

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:09-cv-08011-RJH**

In Re: Direxion Shares ETF Trust
Assigned to: Judge Richard J. Holwell
Member case: ([View Member Case](#))
Related Cases: [1:09-cv-08459-RJH](#)
[1:09-cv-08375-RJH](#)
[1:10-cv-00271-RJH](#)
Cause: 28:1331 Fed. Question

Date Filed: 09/18/2009
Jury Demand: Plaintiff
Nature of Suit: 850
Securities/Commodities
Jurisdiction: Federal Question

Lead Plaintiff

Evan Stoopler
*on behalf of himself and all others
similarly situated*

represented by **William Bernard Federman**
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Plaintiff

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Plaintiff

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Plaintiff

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Plaintiff

Jason Haas

represented by **Jason Haas**
PRO SE

Plaintiff

Joel Behnken

represented by **Joel Behnken**
PRO SE

Plaintiff

James Killmon

represented by **James Killmon**
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V.

Consolidated Plaintiff

Milton Pfeiffer
on behalf of himself

represented by **Marc Ian Gross**
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Consolidated Plaintiff

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Movant

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Defendant

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Defendant

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Defendant

Todd Kellerman

Defendant

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Defendant

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Defendant

Forside Financial Group LLC
TERMINATED: 04/08/2011

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V.

Consolidated Defendant

Todd Kellerman

Date Filed	#	Docket Text
09/18/2009	<u>1</u>	COMPLAINT against Direxion Shares ETF Trust, Daniel O'Neill, Todd Kellerman, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC. (Filing Fee \$ 350.00, Receipt Number 700279)Document filed by Evan Stoopler.(rdz) (rdz). (Entered: 09/21/2009)
09/18/2009		SUMMONS ISSUED as to Direxion Shares ETF Trust, Daniel O'Neill, Todd Kellerman, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC. (rdz) (Entered: 09/21/2009)
09/18/2009		Magistrate Judge Andrew J. Peck is so designated. (rdz) (Entered: 09/21/2009)
09/18/2009		Case Designated ECF. (rdz) (Entered: 09/21/2009)
09/18/2009	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Evan Stoopler.(rdz) (Entered: 09/21/2009)
09/28/2009	<u>3</u>	AFFIDAVIT OF SERVICE. Direxion Shares ETF Trust served on 9/25/2009, answer due 10/15/2009. Service was accepted by F. Mack. Document filed by Evan Stoopler. (Federman, William) (Entered: 09/28/2009)
10/22/2009	<u>4</u>	INITIAL SCHEDULING CONFERENCE NOTICE AND ORDER:... Initial Conference set for 12/18/2009 at 10:30 AM in Courtroom 17B, 500 Pearl Street, New York, NY 10007 before Judge Richard J. Holwell. (Signed by Judge Richard J. Holwell on 10/20/2009) (tve) (Entered: 10/22/2009)
10/22/2009	<u>5</u>	NOTICE OF APPEARANCE by Joanna Andrea Diakos on behalf of Direxion Shares ETF Trust, Daniel O'Neill, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC (Diakos, Joanna) (Entered: 10/22/2009)
10/28/2009	<u>6</u>	STIPULATION WAIVING SERVICE AND EXTENDING TIME TO RESPOND TO SUMMONS AND COMPLAINT: Each of the three above referenced actions is a related subject to the Private Securities Litigation Reform Action, which requires the designation by the Court of a lead plaintiff as a prerequisite to further proceedings. Defendants Direxion Shares ETF Trust, Daniel D. O'Neill, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser and Rafferty Asset Management, LLC hereby waive service, or any objection to service previously made, as applicable. Within 60 days of his, her, or its appointment by the Court, the leaf plaintiff(s) shall file with the Court either a consolidated complaint or a notice confirming that such plaintiff will proceed on an existing complaint. Defendants shall have no obligation to answer, move or otherwise respond to any pleading in any of the above referenced actions, until 60 days from the date on which the Court-appointed lead plaintiff(s) take either step outlined in paragraph 3. One defendant was served with the Stoopler complaint on or about 9/25/09, and thus would have been obligated to respond to the complain in a non-

		Reform Act case on or about 10/15/09. The remaining defendants are not presently obligated to respond to any of the other pleadings. No previous request for an extension have been made, and all parties hereto consent to the stipulation. So Ordered. (Signed by Judge Richard J. Holwell on 10/26/09) (tro) (Entered: 10/28/2009)
11/17/2009	<u>7</u>	MOTION to Consolidate Cases 09-8011; 09-8375; 09-8459., MOTION to Appoint Scott Woska to serve as lead plaintiff(s)., MOTION to Appoint Counsel. Document filed by Thomas C. Longman.(Weiss, Joseph) (Entered: 11/17/2009)
11/17/2009	<u>8</u>	MEMORANDUM OF LAW in Support re: <u>7</u> MOTION to Consolidate Cases 09-8011; 09-8375; 09-8459. MOTION to Appoint Scott Woska to serve as lead plaintiff(s). MOTION to Appoint Counsel.. Document filed by Thomas C. Longman. (Weiss, Joseph) (Entered: 11/17/2009)
11/17/2009	<u>9</u>	MOTION to Appoint Peter Lau and Dre Enterprises, Inc. to serve as lead plaintiff(s) <i>and approval of Lead Counsel</i> . Document filed by Peter Lau, Dre Enterprises, Inc. (Attachments: # <u>1</u> Text of Proposed Order)(Gross, Marc) (Entered: 11/17/2009)
11/17/2009	<u>10</u>	MEMORANDUM OF LAW in Support re: <u>9</u> MOTION to Appoint Peter Lau and Dre Enterprises, Inc. to serve as lead plaintiff(s) <i>and approval of Lead Counsel</i> .. Document filed by Peter Lau, Dre Enterprises, Inc. (Attachments: # <u>1</u> Exhibit 1 to Memorandum in Support, # <u>2</u> Exhibit 2 to Memorandum in Support, # <u>3</u> Exhibit 3 to Memorandum in Support, # <u>4</u> Exhibit 3 to Memorandum in Support)(Gross, Marc) (Entered: 11/17/2009)
11/17/2009	<u>11</u>	DECLARATION of Joseph H. Weiss in Support re: <u>7</u> MOTION to Consolidate Cases 09-8011; 09-8375; 09-8459. MOTION to Appoint Scott Woska to serve as lead plaintiff(s). MOTION to Appoint Counsel.. Document filed by Thomas C. Longman. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E-1, # <u>6</u> Exhibit E-2)(Weiss, Joseph) (Entered: 11/17/2009)
11/17/2009	<u>12</u>	MOTION to Appoint Evan J. Stoopler to serve as lead plaintiff(s) <i>and for Consolidation</i> . Document filed by Evan Stoopler.(Federman, William) (Entered: 11/17/2009)
11/17/2009	<u>13</u>	MEMORANDUM OF LAW in Support re: <u>12</u> MOTION to Appoint Evan J. Stoopler to serve as lead plaintiff(s) <i>and for Consolidation</i> .. Document filed by Evan Stoopler. (Federman, William) (Entered: 11/17/2009)
11/17/2009	<u>14</u>	MOTION to Consolidate Cases 09-cv-08011; 09-cv-08375; 09-cv-08459., MOTION to Appoint <i>Lead Plaintiff</i> ., MOTION to Appoint Counsel. Document filed by FAZ Investor Group.(Brower, David) (Entered: 11/17/2009)
11/17/2009	<u>15</u>	MEMORANDUM OF LAW in Support re: <u>14</u> MOTION to Consolidate Cases 09-cv-08011; 09-cv-08375; 09-cv-08459. MOTION to Appoint <i>Lead Plaintiff</i> . MOTION to Appoint Counsel.. Document filed by FAZ Investor Group. (Brower, David) (Entered: 11/17/2009)
11/17/2009	<u>16</u>	DECLARATION of KENNETH G. GILMAN in Support re: <u>14</u> MOTION to Consolidate Cases 09-cv-08011; 09-cv-08375; 09-cv-08459. MOTION to Appoint <i>Lead Plaintiff</i> . MOTION to Appoint Counsel.. Document filed by FAZ Investor Group. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Brower, David) (Entered: 11/17/2009)
11/18/2009	<u>17</u>	DECLARATION of William B. Federman in Support re: <u>12</u> MOTION to Appoint Evan

		J. Stoopler to serve as lead plaintiff(s) <i>and for Consolidation.</i> . Document filed by Evan Stoopler. (Attachments: # <u>1</u> Exhibit A - Investor Certification, # <u>2</u> Exhibit B - News Release, # <u>3</u> Exhibit C - Resume)(Federman, William) (Entered: 11/18/2009)
11/18/2009	<u>18</u>	NOTICE OF APPEARANCE by Jeremy Alan Lieberman on behalf of Peter Lau, Dre Enterprises, Inc (Lieberman, Jeremy) (Entered: 11/18/2009)
11/19/2009	<u>19</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Direxion Shares ETF Trust, Daniel O'Neill, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC.(Diakos, Joanna) (Entered: 11/19/2009)
12/07/2009	<u>20</u>	RESPONSE to Motion re: <u>12</u> MOTION to Appoint Evan J. Stoopler to serve as lead plaintiff(s) <i>and for Consolidation.</i> , <u>7</u> MOTION to Consolidate Cases 09-8011; 09-8375; 09-8459. MOTION to Appoint Scott Woska to serve as lead plaintiff(s). MOTION to Appoint Counsel., <u>14</u> MOTION to Consolidate Cases 09-cv-08011; 09-cv-08375; 09-cv-08459. MOTION to Appoint <i>Lead Plaintiff</i> . MOTION to Appoint Counsel.. Document filed by Peter Lau, Dre Enterprises, Inc. (Lieberman, Jeremy) (Entered: 12/07/2009)
12/07/2009	<u>21</u>	MEMORANDUM OF LAW in Opposition re: <u>12</u> MOTION to Appoint Evan J. Stoopler to serve as lead plaintiff(s) <i>and for Consolidation.</i> , <u>14</u> MOTION to Consolidate Cases 09-cv-08011; 09-cv-08375; 09-cv-08459. MOTION to Appoint <i>Lead Plaintiff</i> . MOTION to Appoint Counsel., <u>9</u> MOTION to Appoint Peter Lau and Dre Enterprises, Inc. to serve as lead plaintiff(s) <i>and approval of Lead Counsel.</i> . Document filed by Thomas C. Longman. (Weiss, Joseph) (Entered: 12/07/2009)
12/07/2009	<u>22</u>	DECLARATION of Joseph H. Weiss in Opposition re: <u>12</u> MOTION to Appoint Evan J. Stoopler to serve as lead plaintiff(s) <i>and for Consolidation.</i> , <u>14</u> MOTION to Consolidate Cases 09-cv-08011; 09-cv-08375; 09-cv-08459. MOTION to Appoint <i>Lead Plaintiff</i> . MOTION to Appoint Counsel., <u>9</u> MOTION to Appoint Peter Lau and Dre Enterprises, Inc. to serve as lead plaintiff(s) <i>and approval of Lead Counsel.</i> . Document filed by Thomas C. Longman. (Weiss, Joseph) (Entered: 12/07/2009)
12/07/2009	<u>23</u>	MEMORANDUM OF LAW in Support re: <u>7</u> MOTION to Consolidate Cases 09-8011; 09-8375; 09-8459. MOTION to Appoint Scott Woska to serve as lead plaintiff(s). MOTION to Appoint Counsel.. Document filed by Thomas C. Longman. (Weiss, Joseph) (Entered: 12/07/2009)
12/07/2009	<u>24</u>	DECLARATION of Joseph H. Weiss in Support re: <u>7</u> MOTION to Consolidate Cases 09-8011; 09-8375; 09-8459. MOTION to Appoint Scott Woska to serve as lead plaintiff(s). MOTION to Appoint Counsel.. Document filed by Thomas C. Longman. (Weiss, Joseph) (Entered: 12/07/2009)
12/07/2009	<u>25</u>	MEMORANDUM OF LAW in Opposition re: <u>7</u> MOTION to Consolidate Cases 09-8011; 09-8375; 09-8459. MOTION to Appoint Scott Woska to serve as lead plaintiff(s). MOTION to Appoint Counsel., <u>14</u> MOTION to Consolidate Cases 09-cv-08011; 09-cv-08375; 09-cv-08459. MOTION to Appoint <i>Lead Plaintiff</i> . MOTION to Appoint Counsel., <u>9</u> MOTION to Appoint Peter Lau and Dre Enterprises, Inc. to serve as lead plaintiff(s) <i>and approval of Lead Counsel.</i> . Document filed by Evan Stoopler. (Federman, William) (Entered: 12/07/2009)
12/07/2009	<u>26</u>	RESPONSE to Motion re: <u>12</u> MOTION to Appoint Evan J. Stoopler to serve as lead

		plaintiff(s) <i>and for Consolidation.</i> , <u>7</u> MOTION to Consolidate Cases 09-8011; 09-8375; 09-8459. MOTION to Appoint Scott Woska to serve as lead plaintiff(s). MOTION to Appoint Counsel., <u>14</u> MOTION to Consolidate Cases 09-cv-08011; 09-cv-08375; 09-cv-08459. MOTION to Appoint <i>Lead Plaintiff</i> . MOTION to Appoint Counsel., <u>9</u> MOTION to Appoint Peter Lau and Dre Enterprises, Inc. to serve as lead plaintiff(s) <i>and approval of Lead Counsel.</i> . Document filed by Direxion Shares ETF Trust, Daniel O'Neill, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC. (Diakos, Joanna) (Entered: 12/07/2009)
12/07/2009	<u>27</u>	MEMORANDUM OF LAW in Support re: <u>12</u> MOTION to Appoint Evan J. Stoopler to serve as lead plaintiff(s) <i>and for Consolidation.</i> . Document filed by FAZ Investor Group. (Brower, David) (Entered: 12/07/2009)
12/09/2009	<u>28</u>	STIPULATION, that all response papers regarding the motion for the appointment of Lead Plaintiff and Lead Counsel will be filed and served by no later than December 7, 2007. (Signed by Judge Richard J. Holwell on 12/8/09). (pl) Modified on 12/9/2009 (pl). Modified on 12/9/2009 (pl). (Entered: 12/09/2009)
12/17/2009	<u>29</u>	REPLY MEMORANDUM OF LAW in Opposition re: <u>7</u> MOTION to Consolidate Cases 09-8011; 09-8375; 09-8459. MOTION to Appoint Scott Woska to serve as lead plaintiff(s). MOTION to Appoint Counsel., <u>14</u> MOTION to Consolidate Cases 09-cv-08011; 09-cv-08375; 09-cv-08459. MOTION to Appoint <i>Lead Plaintiff</i> . MOTION to Appoint Counsel., <u>9</u> MOTION to Appoint Peter Lau and Dre Enterprises, Inc. to serve as lead plaintiff(s) <i>and approval of Lead Counsel.</i> . Document filed by Evan Stoopler. (Attachments: # <u>1</u> Exhibit A - Account Statements)(Federman, William) (Entered: 12/17/2009)
12/17/2009	<u>30</u>	REPLY MEMORANDUM OF LAW in Support re: <u>12</u> MOTION to Appoint Evan J. Stoopler to serve as lead plaintiff(s) <i>and for Consolidation.</i> . Document filed by FAZ Investor Group. (Brower, David) (Entered: 12/17/2009)
12/17/2009	<u>31</u>	DECLARATION of KENNETH G. GILMAN in Support re: <u>12</u> MOTION to Appoint Evan J. Stoopler to serve as lead plaintiff(s) <i>and for Consolidation.</i> . Document filed by FAZ Investor Group. (Attachments: # <u>1</u> Exhibit A)(Brower, David) (Entered: 12/17/2009)
12/18/2009	<u>32</u>	NOTICE of Filing Additional Declaration. Document filed by FAZ Investor Group. (Attachments: # <u>1</u> Exhibit Declaration of Mac R. Behnke)(Brower, David) (Entered: 12/18/2009)
01/19/2010	<u>33</u>	STIPULATION: IT IS HEREBY STIPULATED AND AGREED that this Court's order entered October 22, 2009 (Dckt. No.4) provided that, if the parties were unable to agree on a scheduling order that met certain conditions, an initial scheduling conference in this matter would be held on Friday December 18, 2009, at 10:30 a.m. in response to a letter request by the plaintiff's counsel on behalf of all parties dated December 16, 2009, the Court's clerk orally informed plaintiff Stoopler's counsel that the scheduling conference would be deferred to January 22, 2010 at 10:00 a.m. In light of the Court's order entered October 28, 2009 (Dckt No.6), the parties hereby stipulate, and respectfully request that the Court order, that scheduling conference be adjourned without date pending further order of the Court. This is one of three related actions, subject to the Private Securities Litigation Reform Act ("Reform Act"). The other related actions are Pfeiffer v. Direxion Shares ETF Trust et al., 09-cv-08375-RJH and

		Longman v. Direxion Shares ETF Trust et al., 09-cv-08459. No comparable scheduling order has been entered in either of the two other related actions. Accordingly, the scheduling conference contemplated in this Court's order entered October 22, 2009 (Dckt. No 4), is adjourned without date pending further order of the Court. Conference adjourned. (Signed by Judge Richard J. Holwell on 1/15/2010) (jfe) (Entered: 01/19/2010)
01/29/2010	<u>34</u>	MOTION for Jeffrey B. Maletta to Appear Pro Hac Vice. Document filed by Direxion Shares ETF Trust, Daniel O'Neill, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC.(mro) (Entered: 02/02/2010)
01/29/2010	<u>35</u>	MOTION for Nicholas G. Terris to Appear Pro Hac Vice. Document filed by Direxion Shares ETF Trust, Daniel O'Neill, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC. (mro) (Entered: 02/02/2010)
02/04/2010		CASHIERS OFFICE REMARK on <u>34</u> Motion to Appear Pro Hac Vice, <u>35</u> Motion to Appear Pro Hac Vice in the amount of \$50.00, paid on 01/29/2010, Receipt Number 893327. (jd) (Entered: 02/04/2010)
04/01/2010	<u>36</u>	MOTION to Consolidate Cases 1:09-cv-8011, 1:09-cv-8375, 1:09-cv-8459, 1:10-cv-00271 and 1:10-cv-01273. Document filed by Direxion Shares ETF Trust, Daniel O'Neill, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC.(Diakos, Joanna) (Entered: 04/01/2010)
04/01/2010	<u>37</u>	MEMORANDUM OF LAW in Support re: <u>36</u> MOTION to Consolidate Cases 1:09-cv-8011, 1:09-cv-8375, 1:09-cv-8459, 1:10-cv-00271 and 1:10-cv-01273.. Document filed by Direxion Shares ETF Trust, Daniel O'Neill, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC. (Diakos, Joanna) (Entered: 04/01/2010)
04/01/2010	<u>38</u>	DECLARATION of Joanna A. Diakos in Support re: <u>36</u> MOTION to Consolidate Cases 1:09-cv-8011, 1:09-cv-8375, 1:09-cv-8459, 1:10-cv-00271 and 1:10-cv-01273.. Document filed by Direxion Shares ETF Trust, Daniel O'Neill, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC. (Attachments: # <u>1</u> Continuation of Declaration of Joanna A. Diakos in Support of Defendants' Motion to Consolidate or Coordinate)(Diakos, Joanna) (Entered: 04/01/2010)
04/13/2010		***DELETED DOCUMENT. Deleted document number <u>39</u> and <u>40</u> Order admitting counsel pro hac vice. The document was incorrectly filed in this case. (tro) (Entered: 04/14/2010)
04/16/2010	<u>39</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION granting <u>35</u> Motion for Nicholas G. Terris to Appear Pro Hac Vice. (Signed by Judge Richard J. Holwell on 4/15/2010) (tro) (Entered: 04/16/2010)
04/16/2010	<u>40</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION granting <u>34</u> Motion for Jeffrey B. Maletta to Appear Pro Hac Vice. (Signed by Judge Richard J. Holwell on 4/15/2010) (tro) (Entered: 04/16/2010)
04/19/2010	<u>41</u>	MEMORANDUM OF LAW in Opposition re: <u>36</u> MOTION to Consolidate Cases 1:09-cv-8011, 1:09-cv-8375, 1:09-cv-8459, 1:10-cv-00271 and 1:10-cv-01273. <i>PLAINTIFFS' JOINT MEMORANDUM IN RESPONSE TO DEFENDANTS' MOTION TO CONSOLIDATE OR COORDINATE CASES</i> . Document filed by Evan Stoopler,

		Thomas C. Longman. (Attachments: # <u>1</u> Declaration of Service)(Bruckner, Gustavo) (Entered: 04/19/2010)
04/29/2010	<u>42</u>	REPLY MEMORANDUM OF LAW in Support re: <u>36</u> MOTION to Consolidate Cases 1:09-cv-8011, 1:09-cv-8375, 1:09-cv-8459, 1:10-cv-00271 and 1:10-cv-01273.. Document filed by Direxion Shares ETF Trust, Daniel O'Neill, Daniel J. Byrne, Gerald E. Shanley, III, John Weisser, Rafferty Asset Management, LLC. (Diakos, Joanna) (Entered: 04/29/2010)
08/12/2010	<u>43</u>	MEMORANDUM OPINION AND ORDER: #99335 For these reasons, above-captioned actions are consolidated for pre-trial purposes. The caption of the Consolidated Action shall be "In re Direxion Shares ETF Trust." All relevant documents and submissions shall be maintained as one file under Master File No. 09-cv-08011(RJH). The Clerk of the Court is directed to close the following four docket entries: 09cv08375, 09cv8459, 10cv00271 and 10cv00273. The parties are directed to submit a joint stipulation concerning the filing of any consolidated amended complaint and a proposed case management plan within thirty (30) days of this Order. Evan Stoopler is hereby appointed as lead plaintiff, and Fedennan & Shenwood is appointed as lead counsel. to represent holders of the FAZ Fund. Howard Schwack and William Lee are appointed as co-lead plaintiffs, and Wolf Haldenstein Adler Freeman & Herz LLP and Gilman and Pastor LLP are appointed as co-lead counsel, to represent holders of the ERY Fund. The Court reserves the right to modify this lead plaintiff structure in the event that it becomes unmanageable. The Clerk of the Court is directed to terminate all pending motions in the five above-captioned actions. (Signed by Judge Richard J. Holwell on 8/12/2010) Filed In Associated Cases: 1:09-cv-08011-RJH, 1:09-cv-08375-RJH, 1:09-cv-08459-RJH, 1:10-cv-00271-RJH, 1:10-cv-00273-SHS(jpo) Modified on 8/24/2010 (ajc). (Entered: 08/12/2010)
08/16/2010	<u>44</u>	CORRECTED MEMORANDUM OPINION AND ORDER: #99335 For these reasons, above-captioned actions are consolidated for pre-trial purposes. The caption of the Consolidated Action shall be "In re Direxion Shares ETF Trust." All relevant documents and submissions shall be maintained as one file under Master File No. 09-cv-08011(RJH). The Clerk of the Court is directed to close the following four docket entries: 09cv08375, 09cv8459, 10cv00271 and 10cv01273. The parties are directed to submit a joint stipulation concerning the filing of any consolidated amended complaint and a proposed case management plan within thirty (30) days of this Order. Evan Stoopler is hereby appointed as lead plaintiff, and Fedennan & Shenwood is appointed as lead counsel. to represent holders of the FAZ Fund. Howard Schwack and William Lee are appointed as co-lead plaintiffs, and Wolf Haldenstein Adler Freeman & Herz LLP and Gilman and Pastor LLP are appointed as co-lead counsel, to represent holders of the ERY Fund. The Court reserves the right to modify this lead plaintiff structure in the event that it becomes unmanageable. The Clerk of the Court is directed to terminate all pending motions in the five above-captioned actions. (Signed by Judge Richard J. Holwell on 8/12/2010) Filed In Associated Cases: 1:09-cv-08011-RJH, 1:09-cv-08375-RJH, 1:09-cv-08459-RJH, 1:10-cv-00271-RJH, 1:10-cv-01273-RJH(jmi) Modified on 8/24/2010 (ajc). (Entered: 08/16/2010)
09/23/2010	<u>45</u>	STIPULATION CONCERNING THE FILING OF A CONSOLIDATED AMENDED COMPLAINT within 60 days of the filing and service of this stipulation, the lead plaintiffs shall file and serve a consolidated amended complaint, and as further set forth in this document. (Signed by Judge Richard J. Holwell on 9/22/10) (cd) (Entered: 09/23/2010)

		09/23/2010)
11/23/2010	<u>46</u>	FIRST CONSOLIDATED AMENDED CLASS ACTION COMPLAINT amending <u>1</u> Complaint, against Daniel J. Byrne, Direxion Shares ETF Trust, Todd Kellerman, Daniel O'Neill, Rafferty Asset Management, LLC, Gerald E. Shanley, III, John Weisser with JURY DEMAND. Document filed by Evan Stoopler, Howard Schwack, Michael Salach, David Remmels. Related document: <u>1</u> Complaint, filed by Evan Stoopler.(mbe) (Entered: 11/30/2010)
12/13/2010	<u>47</u>	ENDORSED LETTER addressed to Judge Richard J. Holwell from Joanna A. Diakos dated 12/9/2010 re: The parties have agreed that the time for Defendants to file and serve a pre-motion conference letter will be extended to January 11, 2011. ENDORSEMENT: So Ordered . (Signed by Judge Richard J. Holwell on 12/9/2010) (jpo) Modified on 1/5/2011 (jpo). (Entered: 12/13/2010)
12/21/2010	<u>48</u>	AFFIDAVIT OF SERVICE of Summons and Amended Complaint,. Foreside Financial Group LLC served on 12/15/2010, answer due 1/5/2011. Service was accepted by Cynthia Alicea, C.S.R.. Document filed by Michael Salach; Evan Stoopler; Howard Schwack; David Remmels. (Bruckner, Gustavo) (Entered: 12/21/2010)
01/14/2011	<u>49</u>	ENDORSED LETTER addressed to Judge Richard J. Holwell from Joanna Diakos dated 1/5/11 re: Request for an enlargement of 5 pages for defendants' pre motion conference letter due to be filed 1/11. ENDORSEMENT: The page limit is granted. (Signed by Judge Richard J. Holwell on 1/11/11) (cd) (Entered: 01/14/2011)
01/20/2011	<u>50</u>	NOTICE OF APPEARANCE by Nicole Joy Coward on behalf of Foreside Financial Group LLC (Coward, Nicole) (Entered: 01/20/2011)
01/20/2011	<u>51</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying No as Corporate Parent. Document filed by Foreside Financial Group LLC.(Coward, Nicole) (Entered: 01/20/2011)
01/20/2011	<u>52</u>	NOTICE OF APPEARANCE by Steven Francis Molo on behalf of Foreside Financial Group LLC (Molo, Steven) (Entered: 01/20/2011)
01/25/2011	<u>53</u>	ENDORSED LETTER addressed to Judge Richard J. Holwell from Joanna A. Diakos dated 1/11/2011 re: The Complaint principally asserts that the Trust's registration statement did not adequately disclose that the Bear funds in the Trust tracked their benchmarks only on a daily basis and not over longer investment horizons. As demonstrated, plaintiffs plainly fail to state a claim in this regard. ENDORSEMENT: A pre-motion conference is scheduled for 2/4/2011 at 10:30 am. (Signed by Judge Richard J. Holwell on 1/21/2011) (jpo) (Entered: 01/25/2011)
01/26/2011	<u>54</u>	NOTICE OF APPEARANCE by Robert Kelsey Kry on behalf of Foreside Financial Group LLC Filed In Associated Cases: 1:09-cv-08011-RJH, 1:09-cv-08375-RJH, 1:09-cv-08459-RJH, 1:10-cv-00271-RJH, 1:10-cv-01273-RJH(Kry, Robert) (Entered: 01/26/2011)
02/08/2011	<u>55</u>	ENDORSED LETTER addressed to Judge Richard J. Holwell from Mark C. Rifkin dated 1/27/2011 re: Plaintiffs believe a pre-motion conference addressing the First Consolidated Amended Complaint at this time is premature and would be inefficient in light of plaintiffs' intent to file a Second Consolidated Amended Complaint. ENDORSEMENT: The pre-motion conference is adjourned. The plaintiff is to file an

		amended complaint by April 4, 2011. (Signed by Judge Richard J. Holwell on 2/2/2011) (jpo) (Entered: 02/08/2011)
02/08/2011	<u>56</u>	STIPULATION AND ORDER. 1. Foreside Financial Group, LLC, through its undersigned counsel, hereby accepts service of the Complaint and summons as of the date of the parties' execution of this stipulation as reflected below, reserving all other defenses and objections; 2. Foreside Financial Group, LLC, shall answer or otherwise respond to the Complaint within 21 days from the date of the parties' execution of this stipulation as reflected below (or such other date as may subsequently be set by further stipulation of the parties or by order of the Court) and shall not be required to answer or otherwise respond to the Complaint or summons before such date. (Signed by Judge Richard J. Holwell on 2/2/11); (djc) (Entered: 02/08/2011)
02/17/2011	<u>57</u>	NOTICE OF CHANGE OF ADDRESS by Gustavo Fabian Bruckner on behalf of Howard Schwack. New Address: Pomerantz Haudek Grossman & Gross, 100 Park Avenue, New York, New York, USA 10017, 2126611100. (Bruckner, Gustavo) (Entered: 02/17/2011)
04/01/2011	<u>58</u>	MOTION for Scott J. Farrell to Withdraw as Attorney <i>for Plaintiff Howard Schwack</i> . Document filed by Howard Schwack. (Attachments: # <u>1</u> Text of Proposed Order for Withdrawal of Counsel)Filed In Associated Cases: 1:09-cv-08011-RJH, 1:09-cv-08375-RJH, 1:09-cv-08459-RJH, 1:10-cv-00271-RJH, 1:10-cv-01273-RJH(Farrell, Scott) (Entered: 04/01/2011)
04/08/2011	<u>59</u>	SECOND CONSOLIDATED AMENDED COMPLAINT amending <u>46</u> Amended Complaint, against All Defendants with JURY DEMAND.Document filed by Michael Salach, David Remmels, Thomas C. Longman. Related document: <u>46</u> First Consolidated Amended Complaint, filed by Howard Schwack, David Remmels, Michael Salach, Evan Stoopler. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D)(mbe) (Entered: 04/12/2011)
04/15/2011	<u>60</u>	STIPULATION EXTENDING THE TIME TO FILE SECOND CONSOLIDATED AMENDED COMPLAINT: It is hereby Stipulated and agreed that pursuant to the Stipulation dated September 23, 2010, the parties agreed that lead plaintiffs shall file and serve either a second consolidated amended complaint or a notice confirming that plaintiffs will stand on the existing complaint by April 4, 2011. Due to personal reasons concerning one of plaintiffs' counsel, the parties have agreed that the lead plaintiffs shall have until April 8, 2011 to file and serve a second consolidated amended complaint. Within 60 days from when lead plaintiffs serve the second consolidated amended complaint, defendants shall file and serve a formal motion (or motions) to dismiss the then-operative complaint. Plaintiffs shall file and serve an opposition to the motion to dismiss within 60 days from when the motion (or motions) is served on them. Defendants shall file and serve their reply (or replies) within 40 days of the service of plaintiff's opposition. With respect to a Proposed Case Management Plan, the Court's Individual Practices contemplate that, in typical cases, the parties will propose dates for such matters as joinder of additional parties, amendments to pleadings, and completion of discovery. In light of the Private Securities Litigation Reform Act's mandate that, ordinarily, "all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss," 15 U.S.C. 77z1(b)(1), the parties agree that it is not practicable at this time to attempt to set deadlines for possible later stages of the proceedings. (Signed by Judge Richard J. Holwell on 4/14/2011) (jfe) (Entered: 04/15/2011)

06/08/2011	<u>61</u>	NOTICE OF APPEARANCE by Sarah Peck Kenney on behalf of Daniel J. Byrne, Direxion Shares ETF Trust, Daniel O'Neill, Rafferty Asset Management, LLC, Gerald E. Shanley, III, John Weisser (Kenney, Sarah) (Entered: 06/08/2011)
06/10/2011	<u>62</u>	MOTION to Dismiss <i>THE SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT</i> . Document filed by Daniel J. Byrne, Direxion Shares ETF Trust, Daniel O'Neill, Rafferty Asset Management, LLC, Gerald E. Shanley, III, John Weisser.(Terris, Nicholas) (Entered: 06/10/2011)
06/10/2011	<u>63</u>	DECLARATION of NICHOLAS G. TERRIS in Support re: <u>62</u> MOTION to Dismiss <i>THE SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT</i> .. Document filed by Daniel J. Byrne, Direxion Shares ETF Trust, Daniel O'Neill, Rafferty Asset Management, LLC, Gerald E. Shanley, III, John Weisser. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I)(Terris, Nicholas) (Entered: 06/10/2011)
06/10/2011	<u>64</u>	DECLARATION of RAYMUND WONG in Support re: <u>62</u> MOTION to Dismiss <i>THE SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT</i> .. Document filed by Daniel J. Byrne, Direxion Shares ETF Trust, Daniel O'Neill, Rafferty Asset Management, LLC, Gerald E. Shanley, III, John Weisser. (Terris, Nicholas) (Entered: 06/10/2011)
06/10/2011	<u>65</u>	MEMORANDUM OF LAW in Support re: <u>62</u> MOTION to Dismiss <i>THE SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT</i> .. Document filed by Daniel J. Byrne, Direxion Shares ETF Trust, Daniel O'Neill, Rafferty Asset Management, LLC, Gerald E. Shanley, III, John Weisser. (Terris, Nicholas) (Entered: 06/10/2011)
08/15/2011	<u>66</u>	ENDORSED LETTER addressed to Judge Richard J. Holwell from Kenneth G. Gilman dated 8/5/2011 re: Counsel request a brief extension to serve and file their opposition to defendants' motion to dismiss to 8/15/11. Also, that defendants reply brief be extended until 9/28/11. Plaintiffs also respectfully request leave to file briefs related to the motion with the following page limit: 35 pages for plaintiff and 20 pages for defendants'. ENDORSEMENT: The request is granted. So Ordered. (Signed by Judge Richard J. Holwell on 8/11/2011) (jfe) (Entered: 08/15/2011)
08/15/2011	<u>67</u>	MEMORANDUM OF LAW in Opposition re: <u>62</u> MOTION to Dismiss <i>THE SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT</i> .. Document filed by David Rimmels, Howard Schwack, Evan Stoopler, Jason Haas, Joel Behnken, James Killmon. (Rifkin, Mark) (Entered: 08/15/2011)
08/15/2011	<u>68</u>	DECLARATION of Kenneth G. Gilman in Opposition re: <u>62</u> MOTION to Dismiss <i>THE SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT</i> .. Document filed by Joel Behnken, Jason Haas, James Killmon, David Rimmels, Howard Schwack, Evan Stoopler. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Rifkin, Mark) (Entered: 08/15/2011)
09/28/2011	<u>69</u>	REPLY MEMORANDUM OF LAW in Support re: <u>62</u> MOTION to Dismiss <i>THE SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT</i> .. Document filed by Daniel J. Byrne, Direxion Shares ETF Trust, Daniel O'Neill, Rafferty Asset Management, LLC, Gerald E. Shanley, III, John Weisser. (Terris, Nicholas) (Entered: 09/28/2011)

11/09/2011	<u>70</u>	MOTION to Intervene. Document filed by Barton Boothe. (Attachments: # <u>1</u> Text of Proposed Order)(D'Agnenica, Jason) (Entered: 11/09/2011)
11/09/2011	<u>71</u>	MEMORANDUM OF LAW in Support re: <u>70</u> MOTION to Intervene.. Document filed by Barton Boothe. (D'Agnenica, Jason) (Entered: 11/09/2011)
11/09/2011	<u>72</u>	DECLARATION of Jason D'Agnenica in Support re: <u>70</u> MOTION to Intervene.. Document filed by Barton Boothe. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(D'Agnenica, Jason) (Entered: 11/09/2011)

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