



## Information Circular: MIDCAP SPDRs TRUST FUNDS

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**To:** Head Traders, Technical Contacts, Compliance Officers, Head of ETF Trading, Structured Products Traders

**From:** William Slattery, Director, NASDAQ Listing Qualifications Department

**DATE:** February 12, 2007

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**The NASDAQ Stock Market LLC ("NASDAQ") begins operating as a national securities exchange for trading non-NASDAQ listed securities on February 12, 2007. As a result, certain First Trust index funds listed on other exchanges that have previously traded over-the-counter will be traded by NASDAQ as an exchange on an unlisted trading privileges (UTP) basis for the first time. See Appendix A for a listing of First Trust Funds ("Funds") that are commencing trading on NASDAQ on a UTP basis on February 12, 2007.**

Exchange-Traded Fund	Symbol	CUSIP Number
MidCap SPDR Trust, Series I	MDY	595635103

### Background Information on the Trust

The investment objective of the Trust is to provide investment results that correspond generally to the price and yield, before fees and expenses, of the Standard & Poor's ("S&P") MidCap 400 Index. The Trust will generally invest in all of the component stocks of the S&P MidCap 400 Index ("Index Securities") in the same proportion as in the S&P MidCap 400 Index. However, under various circumstances, it may not be possible or practical to replicate and maintain exactly the composition of the Index Securities.

The Sponsor of the Trust is PDR Services LLC, a Delaware limited liability Company ("Sponsor"). The Trust is governed by a trust agreement (the "Trust Agreement") between The Bank of New York, a corporation organized under the laws of New York with powers of a trust company under the New York Banking Law (the "Trustee"), and the Sponsor. The Distributor for MidCap SPDRs is ALPS Mutual Funds Services, Inc. ("Distributor").

As described more fully in the prospectus and the Statement of Additional Information ("SAI") for the Trust, the Trust issues SPDRs in specified large lots (25,000 MidCap SPDRs or multiples thereof) referred to as "Creation Units," generally in exchange for a specified portfolio of Index Securities, as well as a cash payment generally equal to accumulated dividends of the portfolio securities net of expenses up to the time of deposit. SPDRs will trade on NASDAQ at market prices that may differ from their NAV. SPDRs are redeemable only in Creation Units, and, generally, in exchange for portfolio securities and a specified cash payment. Except when aggregated in Creation Units, SPDRs may not be redeemed with the Trust.

The Trust intends to declare and distribute dividends from net investment income quarterly. The Trust will distribute net realized capital gains, if any, at least annually.

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

The Sponsor makes available (a) on each business day, a dividend equivalent payment effective through and including the previous business day, per outstanding SPDR, and (b) every 15 seconds throughout the day a number representing, on a per SPDR unit basis, the sum of the dividend equivalent payment effective through and including the previous business day, plus the current value of the securities portion of a portfolio deposit as in effect on such day.

The registration statement for the Trust describes the various fees and expenses for the SPDR product.

### **Purchases and Redemptions in Creation Unit Size**

NASDAQ members are hereby informed that procedures for purchases and redemptions of SPDRs in Creation Unit Size are described in the prospectus and SIA for the Trust, and that SPDRs are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

### **Principal Risks**

Interested persons are referred to the discussion in the prospectus for the Trust of the principal risks of an investment in the Trust. These include tracking error risk (factors causing the Trust’s performance to not match the performance of the underlying index), market trading risk (for example, trading halts, trading above or below net asset value), stock market risk, investment style risk, interest rate risk, investment approach risk, concentration risk, non-diversification risk, issuer-specific risk, management risk, lack of market liquidity, lack of governmental insurance or guarantee and fiscal policy risk.

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

Trading in SPDRs on NASDAQ is subject to [NASDAQ equity trading rules](#).

### **Trading Hours**

The value of a SPDR unit is disseminated to data vendors every 15 seconds. SPDRs will trade on NASDAQ between 7:00 a.m. and 8:00 p.m.

### **Suitability**

Trading in SPDRs on NASDAQ will be subject to the provisions of [NASDAQ Rule 2310](#). Members recommending transactions in SPDRs to customers should make a determination that the recommendation is suitable for the customer. In addition, members must possess sufficient information to satisfy the “know your customer” obligation that is embedded in the NASDAQ Conduct Rules.

Members also should review [NASD Notice to Members 03-71](#) for guidance on trading these products. The Notice reminds members of their obligations to: (1) conduct adequate due diligence to understand the features of the product; (2) perform a reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated with the particular product, especially when selling to retail investors; (5) implement appropriate internal controls; and (6) train registered persons regarding the features, risk and suitability of these products.

### **Trading Halts**

NASDAQ will halt trading in SPDRs in accordance with [NASDAQ Rule 4120](#). The grounds for a halt under NASDAQ Rule 4120 include a halt by the primary market because the intraday indicative value of the Trust and/or the value of its underlying index are not being disseminated as required, or a halt for other regulatory reasons. In addition, NASDAQ will stop trading SPDRs if the primary market de-lists the Trust.

### **Delivery of a Prospectus**

NASDAQ members should be mindful of applicable prospectus delivery requirements under the federal securities laws with respect to transactions in the Trust. Prospectuses may be obtained through the Trust's Distributor. The prospectus for a Trust does not contain all of the information set forth in the Trust's registration statement (including the exhibits to the registration statement), parts of which have been omitted in accordance with the rules and regulations of the Securities and Exchange Commission ("SEC"). For further information about a Trust, please refer to its registration statement. In the event that the Trust relies upon an order by the SEC exempting SPDRs from certain prospectus delivery requirements under Section 24(d) of the 1940 Act, and in the future make available a written product description, [NASDAQ Rule 4420\(j\)\(2\)](#) requires that NASDAQ members provide to all purchasers of SPDRs a written description of the terms and characteristics of such securities, in a form prepared by the Trust, no later than the time a confirmation of the first transaction in SPDRs is delivered to such purchaser. In addition, NASDAQ members shall include such a written description with any sales material relating to SPDRs that is provided to customers or the public. Any other written materials provided by a NASDAQ member to customers or the public making specific reference to SPDRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of SPDRs has been prepared by the Trust and is available from your broker. It is recommended that you obtain and review such circular before purchasing SPDRs. In addition, upon request you may obtain from your broker a prospectus for the Trust."

A NASDAQ member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase SPDRs for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to NASDAQ member under this rule.

Upon request of a customer, NASDAQ members also shall provide a copy of the Prospectus.

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

The SEC has issued exemptive, interpretive or no-action relief from certain provisions of rules under the Securities Exchange Act of 1934 (the "Act") regarding trading in the above mentioned exchange-traded funds ("Funds").

### **Short Sale Rules**

Transactions in ETFs will not be subject to "tick" requirements of the SEC short sale rule (SEC Rule 10a-1) or the "bid" requirements of the NASDAQ short sale rule ([NASDAQ Rule 3350](#)). Short orders must be marked SHORT or SHORT EXEMPT. (See paragraph below regarding Rule 200(g) of Regulation SHO.)

### **Rule 200(g) of Regulation SHO**

The SEC Division of Market Regulation has stated that the Division will not recommend enforcement action under Rule 200(g) of Regulation SHO if a broker-dealer marks "short" rather than "short exempt" a short sale effected in the Funds, subject to specified conditions, including that a broker-dealer executing exempt short sales will mark such sales as "short" and in no event will such sales be marked "long". ([See](#) letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, SEC, to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated January 3, 2005.)

### **Regulation M Exemptions**

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

The SEC has granted an exemption from Rule 101 under Regulation M to permit persons participating in a distribution of shares of the above-mentioned Funds ("Fund Shares") to engage in secondary market transactions in such shares during their participation in such a distribution. In addition, the SEC has granted relief under Regulation M to permit persons who may be deemed to be participating in the distribution of shares of the above-mentioned Funds (i) to purchase securities for the purpose of purchasing Creation Unit Aggregations of Fund Shares and to (ii) tender securities for redemption in Creation Unit Aggregations. Further, the SEC has clarified that the tender of Fund Shares to the Funds for redemption does not constitute a bid for or purchase of any of the Funds' securities during the restricted period of Rule 101. The SEC has also granted an exemption pursuant to paragraph (e) of Rule 102 under Regulation M to allow the redemption of Fund Shares in Creation Unit Aggregations during the continuous offering of shares.

## **Customer Confirmations for Creation or Redemption of Fund Shares (SEC Rule 10b-10)**

Broker-dealers who handle purchases or redemptions of Fund Shares in Creation Unit size for customers will be permitted to provide such customers with a statement of the number of Creation Unit Aggregations created or redeemed without providing a statement of the identity, number and price of shares of the individual securities tendered to the Fund for purposes of purchasing Creation Unit Aggregations ("Deposit Securities") or the identity, number and price of shares to be delivered by the Trust to the redeeming holder ("Redemption Securities"). The composition of the securities required to be tendered to the Fund for creation purposes and of the securities to be delivered on redemption will be disseminated each business day and will be applicable to requests for creations or redemption, as the case may be, on that day. This exemptive relief under Rule 10b-10 with respect to creations and redemptions is subject to the following conditions:

- (1) Confirmations to customers engaging in creations or redemptions must state that all information required by Rule 10b-10 will be provided upon request;
- (2) Any such request by a customer for information required by Rule 10b-10 will be filed in a timely manner, in accordance with Rule 10b-10(c);
- (3) Except for the identity, number and price of shares of the component securities of the Deposit Securities and Redemption Securities, as described above, confirmations to customers must disclose all other information required by Rule 10b-10(a).

## **SEC Rule 14e-5**

An exemption from Rule 14e-5 has been granted to permit any person acting as a dealer-manager of a tender offer for a component security of the Funds to (1) redeem Fund Shares in Creation Unit Aggregations from the issuer that may include a security subject to such tender offer and (2) to purchase Fund shares during such tender offer. In addition, a no-action position has been taken under Rule 14e-5 if a broker-dealer acting as a dealer-manager of a tender offer for a security of the Fund purchases or arranges to purchase such securities in the secondary market for the purpose of tendering such securities to purchase one or more Creation Unit Aggregations of Shares, if made in conformance with the following:

- (1) such bids or purchases are effected in the ordinary course of business, in connection with a basket of 20 or more securities in which any security that is the subject of a distribution, or any reference security, does not comprise more than 5% of the value of the basket purchased; or
- (2) purchases are effected as adjustments to such basket in the ordinary course of business as a result of a change in the composition of the underlying index; and

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

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

Section 11(d)(1) of the Act generally prohibits a person who is both a broker and a dealer from effecting any transaction in which the broker-dealer extends credit to a customer on any security which was part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction. The SEC has clarified that Section 11(d)(1) does not apply to broker-dealers that are not "Authorized Participants" (and, therefore, do not create Creation Unit Aggregations) that engage in both proprietary and customer transactions in Shares of the Funds in the secondary market, and for broker-dealer Authorized Participants that engage in creations of Creation Unit Aggregations. This relief is subject to specific conditions, including the condition that such broker-dealer (whether or not an Authorized Participant) does not, directly or indirectly, receive from the fund complex any payment, compensation or other economic incentive to promote or sell the Shares of the Fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830 (I)(5)(A), (B) or (C). (See [letter](#) from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Securities Industry Association, Derivative Products Committee, dated November 21, 2005.) The SEC also has taken a no-action position under Section 11(d)(1) of the Act that broker-dealers may treat Shares of the Funds, for purposes of Rule 11d1-2, as "securities issued by a registered open-end investment company as defined in the Investment Company Act" and thereby extend credit or maintain or arrange for the extension or maintenance of credit on Shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule.

### **SEC Rule 15c1-5 and 15c1-6**

The SEC has taken a no-action position with respect to Rule 15c1-5 and Rule 15c1-6 as to the required disclosure of control by a broker or dealer with respect to creations and redemptions of Fund Shares and secondary market transactions therein. (See [letter](#) from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Securities Industry Association, Derivative Products Committee, dated November 21, 2005.)

**This Information Circular is not a statutory prospectus. NASDAQ members should consult the prospectus for the Trust for relevant information.**

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Inquiries regarding this Information Circular should be directed to:

- Will Slattery, Director, NASDAQ Listing Qualifications, at 301.978.8088
- NASDAQ Office of General Counsel at 301.978.8400
- NASDAQ Market Sales at 800.846.0477