



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

April 23, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200-E

On January 4, 2018, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the following exchange-traded products under NYSE Arca Rule 8.200-E, Commentary .02: Direxion Daily Bitcoin Bear 1X Shares (“1X Bear Fund”), Direxion Daily Bitcoin 1.25X Bull Shares (“1.25X Bull Fund”), Direxion Daily Bitcoin 1.5X Bull Shares (“1.5X Bull Fund”), Direxion Daily Bitcoin 2X Bull Shares (“2X Bull Fund”), and Direxion Daily Bitcoin 2X Bear Shares (“2X Bear Fund”) (each a “Fund,” and collectively the “Funds”). The proposed rule change was published for comment in the Federal Register on January 24, 2018.³ The Commission has received no comment letters on the proposed rule change.

On March 1, 2018, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 82532 (Jan. 18, 2018), 83 FR 3380 (Jan. 24, 2018) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵

This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal⁷

The Exchange proposes to list and trade the Shares under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts on the Exchange.⁸ Each Fund will be a series of the Direxion Shares ETF Trust II (“Trust”), and the Trust and the Funds will be managed and controlled by Direxion Asset Management, LLC (“Sponsor”). Bank of New York Mellon will be the custodian and transfer agent for the Funds.

⁵ See Securities Exchange Act Release No. 82795 (Mar. 1, 2018), 83 FR 9768 (Mar. 7, 2018). The Commission designated April 24, 2018, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ The Commission notes that additional information regarding the Trust (as defined herein), the Shares, and the Funds, including investment strategies, calculation of net asset value (“NAV”) and indicative fund value, creation and redemption procedures, and additional background information about bitcoins, the bitcoin network, and bitcoin futures contracts, among other things, can be found in the Notice. See Notice, *supra* note 3. The registration statement was filed confidentially with the Commission on Form S-1 (“Registration Statement”) under the Securities Act of 1933 (“Securities Act”). The Exchange represents that the Registration Statement, and all amendments thereto, will be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Rule 433(h)(4) under the Securities Act.

⁸ See NYSE Arca Rule 8.200-E, Commentary .02. NYSE Arca Rule 8.200-E permits the listing and trading of “Trust Issued Receipts,” defined as a security (1) that is used by the trust which holds specific securities deposited with the trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (3) that pay beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. Commentary .02 applies to Trust Issued Receipts that invest in any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

U.S. Bancorp Fund Services, LLC will serve as the administrator for the Funds, and Foreside Fund Services, LLC will serve as the distributor of the Shares (“Distributor”).

According to the Exchange, the Funds will seek to obtain daily short, leveraged long, or leveraged short exposure (before fees and expenses) to the target benchmark, which is the lead-month bitcoin futures contract traded on the Chicago Mercantile Exchange (“CME”) or Cboe Global Markets, Inc. (“CBOE”) or on any other U.S. exchange that subsequently trades bitcoin futures contracts (“Bitcoin Futures Contract”).⁹ Specifically, the 1.25X Bull Fund, the 1.5X Bull Fund, and the 2X Bull Fund will seek daily investment results (before fees and expenses) that are 125%, 150%, or 200%, respectively, of the daily return of the target benchmark.¹⁰ The 1X Bear Fund and the 2X Bear Fund will seek daily inverse investment results (before fees and expenses) that are -100% or -200%, respectively, of the daily return of the target benchmark.¹¹

The target benchmark’s value will be calculated as the last sale price published by the CME or the CBOE, or any other U.S. exchange that subsequently trades bitcoin futures contracts, on or before 11:00 a.m. E.T. for the Bitcoin Futures Contract and may reflect trades occurring and published by the CME or CBOE or another U.S. exchange that subsequently trades bitcoin futures contracts outside the normal trading session for the Bitcoin Futures Contract.¹² The Funds will compute their NAV as of 11:00 a.m. E.T., or such earlier time that the NYSE may close.¹³

⁹ Bitcoin Futures Contracts will be cash-settled. The “lead month” contract is the monthly contract with the earliest expiration date. See Notice, supra note 3, at 3381, n.6.

¹⁰ See Notice, supra note 3, at 3382.

¹¹ See id.

¹² See id. at 3381.

¹³ See id. at 3383.

Each Fund, under normal market conditions, will seek to achieve its daily investment objective by investing in the Bitcoin Futures Contract, swaps on the Bitcoin Futures Contract, or listed options on bitcoin or the Bitcoin Futures Contract (collectively, “Bitcoin Financial Instruments”). The Funds’ investments in Bitcoin Financial Instruments will be used to produce economically “leveraged” or “inverse leveraged” investment results for the Funds.¹⁴ A Fund may invest in the listed options and swaps described above in a manner consistent with its investment objective in situations where the Sponsor believes that investing in such financial instruments is in the best interests of a Fund. In addition, a Fund may invest in swap contracts referencing the Bitcoin Futures Contract if the market for a specific bitcoin futures contract experiences emergencies or if position, price, or accountability limits (if any) are reached with respect to a specific bitcoin futures contract. Each trading day at the close of the U.S. equity markets, each Fund will position its portfolio to ensure that the Fund’s exposure to the target benchmark is consistent with the Fund’s investment objective.¹⁵

Assets of each Fund not invested in Bitcoin Financial Instruments will be held in cash or invested in cash equivalents, such as U.S. Treasury Securities or other high credit quality short-term, fixed-income, or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase agreements collateralized by government securities) that serve as collateral for, or pending investments in, the Funds’ investments.¹⁶

According to the Exchange, each Fund will create and redeem Shares in one or more Creation Units (a Creation Unit is a block of 50,000 Shares of a Fund). A creation transaction,

¹⁴ See id. at 3381–82.

¹⁵ See id.

¹⁶ See id. at 3383.

which is subject to acceptance by the Distributor, generally takes place when an Authorized Participant deposits a specified amount of cash in exchange for a specified number of Creation Units. Similarly, Shares can be redeemed only in Creation Units, generally for cash. Only Authorized Participants may purchase and redeem Shares from a Fund.¹⁷

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2018-02 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁸ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."²⁰

¹⁷ See id. at 3384.

¹⁸ 15 U.S.C. 78s(b)(2)(B).

¹⁹ Id.

²⁰ 15 U.S.C. 78f(b)(5).

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²¹

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,²² in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. What are commenters' views on whether the Exchange has sufficiently described how the Sponsor will select the applicable Bitcoin Futures Contract, given that the bitcoin

²¹ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²² See Notice, supra note 3.

futures contracts trading on the two named bitcoin futures exchanges (or on any other U.S. exchange that subsequently trades bitcoin futures contracts) have different terms (including different reference prices) and trade at different prices, and given that any bitcoin futures contracts subsequently listed on a U.S. exchange may likewise have different terms or trade at different prices?

2. In its proposal, the Exchange states that each Fund will seek to achieve its daily investment objective by investing in Bitcoin Financial Instruments, which include the Bitcoin Futures Contract, swaps on the Bitcoin Futures Contract, or listed options on bitcoin or the Bitcoin Futures Contract. What are commenters' views on the current availability of these swaps or listed options? What are commenters' views on the ability of the Funds to invest in these swaps or listed options in the event that position, price, or accountability limits are reached with respect to any bitcoin futures contracts? What are commenters' views on the ability of the Funds to invest in these swaps or listed options if an underlying futures market experiences emergencies or disruptions?
3. What are commenters' views on whether the Funds would have the information necessary to adequately value, including fair value, the Bitcoin Financial Instruments when determining an appropriate NAV for the Funds, taking into account any volatility, fragmentation, or general lack of regulation of the underlying bitcoin markets?
4. What are commenters' views on the potential impact of manipulation in the underlying bitcoin markets on the Funds' NAV? What are commenters' views on the potential effect of such manipulation on the valuation of a Fund's Bitcoin Financial Instruments, which is determined using the last sale price for the Bitcoin Futures Contract on the

applicable U.S. futures exchange (as opposed to the settlement price, closing price, midpoint, or volume weighted average price)? What are commenters' views on the potential effect of such manipulation on the pricing of a Fund's non-exchange-traded Bitcoin Financial Instruments? What are commenters' views on the potential effect of manipulation on the valuation of a Fund's portfolio in cases where, according to the Exchange, the target benchmark's value reflects trades occurring outside the normal trading session for the Bitcoin Futures Contract?

5. What are commenters' views on how the Funds' valuation policies would address the potential for the bitcoin blockchain to diverge into different paths (i.e., a "fork")?
6. What are commenters' views on the price differentials and trading volumes across bitcoin trading platforms (including during periods of market stress) and on the extent to which these differing prices may affect the trading of Bitcoin Financial Instruments and, accordingly, trading in the Shares of the Funds?
7. What are commenters' views on how the substantial margin requirements for bitcoin futures contracts, and the nature of liquidity and volatility in the market for bitcoin futures contracts, might affect the Trust's ability to meet redemption orders? What are commenters' views on whether and how the margin requirements for bitcoin futures contracts may affect a Fund's use of available cash to achieve its investment strategy?
8. What are commenters' views on the possibility that the Funds—along with other exchange-traded products with similar investment objectives—could acquire a substantial portion of the market for some or all of the Bitcoin Financial Instruments? What are commenters' views on whether such a concentration of holdings could affect

the Funds' portfolio management, the liquidity of the Funds' respective portfolios, or the pricing of some or all of the Bitcoin Financial Instruments?

9. What are commenters' views on possible factors that might impair the ability of the arbitrage mechanism to keep the trading price of the Shares tied to the NAV of each Fund? What are commenters' views on whether determining the value of the Funds' benchmark, or striking the Funds' NAV, as of 11:00 a.m. E.T. might affect the arbitrage mechanism during the remainder of the trading day? With respect to the markets for Bitcoin Financial Instruments, what are commenters' views on the potential impact on the arbitrage mechanism of the price volatility and the potential for trading halts? What are commenters' views on whether or how these potential impairments of the arbitrage mechanism may affect the Funds' ability to ensure adequate participation by Authorized Participants? What are commenters' views on the potential effects on investors if the arbitrage mechanism is impaired?
10. What are commenters' views on the risks of price manipulation and fraud in the underlying bitcoin trading platforms and how these risks might affect the Bitcoin Financial Instruments? What are commenters' views on how these risks might affect trading in the Shares of the Funds?
11. What are commenters' views on how an investor may evaluate the price of the Shares in light of the risk of potential price manipulation and fraud in the underlying bitcoin trading platforms and in light of the potentially significant spread between the price of Bitcoin Financial Instruments and the spot price of bitcoin?
12. What are commenters' views on whether the two named bitcoin futures exchanges represent a significant market, i.e., a market of significant size?

13. With respect to the Funds that seek leveraged or leveraged-inverse returns, would trading of the Shares, hedging activity, or creation and redemption activity affect the daily volume, volatility, or liquidity of the underlying Bitcoin Financial Instruments or of the spot bitcoin market any differently than a non-leveraged bitcoin futures exchange-traded product would? If so, why, how, and to what extent? Would any such effect be different during periods of downward market movement or high volatility? If so, why, how, and to what extent?

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2018-02 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2018-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2018-02 and should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman
Assistant Secretary

²³ 17 CFR 200.30-3(a)(57).

