



October 16, 2009

Mr. Rudolph Verra
Managing Director
Risk Oversight and Operational Regulation
Financial Industry Regulatory Authority
20 Broad Street
New York, NY 10005

Re: Regulatory Notice 09-53; Non-Traditional ETFs; Increased Margin Requirements for Leveraged Exchange-Traded Funds and Associated Uncovered Options.

Dear Mr. Verra,

The Credit Division (the Division) of the Securities Industry and Financial Markets Association (“SIFMA”)¹ fully supports the initiative to increase margin requirements on levered exchange traded funds. We concur that these securities add to the risk associated with trading on margin and should be used by sophisticated investors as part of a well-balanced investment strategy. Due to several factors, rationale below, the Division is requesting a two-phased implementation approach:

- **Phase 1 – December 1, 2009** would require the overnight treatment of the underlying leveraged ETF’s (those ETF shares held long and short) to be assessed the add-on variable requirements as outlined in Regulatory Notice 09-53.
- **Phase 2 – June 30, 2010** would require implementations to extend full coverage to all non-traditional ETF related options and day trading.

Rationale for a phased approach:

Phase 1

The December 1, 2009 implementation of the overnight, increased margin requirements achieves the immediate objectives outlined in FINRA’s [Guidance] Regulatory Notice 09-31, dated June 2009:

“...inverse and leveraged ETFs that are reset daily typically are unsuitable for retail investors who plan to hold them for longer than one trading session...”

The increased requirements would limit buying power and, therefore, discourage overnight holding of the instruments for margin clients. Essentially, client’s ability to leverage the non-traditional ETFs would be limited by the higher maintenance requirements.

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 600 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

Additionally, the risk associated with moving the increased requirements on related options to a second phase is mitigated with levered ETFs because of the rules governing the opening and approval of such accounts. For example, customer's engaging in options trading are subject to client risk disclosures and FINRA Option Principle approvals as per FINRA Rule 2360(b)(16)(A),(B) – these rules further help ensure a customer's level of trading sophistication and limit inappropriate investor investment/discretion.

Phase 2

There are Firms that will be faced with more difficult implementation efforts than others. The Division has identified several of the cross-Firm issues that serve as the basis for the multi-phased approach. A number of them include:

1. The Options Symbology Initiative (OSI) is being implemented during the same period. Moreover, the December 1 implementation date will require the same programs being tested for OSI and for the changes outlined in the Regulatory notice.
2. All Firms will be reliant on an outside vendor to identify the leveraged ETFs and related options. As of September 11, 2009, there were 19,832 listed options related to 123 leveraged ETFs. The sheer number of securities precludes any manual intervention for identification purposes. The process to implement an external vendor feed to link into the internal systems to recognize the securities for the correct leverage level and related requirements is a complex system change in addition to the general changes to requirements outlined in the Notice.
3. A final single lead source for determining all leveraged ETFs has not been determined. Although Options Clearing Corp (OCC) was thought to have the full listing, they have advised the Division that they are not considered the final authority as certain leveraged ETFs may be issued without related option contracts and therefore not listed with the OCC.
4. Each of the option strategies requires complex programming to identify the proper formula and apply the appropriate multiplier. With many Firms utilizing option optimization programs, the complex nature of the related algorithms will require extensive testing following any adjustments. Based on the current implementation date, testing would necessarily be limited and pose undue risk and exposure to Firms and (potentially) clients.
5. Overnight processing is also not nearly as complex as intra-day calculations required for day traders. These programs, similar to options optimization programs, pose risk to both the Firms supporting this type of business and the clients relying on their accuracy – further complicating the situation are day traders trading the related options.

FINRA has been helpful with many individual Firm inquiries around particular nuances of the potential application of the new requirements. The Division would welcome the opportunity to work with FINRA to further detail the requirements for complex strategies and help in the issuance of further guidance addressing the many aspects of the Notice. We believe the extra time would help ensure that the best implementation possible is allowed.

We believe the ability to identify the limited number of leveraged ETFs and control the leverage associated with the primary instruments can be achieved within the December 1, 2009 deadline for implementation. We strongly encourage FINRA to consider a secondary implementation for the remaining trading strategies and option products that allows for June 30, 2010 as the end date.

The Division would like to meet in person with you and other senior officials (e.g. Grace Vogel) to further discuss the issues raised and the potential for gaining approval for extending the secondary implementations as outlined in this letter. I will be in touch over the next week to understand your initial thoughts and to

determine a convenient time for a more detailed in-person discussion. In the mean time, if there is other information we may provide to help get the relief proposed approved, please let us know and we will work to gather the necessary details.

Very truly yours,

Vincent Pfalzer
Director
GME Americas
Deutsche Bank Securities, Inc.
60 Wall St. – NYC 60-1305
New York, NY 10005
President - Credit Division, SIFMA
212-250-4138