

Steven A. Williams



May 17, 2018

Brent Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090.

**Re: SECURITIES AND EXCHANGE COMMISSION (Release No. 34-83094; File No. SR-NYSEArca-2018-02)**

Dear Mr. Fields,

This letter responds to the SEC's invitation for comments concerning the above-captioned rule proposal.

Two things need to happen before shares of the Direxion Bitcoin-futures based ETFs can be listed and traded. First, the Fund's sponsor must procure an SEC exemptive order. Then the Exchange needs to obtain SEC approval through a rule filing. Respectfully, the Commission cannot possibly determine the proposal properly if the relief is not considered. The public certainly cannot comment meaningfully if the exemptions are not disclosed.

I write today to urge the Commission, as a body, to review and reconsider any "interpretive" and "no-action relief" properly as required by the Exchange Act, the American Procedures Act ("APA"), and the SEC's own rules.

- First, exemptive and no-action relief is generally conditioned on the ETF's shares not materially deviating from net asset value in the secondary market. The registration statement very distinctly discloses that the Direxion Bitcoin Futures-ETFs may deviate substantially from indicative value in the secondary market.
- Second, no-action interpretive relief related to Section 11(d)(1) and Rule 11d1-2 is conditioned, in part, on broker-dealer authorized participants not being compensated or otherwise economically incentivized to promote or sell the shares. The registration statement clearly discloses that the fund's sponsor may compensate authorized participants for purchasing substantial Creation Units of Direxion Bitcoin Futures ETFs.

- Third, there has never been a finding that the no-action relief is “necessary or appropriate in the public interest and is consistent with the protection of investors.”<sup>1</sup>
- Fourth, there has never been a finding that the interpretive no-action relief related to Section 11(d)(1) and Rule 11d1-2 is the proper interpretation of the rule or “necessary or appropriate in the public interest and is consistent with the protections of investors”.<sup>2</sup>
- Fifth, the exchange has not indicated how it will monitor for compliance with the representations and conditions of exemptive, interpretive, or no-action relief.

As a civilian (non-lawyer), I am not qualified to have an opinion as to whether the proposal is consistent with the applicable sections of the Exchange Act. I do know that former senior SEC staff may have made manipulation legal, however. The attached is just one example.

Steven Williams

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<sup>1</sup> Please see, “Exchange Act Exemptive Applications,” at: [www.sec.gov/rules/exempt.shtml](http://www.sec.gov/rules/exempt.shtml).

<sup>2</sup> See, e.g. Euro Currency Trust Letter at: <https://www.sec.gov/divisions/marketreg/mr-noaction/eurocurrency120505.htm>

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Amendment to SEC  
Whistleblower Tip  
TCR 1379091825035

\$344,000,000 Financial Fraud Related to

[REDACTED]  
[REDACTED] and Several Previous  
Instances of Market Manipulation Involving  
Exchange-Traded-Products (ETPs) and High  
Frequency Trading (HFT) and Commodities

## Background of Events:

On February 21, 2012, ██████████ announced that it had temporarily suspended issuing, or creating, shares of ██████████ due to internal limits on the size of the ETN. According to ██████████ the suspension of new shares triggered an imbalance in the market, resulting in ██████████ trading at a near 100% over its fair value, known as Indicative Net Asset Value (INAV). (The VIX futures it was designed to track).

The market price of ██████████ began to plunge on heavy volume at around 11:00 am on March 22, dropping around 30% on the day. At 7:30 PM, ██████████ announced that it was going to begin issuing new shares of ██████████ beginning March 23. ██████████ dropped another 20% on March 23, bringing the market price back inline with its INAV. Investors who bought ██████████ to profit off rising volatility are believed to have lost as much as \$340 million.

It's seems obvious that the that the news that ██████████ was going to begin issuing new shares of ██████████ leaked before the 7:30 PM press release. ██████████

What's less obvious, monumentally more important, and part of an ongoing fraud is that ██████████ colluded with High Frequency Trading (HFT) firms to create the market imbalance that drove ██████████ market price to a near 100% premium to fair value, or INAV. ██████████ is one of dozens of Exchange-Traded-Products (ETPs) HFT traders have manipulated, generating billions at the expense

of ordinary investors, using the same methodology that I'm about to describe.

### **How HFT Firms Manipulate ETPs**

Traders must do two things to manipulate the market price of an ETP to an excessive premium over its fair value, or INAV, 1) Force a suspension of the creation of new shares, and 2) corner the securities lending market of the ETP.

#### **Part 1: Forcing a Suspension of the Creation of New Shares**

When a prospective ETP is approved by the SEC, the sponsor forms an agreement with one or more authorized participants (APs), generally a market maker, who is empowered to create or redeem ETF shares. In some cases, as was the case with ██████ the AP and the sponsor are the same.

APs create ETPs by depositing a portfolio of the underlying securities, known as a creation basket, (cash in some instances) into the applicable fund in exchange for equally valued ETP shares (Usually blocks of 50k). The process is reversed when they redeem ETPs, depositing a block of ETP shares in exchange for an equally valued portfolio of underlying securities. Both exchanges are done at the closing INAV price - not the closing market price.

APs capture an arbitrage by creating shares when the closing market price is at a premium to INAV (creating for fair value and to sell at the premium market price), and redeeming shares when the closing market price is at a discount to INAV (redeeming at fair value to buy at a discount). This process, when functioning properly and void of fraud, helps keep ETP market prices at a reasonable level to INAV. A suspension of the creation of new shares doesn't automatically translate to excessive market price premiums over INAV, but helps traders who've cornered securities lending to maintain a monopoly on

shares and create market imbalances (more on this in the next section).

Not all ETPs are vulnerable to this sort of manipulation. There are five structures of ETPs (Open-end, Unit Investment Trust, Grantor Trust, Limited Partnership, and Exchange-Traded-Notes). Each structure is beholden to a unique set of rules and regulations prescribed by the SEC. And each individual ETP is beholden to the rules and regulations of the exchanges where the underlying securities trade.

The majority of ETPs targeted have been newly issued ETNs. ETNs are technically debt obligations and registered under the Securities Act of 1933. Like a bond offering, issuers register a finite number of ETN shares with the SEC prior to listing on an exchange. Once listed, issuers create shares to match market demand. While not beholden to the quantity of the original filing, issuers cannot create more shares than are registered. If demand is greater than the quantity registered in the original filing, issuers must file to register additional shares with the SEC. This process takes several days.

Traders have forced dozens of ETNs to temporarily suspend the creation of new shares by aggressively accumulating shares until the quantity outstanding is equal to the number of shares registered with the SEC. The quantity of shares registered with the SEC is found in the prospectus.

The remaining four structures are registered under the Investment Co. Act of 1940, and don't need to register shares like ETNs. However, individual ETPs are beholden to laws and regulations of their underlying securities. The CFTC proposed new position limits for commodity futures in 2009. Futures-based ETPs hold futures contracts, and have to adhere to position limits. Traders have forced dozens of futures-based ETPs to suspend the creation of new shares by aggressively accumulating shares until the quantity of futures contracts held by the ETP equaled CFTC position limits.

CFTC position limits can be found on the CFTC website or that of the Exchanges where the contracts trade. The quantity of shares needed to force a halt in the creation of new shares for futures-based ETPs is found by multiplying the position limit of the underlying futures by the market price of the nearest expiring contract, and dividing that by number by the market price of the ETF.

## **Part 2: Cornering the Securities Lending Market**

Traders can also capture an arbitrage by trading around intraday deviations in market price versus INAV. They buy ETPs trading at a discount to INAV versus selling short the underlying securities, and short ETPs trading at a premium to INAV versus buying the underlying securities. This is done algorithmically by High-Frequency-Trading (HFT) firms. The only caveat for arbitragers is they need to locate, or borrow, shares from somebody with a long position in order to establish and hold a short position.

Short sellers pay a fee to borrow securities to short, but typically don't have difficulty locating shares to borrow. However, the cost associated with borrowing shares fluctuates with supply and demand. Securities lending is a source of revenue for ETP issuers, and issuers typically keep shares to loan in inventory. Likewise, clearing agents or brokerage firms loan securities held in street name to short sellers for a fee.

Clearing agents will only NOT make securities available for short sellers to borrow at the holder's request. This request is rarely made, but holders can do whatever they want with their shares. They can make them available for a period of time and call them back with no warning or reason. And loan them out again, call them back, and loan them out, and call them back. The holder on record can do whatever he wants with his shares.

The ability of short sellers to establish and maintain a short position is determinant upon the availability of shares to borrow, and not simply the number of shares outstanding. Recall, clearing agents will only NOT loan shares to short sellers at the request of the holder. It's extraordinarily unlikely that a well-diversified group of holders will make this request. However, a trader, or group of colluding traders, holding a significant percentage of shares outstanding can use securities lending to manipulate the market price of an ETP that's suspended issuing new shares to a premium over INAV.

If an arbitrageur with a short position has the shares he's borrowed called away, he must locate another source of shares, cover his short position, or risk having a "forced buy-in" from his clearing firm. Forced buy-ins result in result in massive premiums over INAV, like the 100% market premium over INAV in ██████████ on March 22, 2012.

### **Combining the Two**

Volume of a targeted ETP typically spikes to several hundred percent over its Average Daily Volume (ADV) in the days or week before the suspension of creating new shares is announced as traders aggressively accumulate enough shares to force a suspension of the issuance of new shares and corner the securities lending market.

ETPs are manipulated by professional traders who employ an arbitrage strategy of buying the ETP versus selling the underlying securities. They accumulate shares mainly from other HFT firms by bidding above fair value, or INAV, for the ETP. While they capture a negative arbitrage in the process, buying ETP shares for a greater price than they sell the underlying assets, they're able to quickly establish the position needed to manipulate the ETP.



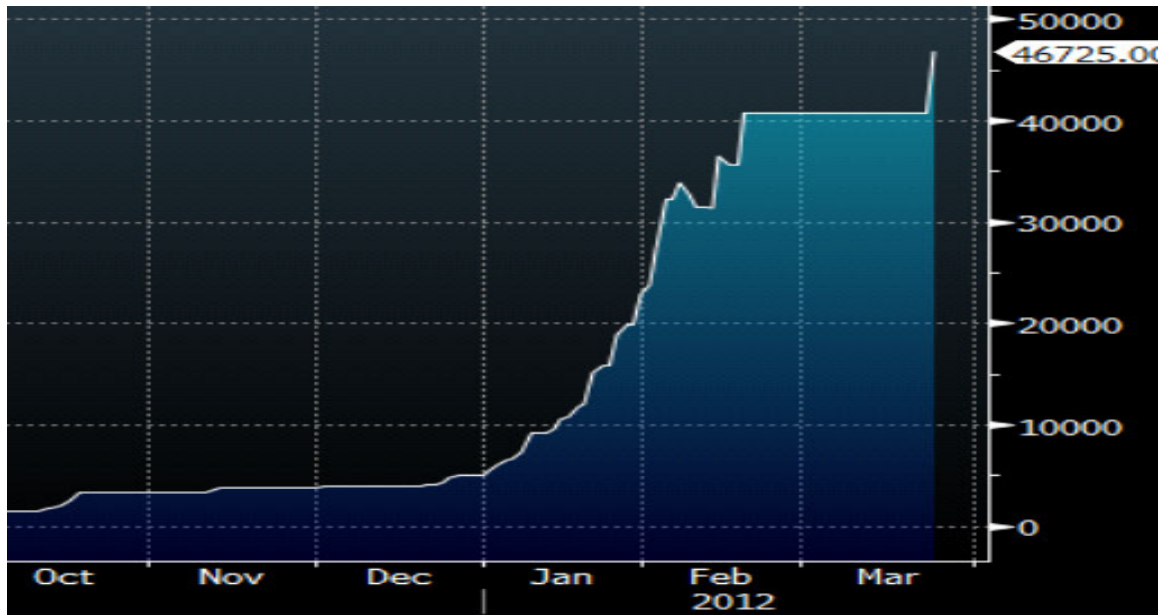
## Forcing a Suspension on the Creation of New Shares

Traders forced a suspension on the creation of new shares of [REDACTED] by aggressively accumulating shares until the quantity outstanding equaled [REDACTED] "internal limits on the size of the ETN". To the best of my knowledge, [REDACTED] internal position limits are nonpublic information.

[REDACTED] was a relatively benign product leading up to January 2012. The Average Daily Volume (ADV) was less than 3 million shares, and there were just 5.09 million shares outstanding at the start of 2012. As it is with every ETP manipulated using this method, volume increased several hundred percent leading up to the suspension. The shares outstanding hit 40,725,000, and 30 million shares traded on February 21, the day [REDACTED] announced the suspension.

[REDACTED] and [REDACTED] all have ties to [REDACTED]. All were top holder of [REDACTED] on February 21, 2012, when [REDACTED] suspended the creation of new shares.

## Chart of TVIX Shares Outstanding

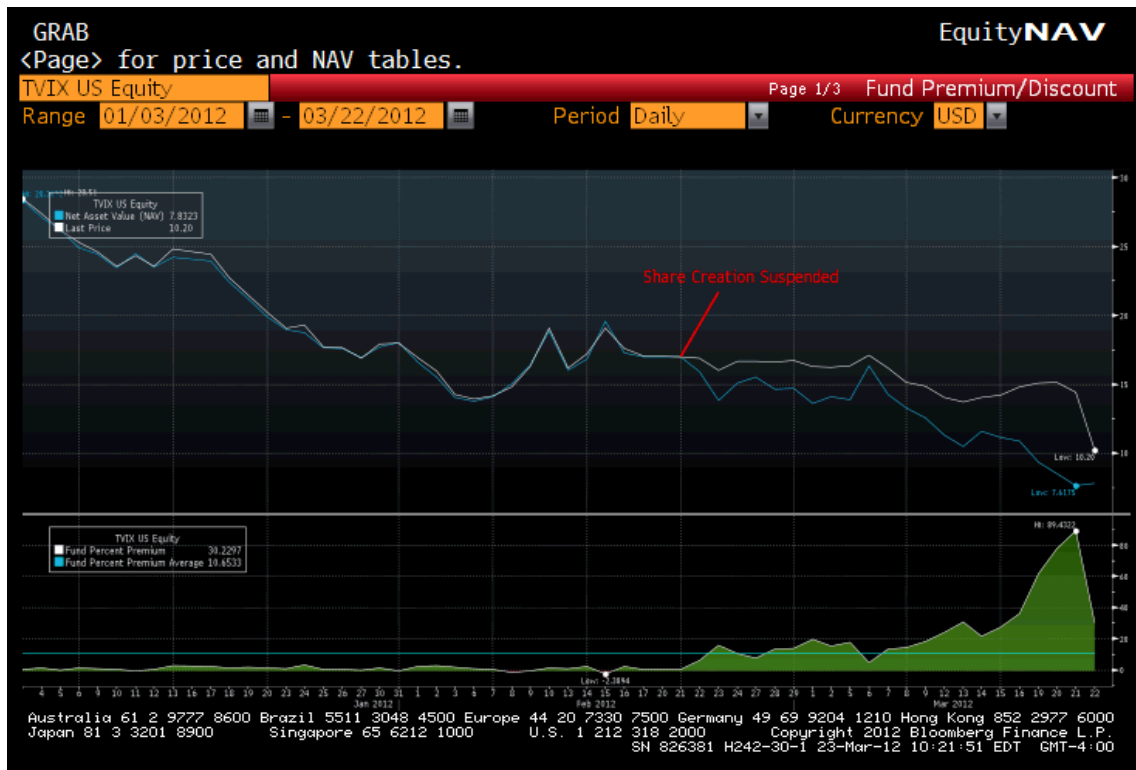


### Cornering Securities Lending

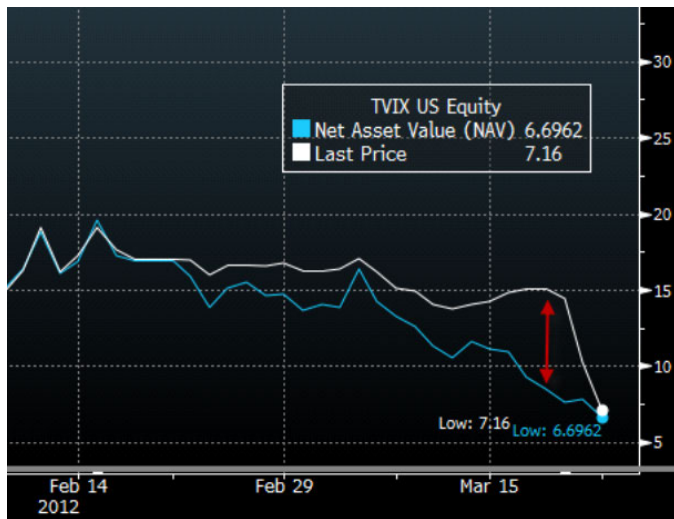
Short interest in █████ quadrupled from 600k on Feb. 21 to 2.2mn on Feb. 22, according to Data Explorers. On March 20, 2012 █████ first appeared on the NYSE Arca threshold securities list, indicating repeated failures-to-deliver (FTD) and required an actual borrow for shorting the shares as opposed to a good locate, which can take several days to settle. The premium over INAV then rose for two days, nearing 100% on March 22<sup>nd</sup>.

Securities lending, while under the jurisdiction of the Federal Reserve, is loosely regulated. Holders of securities can choose not to lend securities at all, or call securities on loan back at any time. Traders with long position loaned made shares available for arbitragers to borrow, and called those shares back in to cause a market imbalance and drive the market price of █████ to a near 100% premium over fair value, or INAV.

### Chart of Market Price, INAV, and Premium to INAV



**Market Price and INAV**



**Other Products**

using this methodology from 2009 through 2012. I don't have access to the data, but the pattern the same. The volume rises in excess of 100% of AVD in advance of the announcement, and they are the holders of enough shares following to manipulate

the securities lending and create a market imbalance strong enough to result in the ETP trading at a significant premium to INAV. In most instances, the information needed to force a suspension was publically available. Likewise, the holder of a security can request that his shares not be made available for securities lending. But it's still market manipulation.

I question why issuers of several of the ETPs manipulated didn't file to register additional shares before being forced to suspend the creation of new shares, and I wonder why they haven't expressed spoken with regulators. Industry commentators like [REDACTED], with financial ties to High-Frequency-Trading, routinely stated that investor interest, as they did with [REDACTED], caused the massive rise in shares outstanding. Yet more often than not, the top holders are [REDACTED] or [REDACTED]

[REDACTED] used nonpublic information provided by [REDACTED] to manipulate the following four ETPs - specifically, [REDACTED] told traders from [REDACTED]. that it was going to delist the ETP prior to issuing to publishing the March 10, 2009 press release [REDACTED]

I've requested 13F filings from the SEC, but haven't received them yet. (FOIA Request No. 14-07365-FOIA and ORMS C-2014-1032)

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] a trader with [REDACTED] - formerly of [REDACTED], is a very good friend of [REDACTED] portfolio manager, [REDACTED]. I don't think [REDACTED] traded [REDACTED] but [REDACTED] told me that borrowing shares of [REDACTED] "won't be a problem", discussed [REDACTED] position (also nonpublic information) - specifically how what they needed to do to hedge [REDACTED] and that [REDACTED] was about to create new shares - implying that this would force [REDACTED] to stop issuing additional shares on February 21 2012, and an email on February 22 2012 saying, "On a related note, [REDACTED] has temporarily suspended further [REDACTED] issuance as of last night" and continued to discuss [REDACTED] which is nonpublic information.

[REDACTED] Creation Unit is an industry term, and "create" is trader-speak. "create a +tive" is not a typo. "Create is an industry word -it's written this way so to not catch the attention of a compliance person.

**From:** [REDACTED]  
[REDACTED]  
**Sent:** Tuesday, February 21, 2012 2:29 PM  
**To:** Steve Williams

I want to talk [REDACTED] when can we chat?

**From:** Steve Williams [mailto:[REDACTED]]  
**Sent:** Tuesday, February 21, 2012 2:34 PM  
**To:** [REDACTED]

sorry im good now [REDACTED]

On Feb 21, 2012, at 4:02 PM, "[REDACTED]"  
[REDACTED]

Ok yes, float adj needs to be taken into account. Haven't looked into that...

