally mirrors an ETF portfolio;

(c) After purchasing a Creation Unit, an investor often splits it up and sells the individual shares on a secondary market. This permits other investors to purchase individual shares (instead of Creation units); and

(d) Investors who want to sell their ETF shares have two options: (1) they can sell individual shares to other investors in the secondary market, or (2) they can sell the Creation Units back to the ETF. ETFs generally redeem Creation Units by giving investors the securities that comprise the portfolio instead of cash (although Creation Units in the FAZ Fund are redeemed for cash).

### Non-Traditional Leveraged ETFs

38. Non-traditional, or leveraged ETFs - sometimes referred to as "exotic" ETFs - are even newer breeds of ETFs that seek to deliver multiples of the performance of the index or benchmark they track. Some leveraged ETFs are "inverse" or "short" funds, like the FAZ Fund, meaning that they seek to deliver the opposite of the performance of the index or benchmark they

track. Like traditional ETFs, some inverse ETFs track broad indices, some are sector-specific, and still others are linked to commodities or currencies. Inverse ETFs are often marketed as a way for investors to profit from, or at least hedge their exposure to, downward moving markets.

39. Some non-traditional ETFs, such as the FAZ Fund, are both short and leveraged, meaning that they seek to achieve a return that is a multiple of the inverse performance of the underlying index. An inverse ETF that tracks the S&P 500, for example, seeks to deliver the inverse of the performance of the S&P 500, while a double-leveraged inverse S&P 500 ETF seeks to deliver twice the opposite of the index's performance. To accomplish their objectives, leveraged and inverse ETFs pursue a range of complex investment strategies through the use of short sales, swaps, futures contracts and other derivative instruments.

40. Most leveraged and inverse ETFs, including the FAZ Fund, "reset" daily. This results in "compounding" effects. Using a two-day example, if the index goes from 100 to close at 101 on the first day and back down to close at 100 on the next day, the two-day return of an inverse ETF will be different than if the index had moved up to close at 110 the first day but then back down to close at 100 on the next day. In the first case with low volatility, the inverse ETF losses 0.02 percent; but in the second more volatile scenario, the inverse ETF loses 1.82 percent.

#### **The False and Misleading Registration Statement**

41. Direxion Shares' Registration Statement for the FAZ Fund, and certain other funds, became effective on September 17, 2008.

42. On September 29, 2008 Direxion Shares filed a post effective Amended Registration Statement for the FAZ Fund, and certain other Funds, with the SEC, effective September 29, 2008, including a Prospectus which was filed with the SEC effective October 3, 2008 as supplemented on November 3, 2008, filed November 7, 2008, as supplemented on December 9, 2008. The Registration Statement was signed by Defendants O'Neill, Kellerman,

Byrne, Shanley and Weiser. On December 17, 2008 Direxion Shares filed another post effective Amendment to its Registration Statement which became effective on February 15, 2009. The Registration Statement was signed by Defendants O'Neill, Byrne, Shanley and Weisser.

43. On November 3, 2008, Direxion Shares issued a press release entitled "Direxion Launches Eight New Leveraged ETFs; innovative funds benchmarked to help advisors and investors seeking to outperform major Russell Indexes in Bull and Bear markets." Among those eight funds offered by Direxion Shares was the FAZ Fund. The Company's press release provided in part:

Boston, MA - November 3, 2008 - Direxion, a pioneer in providing alternative investment strategies to sophisticated investors, today announced their entrance into the ETF space with the Direxion Shares 3X Exchange-Traded Funds, slated to begin trading Wednesday, November 5, 2008. The new ETFs are a group of leveraged Bull and Bear index funds that seek 300% of the daily performance, or 300% of the inverse of the daily performance (before fees and expenses) of the four distinct Russell indexes they benchmark. There is no guarantee that the funds will achieve their objective.

The new Direxion Shares ETFs are designed to give investment advisors and sophisticated investors the ability to execute active trading strategies in all types of markets. The funds deliver increased market exposure via 3 to 1 leverage, long and short of their respective indices and afford investors the opportunity to effectively allocate capital to seek improved risk-adjusted returns. Direxion Shares ETFs represent the highest amount of leverage, currently available in the ETF space.

"These eight leveraged index Bull and Bear ETFs will give our investors the ability to achieve increased exposure to the diversified Russell 10000, Russell 20008, Russell 10000 Energy and Russell 10008 Financial Services Indexes - critical investment tools for navigating changing markets," said Dan O'Neill, Direxion Shares' President. "We're thrilled to be the first to deliver portfolio solutions that track these dynamic Russell indexes using the power of leverage."

The ETF structure allows investors to benefit from the flexibility and low cost features of an exchange traded fund product, coupled with the leveraged investment solution experience that Direxion Funds is known for in the mutual fund industry.

"Our new leveraged Bull and Bear ETFs offer an unprecedented level of leverage in the ETF arena, something that today's dynamic investors are demanding," said Bill Franca, Direxion's Executive Vice President of Sales and Distribution. "Direxion Shares will give savvy investors the array of **important investment options they have been seeking to actively capitalize on the volatility of today's markets.**"

50. On November 19, 2008, the FAZ Fund began trading on the NYSE Arca.

51. The November 3, 2008 Prospectus for the FAZ Fund, among others, filed with the SEC on November 7, 2008 describes the Funds' investment techniques and policies. With respect to leverage, compounding and volatility risks, the Prospectus made the following disclosures:

***Correlation Risk***

A number of factors may affect a Fund's ability to achieve a high degree of correlation with its benchmark, and there can be no guarantee that a Fund will achieve a high degree of correlation. A failure to achieve a high degree of correlation may prevent a Fund from achieving its investment objective. A number of factors may adversely affect a Fund's correlation with its benchmark, including fees, expenses, transaction costs, costs associated with the use of leveraged investment techniques, income items and accounting standards. A Fund may not have investment exposure to all securities in its underlying benchmark index, or its weighting of investment exposure to such stocks or industries may be different from that of the index. In addition, a Fund may invest in securities or financial instruments not included in the index underlying its benchmark. A Fund may be subject to large movements of assets into and out of the Fund, potentially resulting in the Fund being over- or under-exposed to its benchmark. Activities surrounding annual index reconstitutions and other index rebalancing or reconstitution events may hinder the Funds' ability to meet their daily investment objective on that day. Each Fund seeks to rebalance its portfolio daily to keep leverage consistent with each Fund's daily investment objective.

Certain Funds are "leveraged" funds in the sense that they have investment objectives to match a multiple of the performance of an index on a given day. These Funds are subject to all of the correlation risks described above. In addition, there is a special form of correlation risk that derives from these Funds' use of leverage, which is that for periods greater than one day, the use of leverage tends to cause the performance of a Fund to be either greater than or less than the index performance times the stated multiple in the fund objective, before accounting for fees and fund expenses.

\*\*\*\*\*

***Inverse Correlation Risk***

Each Bear Fund is negatively correlated to its index or benchmark and should lose money when its index or benchmark rises - a result that is the opposite from conventional funds. Because each Bear Fund seeks daily returns inverse by a defined percentage to its index or benchmark, the difference between a Bear Fund's daily return and the price performance of its index or benchmark may be negatively compounded during periods in which the markets decline.

\* \* \*

### ***Tracking Error Risk***

Several factors may affect a Fund's ability to achieve its daily target. A Fund may have difficulty achieving its daily target due to fees and expenses, high portfolio turnover, transaction costs, and/or a temporary lack of liquidity in the markets for the securities held by a Fund. A failure to achieve a daily target may cause a Fund to provide returns for a longer period that are worse than expected. In addition, a Fund that meets its daily target over a period of time may not necessarily produce the returns that might be expected in light of the returns of its index or benchmark for that period. Differences may result from the compounding effect of daily market fluctuations, the use of leverage and the Bear Funds' inverse correlation.

52. Suggesting that the Funds' including the FAZ Fund, are appropriate investment vehicles for long term and retail investors the Prospectus discloses:

Shares may only be purchased from or redeemed with the Funds in Creation Units. As a result, *retail investors* generally will not be able to purchase or redeem Shares directly from or with the Funds. ***Most retail investors will purchase or sell Shares in the secondary market with the assistance of a broker.*** Thus, some of the information contained in this prospectus such as information about purchasing and redeeming Shares with the Fund and all references to the transaction fee imposed on purchases and redemptions, is not relevant *to retail investors*.

### ***High Portfolio and Turnover Risk***

Frequent trading could increase the rate of creations and redemptions of Fund Shares and the Funds' portfolio turnover, which could involve correspondingly greater expenses to a Fund, including brokerage commissions or dealer mark-ups/mark-downs and adverse tax consequences to a Fund's shareholders.

Unlike traditional mutual funds, however, each Fund issues and redeems its Shares at NAV per share in Creation Units plus applicable transaction fees and each Fund's Shares may be purchased and sold on the Exchange at prevailing market prices. ***Given this structure, the risks of frequent trading may be less than in the case of a traditional mutual fund.*** Nevertheless, to the extent that purchases and redemptions directly with the Funds are effected in cash rather than through a combination or redemption of portfolio securities, frequent purchases and redemptions could still increase the rate of portfolio turn-over.

***The costs associated with the Funds' portfolio turnover will have a negative impact on longer-term investors.*** Although the Funds reserve the right to reject any purchase orders or suspend the offering of Fund Shares, the Funds do not currently impose any trading restrictions on Fund shareholders nor actively monitor for trading abuses.

**A Precautionary Note to Retail Investors.** The Depository Trust Company (“DTC”), a limited trust company and securities depository that serves as a national clearinghouse for the settlement of trades for its participating banks and broker-dealers, or its nominee will be the registered owner of all outstanding Shares of each Fund of the Trust. Your ownership of Shares will be shown on the records of DTC and the DTC Participant broker through whom you hold the Shares. THE TRUST WILL NOT HAVE ANY RECORD OF YOUR OWNERSHIP. *Your account information will be maintained by your broker, who will provide you with account statements, confirmations of your purchases and sales of Shares, and tax information.* Your broker also will be responsible for ensuring that you receive shareholder reports and other communications from the Fund whose Shares you own. Typically, you will receive other services (e.g., average cost information) only if your broker offers these service (emphasis in bold italics added).

53. The Statement of Additional Information (“SAI”) incorporated into the Prospectus by reference contains the following additional misleading risk disclosures:

**Risk of Tracking Error**

Several factors may affect a Fund’s ability to track the performance of its applicable index. Among these factors are: (1) Fund expenses, including brokerage expenses and commissions (which may be increased by high portfolio turnover); (2) less than all of the securities in the target index being held by a Fund and securities not included in the target index being held by a Fund; (3) an imperfect correlation between the performance of instruments held by a Fund, such as futures contracts and options, and the performance of the underlying securities in the cash market comprising an index; (4) bid-ask spreads; (5) a Fund holding instruments that are illiquid or the market for which becomes disrupted; (6) the need to conform a Fund’s portfolio holdings to comply with that Fund’s investment restrictions or policies, or regulatory or tax law requirements; and (7) market movements that run counter to a Bull Fund’s investments (which will cause divergence between a Fund and its target index over time due to the mathematical effects of leveraging).

While index futures and options contracts closely correlate with the applicable indices over long periods, shorter-term deviation, such as on a daily basis, does occur with these instruments. As a result, a Fund’s short-term performance will reflect such deviation from its target index.

In the case of Bear ETFs whose NAVs are intended to move inversely from their target indices, the factor of compounding also may lead to tracking error. Even if there is a perfect inverse correlation between a Fund and the return of its applicable target index on a daily basis, the symmetry between the changes in the benchmark and the changes in a Fund’s NAV can be altered significantly over time by a compounding effect. For example, if a Fund achieved a perfect inverse correlation with its target index on every trading day over an extended period and the level of returns of that index significantly decreased during that period, a compounding effect for that period would result, causing an increase in a Fund’s NAV by a

percentage that is somewhat greater than the percentage that the index's returns decreased. Conversely, if a Fund maintained a perfect inverse correlation with its target index over an extended period and if the level of returns of that index significantly increased over that period, a compounding effect would result, causing a decrease of a Fund's NAV by a percentage that would be somewhat less than the percentage that the index returns increased.

### Leverage

Each Fund intends regularly to use leveraged investment techniques in pursuing its investment objectives. Utilization of leverage involves special risks and should be considered to be speculative. Leverage exists when a Fund achieves the right to a return on a capital base that exceeds the amount the Fund has invested. Leverage creates the potential for greater gains to shareholders of these Funds during favorable market conditions and the risk of magnified losses during adverse market conditions. Leverage is likely to cause higher volatility of the net asset values of these Funds' Shares. Leverage may involve the creation of a liability that does not entail any interest costs or the creation of a liability that requires the Fund to pay interest which would decrease the Fund's total return to shareholders. If these Funds achieve their investment objectives, during adverse market conditions, shareholders should experience a loss greater than they would have incurred had these Funds not been leveraged.

54. Directly below these disclosures the Statement of Additional Information depicts three tables intended to illustrate (a) estimated Fund return over one year when the Fund objective is to seek daily investment results, before fund fees and expenses and leverage costs, that correspond to 300% of the daily performance of an index; (b) estimated Fund return over one year when the Fund objective is to seek daily investment results, before fees and expenses, that correspond to the inverse (minus 100%) of the daily performance of an index; and (c) estimated fund return over one year when the fund objective is to seek daily investment results, before fees and expenses, that correspond to three times the inverse (minus 300%) of the daily performance of an index. Without additional narrative or explanation, Direxion Shares states that these three tables are intended to isolate the effect of index volatility and index performance on the return of a Bull Fund and that the Fund's actual returns may be significantly greater or less than the returns shown above as a result of any of the factors discussed above or under "Correlation Risk" in prospectus.

55. All of the above discussed disclosures were materially misleading because they failed to disclose:

- Inverse correlation between the FAZ Fund and the Russell 1000 Financial Services Index over a period of more than one day would occur only on rare occasions, if at all;
- the extent to which performance of the FAZ Fund would inevitably diverge from the performance of the Russell 1000 Financial Services Index - - i.e., the probability, if not certainty of spectacular tracking error;
- the severe consequences of high market volatility on the FAZ Fund's investment objective and performance;
- the role the FAZ Fund plays in increasing market volatility, particularly in the last hour of trading;
- the consequences of the FAZ Fund's daily hedge adjustment always going in the same direction as the movement of the underlying index, notwithstanding that it is an inverse leveraged ETF;
- the FAZ Fund causes dislocations in the stock market; and
- The FAZ Fund offers a seemingly straight forward way to obtain desired exposure, but such exposure is not attainable through the FAZ Fund.

56. On December 9, 2008, Direxion Shares supplemented its Registration Statement and Prospectus in a filing with the SEC on Form 497. In this document, Direxion Shares disclosed for the first time that the Funds are intended to be used as short-term trading vehicles. In particular the Supplemented Prospectus filed December 7, 2008, disclosed:

**The Funds are exchange-traded funds that seek *daily leveraged* investment results. The Funds are intended to be used as short-term trading vehicles. The pursuit of leveraged investment goals means that the Funds are riskier than alternatives which do not use leverage. Further, the pursuit of *daily* leveraged investment goals means that the return of a Fund for a period longer than a single day will be the product of the series of daily leveraged returns for each day during the relevant period. As a consequence, especially in periods of market volatility, the path of the benchmark during the period may be at least as important to the Fund's return for the period as the cumulative return of the benchmark for the relevant period. The Funds are not suitable for all investors. The Funds should be utilized only by sophisticated investors who**

**understand the risks associated with the use of leverage, understand the consequences of seeking daily leveraged investment results and (c) who intend to actively monitor and manage their investments. There is no assurance that the Funds will achieve their objectives and an investment in a Fund could lose money. No single Fund is a complete investment program.**

(emphasis in original).

57. Direxion Shares, however, stopped short of making the types of disclosures that would render the December 9th Prospectus not materially misleading. Significantly, Direxion Shares failed to disclose that its Funds were only appropriate investment vehicles for day trades and that they were inappropriate investment vehicles for traders who intended to hold their Fund positions for periods greater than one day.

58. Moreover, Direxion Shares, again, included language in the Prospectus that suggested that its Funds, including the FAZ Fund, were appropriate for retail investors and investors that intended to hold positions for longer than one day:

Shares may only be purchased from or redeemed with the Funds in Creation Units. As a result, *retail investors* generally will not be able to purchase or redeem Shares directly from or with the Funds. ***Most retail investors will purchase or sell Shares in the secondary market with the assistance of a broker.*** Thus, some of the information contained in this prospectus, such as information about purchasing and redeeming Shares from or with a Fund and all references to the transaction fee imposed on purchases and redemptions, is not relevant to *retail investors*.

#### ***High Portfolio and Turnover Risk***

Frequent trading could increase the rate of creations and redemptions of Fund Shares and the Funds' portfolio turnover, which could involve correspondingly greater expenses to a Fund, including brokerage commissions or dealer mark-ups/mark-downs and adverse tax consequences to a Fund's shareholders.

Unlike traditional mutual funds, however, each Fund issues and redeems its Shares at NAV per share in Creation Units plus applicable transaction fees and each Fund's Shares may be purchased and sold on the Exchange at prevailing market prices. ***Given this structure, the risks of frequent trading may be less than in the case of a traditional mutual fund.*** Nevertheless, to the extent that purchases and redemptions directly with the Funds are effected in cash rather than through a combination or redemption of portfolio securities, frequent purchases and redemptions could still increase the rate of portfolio turn-over.

*The costs associated with the Funds' portfolio turnover will have a negative impact on longer-term investors.* Although the Funds reserve the right to reject any purchase orders or suspend the offering of Fund Shares, the Funds do not currently impose any trading restrictions on Fund shareholders nor actively monitor for trading abuses.

**A Precautionary Note to Retail Investors.** The Depository Trust Company ("DTC"), a limited trust company and securities depository that serves as a national clearinghouse for the settlement of trades for its participating banks and broker-dealers, or its nominee will be the registered owner of all outstanding Shares of each Fund of the Trust. Your ownership of Shares will be shown on the records of DTC and the DTC Participant broker through whom you hold the Shares. **THE TRUST WILL NOT HAVE ANY RECORD OF YOUR OWNERSHIP. Your account information will be maintained by your broker, who will provide you with account statements, confirmations of your purchases and sales of Shares, and tax information.** Your broker also will be responsible for ensuring that you receive shareholder reports and other communications from the Fund whose Shares you own. Typically, you will receive other services (e.g., average cost information) only if your broker offers these services.

(emphasis in bold italics added).

60. Once again, the Prospectus also provided hypothetical examples of fees and expenses that investors may encounter over 1 year and 3 year periods, indicating that investing for periods greater than one day was an acceptable investing strategy.

62. On December 17, 2008, Direxion Shares again filed a post-effective amendment to its Registration Statement. The amended Registration Statement which became effective on February 15, 2009, contained the same misleading statements that were contained in the December 9, 2009, Prospectus.

63. On December 17, 2008, Direxion Shares issued a press release announcing that it had added six new leveraged ETFs to its existing fund lineup. The press release stated in part:

"Our first eight Direxion Shares ETFs have been extremely well received by sophisticated advisors and institutional investors - some seeking to hedge positions in their portfolios and others seeking to take advantage of the current volatile markets," stated Dan O'Neill, Direxion Shares' President. "We experienced remarkable levels of trading volume following the launch of our initial ETFs, garnering over \$800 million in assets in the first five weeks, as of 12/12/2008. The reception of these funds in the marketplace has been overwhelmingly positive."

Much like the first eight Direxion Shares ETFs launched in November 2008, these six new ETFs afford investment advisors and sophisticated investors the ability to execute active trading strategies in varying market types. The funds deliver increased market exposure of 300 percent, long and short, of their respective indices. The suite of Direxion Shares ETFs represents the highest amount of leverage currently available in the ETFs space.

By providing both Bull and Bear versions of each of the indexes, Direxion gives seasoned investors the ability to seek competitive returns in rising and falling markets across a wide spectrum of diversified assets. The ETF structure allows investors to benefit from the flexibility of an exchange traded fund product, coupled with the leveraged investment solution experience that Direxion is known for in the mutual fund industry.

64. On January 8, 2009 Direxion issued a press release announcing that it had added two 3X leveraged ETFs to its existing fund offerings. The press release stated in part:

“We received such a wonderful response from investors after the launch of our first fourteen ETFs last year,” stated Dan O’Neill, Direxion Shares’ President. “Trading volume for the products has been quite high, mainly due to the fact that we now offer investors the highest amount of leverage available in the market place on the long and the short side. Additionally, the flexibility that these products afford investors can prove quite valuable in these volatile markets.”

Many sophisticated advisors and institutional investors are using these 3X ETFs to hedge the positions in their current portfolios, while others are using the Funds to seek to take advantage of the volatility found in today’s markets. The Direxion Shares ETFs represent the highest amount of leverage currently available in the ETF space.

By providing both a Bull and a Bear Fund to track each of the indexes, Direxion gives seasoned investors the ability to seek competitive returns in rising and falling markets across a wide spectrum of diversified assets.

65. All of the above discussed disclosures were false or misleading because they failed to disclose:

- Inverse correlation between the FAZ Fund and the Russell Financial Services Index over time would only happen in the rarest of circumstances, and inadvertently, if at all;
- the extent to which performance of the FAZ Fund would inevitably diverge from the performance of the Russell 1000 Financial Services Index - - i.e., the probability, if not certainty, of spectacular tracking errors;

- the severe consequences of high market volatility on the FAZ Fund's investment objective and performance;
- the severe consequences of inherent path dependency in periods of high market volatility on the FAZ Fund's performance;
- the role the FAZ Fund plays in increasing market volatility, particularly in the last hour of trading; and
- The FAZ Fund offers a seemingly straight forward way to obtain desired exposure, but such exposure is not attainable through the FAZ Fund.

66. Significantly, Direxion Shares failed to disclose that mathematical compounding actually prevents the FAZ Fund from achieving its stated objective over a period of time greater than one day. Another ETF provider, Proshares Trust, did in fact disclose this fact in a Form 10-K filed with the SEC on March 31, 2009 ("the Funds do not seek to achieve their stated objective over a period of time greater than one day because mathematical compounding prevents the Funds from achieving such results."). Disclosures that merely state that the return of the index over a period of time greater than one day multiplied by a Funds' specified multiple or inverse multiple "may" or "will not generally" equal a Funds' performance over that same period are misleading the virtual impossibility of the FAZ Fund's ability to correlate to the Russell 1000 Financial Services Index over time.

67. On April 10, 2009, Direxion Shares began to disclose the true risks of its highly leveraged ETF products when it disclosed in its Supplemental Prospectus, that "[t]he return of each Fund for periods longer than a single day, especially in periods of market volatility, may be completely uncorrelated to the Fund's benchmark for such longer period[;]. . . the Funds are not intended to be used by, and are inappropriate for, investors who intend to hold positions:"

**The Funds offered in this Prospectus are exchange-traded funds but they are very different from most exchange-traded funds. First, all of the Funds pursue leveraged investment goals, which means that the Funds are riskier than alternatives that do not use leverage because the Funds magnify the performance of the benchmark on an investment. Second, each of the Bear**

Funds pursues investment goals which are inverse to the performance of its benchmark, a result opposite of most exchange-traded funds. Third, each Fund offered in this Prospectus seeks *daily leveraged* investment results. *The return of each Fund for periods longer than a single day, especially in periods of market volatility, may be completely uncorrelated to the return of the Fund's benchmark for such longer period.*

*The Funds are intended to be used as short-term trading vehicles for investors managing their portfolios on a daily basis. The Funds are not intended to be used by, and are not appropriate for, investors who intend to hold positions. The Funds should be utilized only by sophisticated investors who (a) understand the risks associated with the use of leverage, (b) understand the consequences of seeking daily leveraged investment results, (c) understand the risk of shorting; and (d) intend to actively monitor and manage their investments on a daily basis. Investors who do not understand the Funds or do not intend to manage the funds on a daily basis should not buy the Funds. There is no assurance that the Funds will achieve their objectives and an investment in a Fund could lose money. No single Fund is a complete investment program.*

(italicized emphasis added).

68. With respect to daily rebalancing risk and volatility risk, the Prospectus further disclosed:

Each Fund seeks to provide a return which is a multiple of the daily performance of its benchmark. No Fund attempts to, and no Fund should be expected to, provide returns which are a multiple of the return of the benchmark for periods longer than a single day. Each Fund rebalances its portfolio on a daily basis, increasing exposure in response to that day's gains or reducing exposure in response to that day's losses. Daily rebalancing will impair a Fund's performance if the benchmark experiences volatility. For instance, a hypothetical 3X Bull Fund would be expected to lose 11% (as shown in the Table 1 below) if its benchmark provided no return over a one year period during which its benchmark experienced annualized volatility of 20%. A hypothetical 3X Bear Fund would be expected to lose 14% (as shown in the Table 1 below) if its benchmark provided no return over a one year period during which its benchmark experienced annualized volatility of 20%. If the benchmark's annualized volatility were to rise to 40%, the hypothetical loss for a one year period for a Bull Fund widens to approximately 38% while the loss for a Bear Fund rises to 46%. *At higher ranges of volatility, there is a chance of a near complete loss of Fund value even if the benchmark is flat. For instance, if annualized volatility of the benchmark is 90%, both a Bull and a Bear Fund targeted to the same benchmark would be expected to lose more than 90% of their value even if the cumulative benchmark return for the year was 0%. An index's volatility rate is a statistical measure of the magnitude of fluctuations in the returns of an index.*

Table 1

Volatility	Bull Fund Loss	Bear Fund Loss
10%	-3%	-4%
20%	-11%	-14%
30%	-24%	-29%
40%	-38%	-46%
50%	-53%	-64%
60%	-67%	-80%
70%	-78%	-94%
80%	-87%	-93%
90%	-92%	-97%
100%	-96%	-99%

Table 2 shows the range of volatility for each of the indexes to which one of the Funds is benchmarked over the six months ended February 27, 2009. (In historical terms, volatility ranges during this period were extremely high.) The indexes to which the Funds are benchmarked have historical volatility rates over that period ranging from 3% to 26%. Since market volatility, like that experienced by the markets currently, has negative implications for the performance for periods longer than a single day for Funds which rebalance daily, investors should be sure to monitor and manage their investments in the Funds in volatile markets. Investors can use Table 1 and Table 2 together to understand the risks of holding the Funds for long periods. *These tables are intended to simply underscore the fact that the Funds are designed as short-term trading vehicles for investors managing their portfolios on a daily basis. They are not intended to be used by, and are not appropriate for, investors who intend to hold positions in an attempt to generate returns through time.*

Table 2

Index	Volatility Range
BNY BRIO Select ADR Index <sup>®</sup>	99%
BNY China Select ADR Index <sup>®</sup>	82%
Idus India Index	82%
IMSCI EAFE <sup>®</sup> Index	67%
IMSCI Emerging Markets Index <sup>SM</sup>	100%
IMSCI US REIT Index <sup>SM</sup>	111%
NYSE Current 2 Year U.S. Treasury Index	3%
NYSE Current 5 Year U.S. Treasury Index	8%
NYSE Current 10 Year U.S. Treasury Index	13%
NYSE Current 30 Year U.S. Treasury Index	26%
Russell 1000 <sup>®</sup> Index	57%
Russell 1000 <sup>®</sup> Energy Index	83%
Russell 1000 <sup>®</sup> Financial Services Index	93%
Russell 1000 <sup>®</sup> Technology Index	60%

Russell 2000 <sup>®</sup> Index	64%
Russell 3000 <sup>®</sup> Index	58%
Russell Midcap <sup>®</sup> Index	62%
S&P Global Clean Energy Index <sup>™</sup>	93%
S&P Homebuilding Select Industry Index <sup>SM</sup>	118%
S&P Latin America 40 Index	101%

(emphasis added).

69. The Prospectus also for the first time titled its ETFs “daily funds”. Thus, the new title given to the FAZ Fund, is “Direxion *Daily* Financial Bear 3X Shares.” (emphasis added).

70. On June 11, 2009, the Financial Industry Regulatory Authority (“FINRA”) issued Regulatory Notice 09-31 (the “FINRA Notice”). The FINRA Notice cautioned that “**inverse and leveraged ETFs . . . typically are unsuitable for retail investors who plan to hold them for longer than one trading session, particularly in volatile markets.**” (emphasis added). FINRA also reminded those who deal in non-traditional ETFs that sales materials related to leveraged and inverse ETFs “must be fair and accurate.” Moreover, FINRA spokesman Herb Perone stated: “Exotic ETFs, such as inverse, leveraged and inverse-leveraged ETFs, are extremely complicated and confusing products....”

71. FINRA issued additional warnings on July 13, 2009 by way of a podcast on its website. FINRA reiterated that most leveraged and inverse ETFs reset each day and are designed to achieve their stated objective on a daily basis -- but with the effects of compounding over a longer timeframe, results differ significantly.

72. In light of these warnings, Edward Jones & Company (“Edward Jones”) halted the sale of its non-traditional ETFs, such as the FAZ Fund. Edward Jones called leveraged ETFs “one of the most misunderstood and potentially dangerous types of ETFs.”

73. UBS has also said it would not trade ETFs that use leverage or sell an asset short. Similarly, Ameriprise Financial and LPL Investment Holdings, Inc. have prohibited sales of leveraged ETFs that seek more than twice the long or short performance of their target index.

Wells Fargo and Morgan Stanley Smith Barney are now also reviewing their policies on non-traditional ETFs.

74. As reported on July 30, 2009 by the Wall Street Journal, Charles Schwab (“Schwab”) issued an unusual warning on July 28, 2009 to clients who buy non-traditional ETFs. Schwab offered a strongly worded warning on its website noting that “while there may be limited occasions where a leveraged or inverse ETF may be useful for some types of investors, it is extremely important to understand that, for holding periods longer than a day, these funds may not give you the returns you may be expecting. ...Proceed with extreme caution.”

75. On August 18, 2009 the SEC staff and FINRA issued an alert entitled “Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-And-Hold Investors.” The alert was issued “because we believe individual investors may be confused about the performance objectives of leveraged and inverse exchange-traded funds (ETFs).” Among other things, the alert advised investors that before investing in leveraged ETFs investors should ask:

- **What happens if I hold longer than one trading day?** While there may be trading and hedging strategies that justify holding these investments longer than a day, buy-and-hold investors with an intermediate or long-term time horizon should carefully consider whether these ETFs are appropriate for their portfolio. As discussed above, because leveraged and inverse ETFs reset each day, their performance can quickly diverge from the performance of the underlying index or benchmark. In other words, it is possible that you could suffer significant losses even if the long term performance of the index showed a gain.

76. And in a news release dated August 18, 2009 the North American Securities Administrators Association (“NASAA”), whose members include securities administrators of the 50 United States, “identified real estate investment schemes, leveraged ETFs, private placement offerings, natural resources investments, and Ponzi schemes as the greatest potential threats to investors this year.” With respect to leveraged ETFs NASAA stated:

Leveraged Exchange Traded Funds (ETFs). *This relatively new financial product*

*has been offered to individual investors who may not be aware of the risks these funds carry.* The funds which trade throughout the day like a stock, use exotic financial instruments, including options and other derivatives, and promise the potential to provide greater than market returns as the value of the underlying assets rise or fall. **Given their volatility, these funds typically are not suitable for most retail investors.**

(emphasis added).

77. The FAZ fund was supposed to deliver triple the inverse return of the Russell 1000 Financial Services Index which fell approximately 12.6% from December 9, 2008 through April 9, 2009, ostensibly creating a profit to investors who anticipated a decline in the U.S. financial services market. In other words, the FAZ Fund should have gained approximately 37% (3X the inverse of the decline in the Russell 1000 Financial Services Index) during this period. However, the FAZ Fund actually fell approximately 12%.

78. The FAZ Fund reached an intraday high of \$201.86 per share in November 2008. On June 9, 2009, it closed at \$4.34 per share, a staggering loss of nearly 98%.

79. Investors who acquired shares of the FAZ Fund during the Class Period thought that they were protecting their assets by hedging against the unprecedented drop in the financial markets. However, instead of increasing in value as the Russell Financial Services index declined, the value of the FAZ Fund also declined, thereby causing financial losses to Plaintiff and members of the Class even though, directionally speaking, they invested correctly.

80. Direxion Shares Registration Statement did not disclose that the FAZ Fund is all together defective as a directional investment play. In order to sufficiently and accurately disclose this counter-intuitive reality, the Registration Statement would have had to clearly explain that, notwithstanding the name of the FAZ Fund, the investment objective of the FAZ Fund and the purpose of Direxion Bear Funds generally, the FAZ Fund would perform precisely the opposite of investors' reasonable expectations.

81. Direxion Shares' attempt to explain the relationship between compounding and

volatility *vis-a-vis* an acknowledgement that periods of higher index volatility will cause the effect of compounding to be more pronounced failed to explain to investors that: (a) volatility erodes returns and wealth accumulation, a fact not commonly understood; (b) the path that returns take over time has important effects on mid- and long-term total return achieved; (c) the return - volatility relationship matters even more so where leverage is employed. In short, with triple leveraged ETFs, such as the FAZ Fund, investors receive at least three times the risk of the index but less than three times the return. The drag imposed by return volatility makes such a result inevitable. Clearly, this is not a desirable outcome for investors seeking to hedge against a declining market.

82. Leveraged and inverse ETFs such as the FAZ Fund do not constitute a suitable or solid investment or hedging strategy for investors to hold their position for longer than one day.

83. Direxion Shares' Registration Statement failed to disclose the material facts set forth in this Complaint necessary to render the statements made in its Registration Statement not misleading to Plaintiff and the Class.

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

84. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class of all persons or entities who purchased FAZ securities between November 3, 2008 through April 9, 2009, inclusive and who were damaged thereby. Excluded from the Class are defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

85. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, FAZ securities were actively traded on the NYSE Arca, an open and efficient market. While the exact number of Class members is unknown to

Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Defendants, or their transfer agents and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

86. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

87. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

88. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by defendants' acts as alleged herein;
- whether statements made by defendants to the investing public during the Class Period misrepresented and/or omitted material facts about the business, operations, and/or management of the FAZ Fund;
- whether the Individual Defendants caused Direxion Shares to issue false and misleading financial statements regarding the FAZ fund during the Class Period;
- whether defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the market prices of FAZ during the Class Period were artificially inflated because of the defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

89. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

90. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- the securities of the Company traded in an efficient market;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased their FAZ securities between the time the defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

91. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

**COUNT I**  
**Violations of § 11 of the 1933 Act Against All Defendants**

92. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all Defendants.

93. Plaintiff incorporates by reference the above paragraphs, as if set forth herein. This Count is asserted against all Defendants.

94. Direxion Shares is the issuer of the FAZ Fund shares sold via the Registration Statement. The Individual Defendants are signatories or authorizers of the Registration Statement.

95. Direxion Shares is absolutely liable for the material misstatements in and omissions from the Registration Statement. The other Defendants owed purchasers of the shares the duty to make a reasonable investigation of the statements contained in the Registration Statement to ensure that said statements were true and that there was no omission to state any material fact required to be stated in order to make the statements contained therein not misleading. These Defendants knew or, in the exercise of reasonable care, should have known of the material misstatements and omissions contained in the Registration Statement as set forth herein. None of these Defendants made a reasonable investigation or possessed reasonable grounds for the belief that statements contained in the Registration Statement and Prospectus were true or that there was not any omission of material fact necessary to make the statements made therein not misleading.

96. As signatories to, and/or authorizers of, the Registration Statement, the individual Defendants owed the purchasers of FAZ Fund shares, including Plaintiff and the Class, the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement at the time that it became effective, to ensure that said statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants knew or, in the exercise of reasonable care, should have known of the material misstatements and omissions contained in the Registration Statement and Prospectus as set forth herein. As such, Defendants are liable to Plaintiff and the Class.

97. By reason of the conduct herein alleged, each Defendant violated, and/or controlled a person who violated, Section 11 of the Securities Act. As a direct and proximate result of Defendants' wrongful conduct, the market price for FAZ Fund shares was artificially inflated, and Plaintiff and the Class suffered substantial damages in connection with the purchase thereof.

98. Plaintiff and the Class all purchased FAZ Fund shares issued pursuant and/or traceable to the Registration Statement.

99. Plaintiff and other members of the Class purchased or otherwise acquired their FAZ Fund shares without knowledge of the untruths or omissions alleged herein. Plaintiff and the other members of the Class were thus damaged by Defendants' misconduct and by the material misstatements and omissions in the Registration Statement.

100. At the time of their purchases of FAZ Fund shares, Plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to June 2008. Less than one year has elapsed from the time that Plaintiff discovered or reasonably could have discovered the facts upon which this Complaint is based to the time that Plaintiff filed this Complaint. Less than three years has elapsed between the time that the securities upon which this Count is brought were offered to the public and the time Plaintiff filed this Complaint.

## **COUNT II**

### **Violations of § 15 of the Securities Act Against the Individual Defendants and Rafferty**

97. Plaintiff incorporates by reference the above paragraphs, as if set forth herein. This Count is asserted against the Individual Defendants and Rafferty.

98. Each of the Individual Defendants named herein and Rafferty acted as a controlling person of Direxion shares within the meaning of Section 15 of the Securities Act. The Individual Defendants and Rafferty were each trustees or officers and/or directors and/or otherwise control persons of Direxion Shares charged within the legal responsibility of overseeing its operations. Each controlling person had the power to influence and exercised the same to cause his controlled person to engage in the unlawful acts and conduct complained of herein.

99. By reason of such conduct, the Defendants named in this Count are liable pursuant to Section 15 of the Securities Act. As a direct and proximate result of their wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their purchases

of shares of the FAZ Fund.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- A. Determining that this action is a proper class action and certifying Plaintiff as class representatives under Rule 23 of the Federal Rules of Civil Procedure;
- B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- D. Awarding damages in the form of rescission; and
- E. Such equitable/injunctive or other relief as deemed appropriate by the Court. Jury Trial Demanded.

Dated: October 2, 2009

**POMERANTZ HAUDEK  
GROSSMAN & GROSS LLP**

By: 

Marc I. Gross

Jeremy A. Lieberman  
100 Park Avenue, 26<sup>th</sup> Floor  
New York, New York 10017  
Telephone: (212) 661-1100  
Facsimile: (212) 661-8665

**POMERANTZ HAUDEK  
GROSSMAN & GROSS LLP**

Patrick V. Dahlstrom  
Ten South LaSalle Street, Suite 3505  
Chicago, Illinois 60603  
Telephone: (312) 377-1181  
Facsimile: (312) 377-1184

*Counsel for Plaintiff*

**Certification of Plaintiff**  
**Pursuant to Federal Securities Laws**

1. I, Milton Pfeiffer, make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933.

2. I have reviewed a Complaint against Direxion Shares ETF Trust ("FAZ") and authorize a filing of a comparable complaint on my behalf.

3. I did not purchase my FAZ securities at the direction of plaintiffs' counsel or in order to participate in any private action arising under the federal securities laws.

4. I am willing to serve as a representative party on behalf of a class as set forth in the Complaint, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action and that the Pomerantz Firm will exercise its discretion in determining whether to move on my behalf for appointment as lead plaintiff.

5. To the best of my current knowledge, the attached sheet lists all of my purchases and sales in FAZ securities during the Class Period as specified in the Complaint.

6. During the three-year period preceding the date on which this certification is signed, I have not sought to serve as a representative party on behalf of a class under the federal securities laws, except as follows:

Pfeiffer v. Qiao Zing Universal Telephone, Inc. et. al., 07-cv-07252-DLC (S.D.N.Y. 2007)


7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

8. The matters stated in this declaration are true to the best of my current knowledge, information and belief.

I declare under penalty or perjury that the foregoing is true and correct.

Executed 9/26/09 at  
(Date)

STONINGTON ISLAND NY  
(City, State)

  
(Signature)

MILTON PFEIFFER  
(Type or Print Name)

