Nos. 2, 3, and 4, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09530 Filed 5–10–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80606; File No. SR–NYSEArca-2017–05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares Under NYSE Arca Equities Rule 8.200

May 5, 2017.

I. Introduction

On January 23, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to list and trade shares (''Shares'') of Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares (each a ''Fund,'' and collectively the ''Funds'') under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on February 7, 2017.[4] On March 16, 2017, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission has received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.

II. Exchange's Description of the Proposal

The Exchange proposes to list and trade Shares of the Funds under NYSE Arca Equities Rule 8.200, Commentary .02, which governs the listing and trading of Trust Issued Receipts.[8] Each Fund is a series of the Direxion Shares ETF Trust II (''Trust''), a Delaware statutory trust.[9] The Trust and the Funds are managed and controlled by Direxion Asset Management, LLC (''Sponsor'').[10] Bank of New York Mellon will be the custodian and transfer agent for the Funds. U.S. Bancorp Fund Services, LLC is the administrator for the Funds. Foreside Fund Services, LLC serves as the distributor of the Shares.

The Exchange has made the following representations and statements in describing the Funds and their investment strategies, including the Funds' portfolio holdings and investment restrictions.[11]

A. Investment Objectives of the Funds

The investment objective of the Direxion Daily Crude Oil Bull 3X Shares is to seek, on a daily basis,[12] investment results that correspond (before fees and expenses) to a multiple three times (3x) of the daily performance of the Bloomberg WTI Crude Oil Subindex^{SM} (a subindex of the Bloomberg Commodity Index^{SM}) (''Benchmark'').[13] The investment objective of the Direxion Daily Crude Oil Bear 3X Shares is to seek, on a daily basis,[14] investment results that correspond (before fees and expenses) to three times (3x) the inverse of the performance of the Benchmark. The Benchmark is intended to reflect the performance of crude oil as measured by the price of West Texas Intermediate crude oil futures contracts traded on the New York Mercantile Exchange (which is part of the Chicago Mercantile Exchange), including the impact of rolling,[15] without regard to income earned on cash positions. According to the Exchange, the Funds will not be directly linked to the ''spot'' price of crude oil.[16]

B. Investments of the Funds

In seeking to achieve the Funds' investment objectives, the Exchange states that the Sponsor will utilize a mathematical approach to determine the type, quantity, and mix of investment positions that the Sponsor believes, in combination, should produce daily returns consistent with the Funds' respective objectives.[17] The Sponsor would rely on a pre-determined model to generate orders that result in repositioning the Funds' investments in accordance with their respective investment objectives.

According to the Exchange, each Fund will seek to achieve its investment objectives by investing, under normal market conditions,[18] substantially all of

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[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 79916 (February 1, 2017), 82 FR 9608 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 80265 (March 22, 2017), 82 FR 14778. The Commission designated May 8, 2017 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means 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.

[9] According to the Exchange, on December 14, 2016, the Trust filed with the Commission a registration statement on Form S–1 under the Securities Act of 1933, as amended, relating to the Funds (File No. 333–215091) (''Registration Statement'').

[10] According to the Exchange, the Sponsor is registered as a commodity pool operator with the Commodity Futures Trading Commission and is a member of the National Futures Association. *See* Notice, *supra* note 4, 82 FR at 9608.

[11] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, fees, availability of information, trading rules and halts, surveillance, information bulletins, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* notes 4 and 9, respectively.

[12] According to the Exchange, the Funds do not seek to achieve their investment objectives over a period greater than a single trading day. The Exchange states that a single trading day is measured from the time a Fund calculates its NAV to the time of a Fund's next NAV calculation. The Exchange states that the return of a Fund for a period longer than a single trading day is the result of its return for each day compounded over the period and thus will usually differ from a Fund's multiple times the return of the Benchmark for the same period. *See* Notice, *supra* note 4, 82 FR at 9609.

[13] According to the Exchange, the Benchmark is a ''rolling index,'' which means that the index does not take physical possession of any commodities. *See id.* at 9609 n.7.

[14] *See supra* note 12.

[15] The Exchange states that futures contracts held by the Funds near expiration are generally closed out and replaced by contracts with a later expiration as required by the Benchmark. The Exchange states that this process is referred to as ''rolling,'' and that the Funds do not intend to hold futures contracts through expiration, but instead to ''roll'' their respective positions. *See* Notice, *supra* note 4, 82 FR at 9609 n.8.

[16] *See id.* at 9609.

[17] *See id.*

[18] The Exchange states that the term ''normal market conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events

its assets in oil futures contracts traded in the U.S. and listed options on such contracts (such futures contracts and options are collectively referred to as ''Futures Contracts''). The Funds' investments in Futures Contracts will be used to produce economically ''leveraged'' or ''inverse leveraged'' investment results for the Funds.

In the event position or accountability limits are reached with respect to Futures Contracts,[19] each Fund may obtain exposure to the Benchmark through investment in swap transactions and forward contracts referencing the Benchmark or other benchmarks the Sponsor believes should be closely correlated to the performance of each Fund's benchmark, such as the Energy Select Sector Index or the S&P Oil & Gas Exploration & Production Select Industry Index (such swap transactions and forward contracts are collectively referred to as ''Financial Instruments''). To the extent that the Trust invests in Financial Instruments, it would first make use of exchange-traded Financial Instruments, if available. If an investment in exchange-traded Financial Instruments is unavailable, then the Trust would invest in Financial Instruments that clear through derivatives clearing organizations that satisfy the Trust's criteria, if available. If an investment in cleared Financial Instruments is unavailable, then the Trust would invest in other Financial Instruments, including uncleared Financial Instruments in the over-the-counter (''OTC'') market. The Funds may also invest in Financial Instruments if the market for a specific futures contract experiences emergencies (*e.g.,* natural disaster, terrorist attack, or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) that prevent or make it impractical for a Fund to obtain the appropriate amount of investment exposure using Futures Contracts.

The Funds will invest such that each Fund's exposure to the Benchmark will consist substantially of Futures Contracts. The Funds' remaining net assets may be invested in cash or cash equivalents and/or U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds and collateralized repurchase agreements) for direct investment or as collateral for the Funds' investments.

The Funds do not intend to hold Futures Contracts through expiration, but instead to ''roll'' their respective positions.[20]

The Exchange states that the Funds do not expect to have leveraged exposure greater than three times (3x) the Funds' net assets. Thus, the maximum margin held at a Future Commission Merchant would not exceed three times the margin requirement for either Fund.[21]

The Exchange represents that not more than 10% of the net assets of a Fund in the aggregate invested in Futures Contracts shall consist of Futures Contracts whose principal market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have in place a comprehensive surveillance sharing agreement.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2017–05 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[22] 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,[23] 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.''[24]

Under the proposal, each Fund will seek to achieve its investment objective by investing in Financial Instruments, which, according to the Exchange, could include uncleared OTC swap transactions and forward contracts.[25] The Exchange states that each Fund's total portfolio composition will be disclosed each business day that the Exchange is open for trading on the Funds' Web site. The Web site disclosure will include, with respect to the Futures Contracts and Financial Instruments, their name, percentage weighting, and value. The Commission seeks commenters' views on the sufficiency of the information that would be provided with respect to each Fund's Financial Instruments, and whether the information will allow market participants to value these interests intraday.

In addition, under the proposal, the investment objective of the Direxion Daily Crude Oil Bull 3X Shares is to seek, on a daily basis, investment results that correspond (before fees and expenses) to a multiple three times (3x) of the daily performance of the Benchmark, and the investment objective of the Direxion Daily Crude Oil Bear 3X Shares is to seek, on a daily basis, investment results that correspond (before fees and expenses) to three times (3x) the inverse of the performance of the Benchmark. The Exchange's filing does not address whether the value of the Benchmark will be publicly disseminated, and, if

such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. *See id.* at 9609 n.11.

[19] According to the Exchange, U.S. futures exchanges have established accountability levels and position limits on the maximum net long or net short Futures Contracts in commodity interests that any person or group of persons under common trading control (other than as a hedge, which an investment by a Fund is not) may hold, own, or control. These levels and position limits apply to the Futures Contracts that each Fund would invest in to meet its investment objective. According to the Exchange, in addition to accountability levels and position limits, U.S. futures exchanges also set daily price fluctuation limits on Futures Contracts. The daily price fluctuation limit establishes the maximum amount that the price of a Futures Contract may vary either up or down from the previous day's settlement price. *See id.* at 9609.

[20] The Exchange states that when the market for these contracts is such that the prices are higher in the more distant delivery months than in the nearer delivery months, the sale during the course of the ''rolling process'' of the more nearby contract would take place at a price that is lower than the price of the more distant contract. This pattern of higher futures prices for longer expiration Futures Contracts is referred to as ''contango.'' Alternatively, when the market for these contracts is such that the prices are higher in the nearer months than in the more distant months, the sale during the course of the ''rolling process'' of the more nearby contract would take place at a price that is higher than the price of the more distant contract. This pattern of higher futures prices for shorter expiration futures contracts is referred to as ''backwardation.'' According to the Exchange, the presence of contango in certain Futures Contracts at the time of rolling could adversely affect a Fund with long positions, and positively affect a Fund with short positions. Similarly, the presence of backwardation in certain futures contracts at the time of rolling such contracts could adversely affect a Fund with short positions and positively affect a Fund with long positions. *See id.*

[21] *See id.*

[22] 15 U.S.C. 78s(b)(2)(B).

[23] *Id.*

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Notice, *supra* note 4, at 9609.

so, by whom and how often. The Commission seeks commenters' views on the sufficiency of the Exchange's discussion regarding dissemination of the value of the Benchmark on which the investment objectives of the Funds are based.

Furthermore, in its filing the Exchange fails to include a representation that all statements and representations in the proposal regarding the applicability of Exchange listing rules specified in the proposal shall constitute continued listing requirements for listing the Shares on the Exchange.[26] The Commission seeks commenter's views on whether the Exchange's statements in the filing relating to the applicability of continued listing requirements for listing and trading of the Shares on the Exchange are sufficient to support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Act.

IV. 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.[27]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 12, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 26, 2017. 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,[28] in addition to any other comments they may wish to submit about the proposed rule change.

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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–05 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 Numbers SR–NYSEArca–2017–05. This file number should be included on the subject line if email 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 Web site (*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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2017–05 and should be submitted on or before June 12, 2017 Rebuttal comments should be submitted by June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–09522 Filed 5–10–17; 8:45 am]

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[26] The Commission notes that the Exchange has made this representation in other proposed rule changes to list and trade Trust Issued Receipts. *See, e.g.,* Amendment No. 1 to Securities Exchange Act Release No. 79917 (February 1, 2017), 82 FR 9620 (February 7, 2017) (SR–NYSEArca-2017–07), available at: *https://www.sec.gov/comments/sr-nysearca-2017-07/nysearca201707-1630210-137426.pdf;* Amendment No. 2 to Securities Exchange Act Release No. 79742 (January 5, 2017), 82 FR 3366 (January 11, 2017) (SR–NYSEArca–2016–173), available at: *https://www.sec.gov/comments/sr-nysearca-2016-173/nysearca2016173-1678044-149322.pdf.*

[27] 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).

[28] *See supra* note 4.

[29] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80610; File No. SR–MSRB–2017–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Withdrawal of a Proposed Rule Change To Add New MSRB Rule G–49, on Transactions Below the Minimum Denomination of an Issue, to the Rules of the MSRB, and To Rescind Paragraph (f), on Minimum Denominations, From MSRB Rule G–15

May 5, 2017.

On January 24, 2017, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add new MSRB Rule G–49, on transactions below the minimum denomination of an issue, to the rules of the MSRB, and, in MSRB Rule G–15, on confirmation, clearance, settlement, and other uniform practice requirements with respect to transactions with customers, to rescind paragraph (f), on minimum denominations. The proposed rule change was published for comment in the **Federal Register** on February 9, 2017.[3] The Commission received four comment letters on the proposal.[4] On March 21, 2017, pursuant to Section 19(b)(2) of the Exchange Act,[5] the MSRB

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79978 (February 6, 2017), 82 FR 10123.

[4] *See* letters from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated March 2, 2017; Mike Nichols, Chief Executive Officer, Bond Dealers of America, dated March 2, 2017; Paige W. Pierce, President and Chief Executive Officer, RW Smith, dated March 3, 2017; and James J. Angel, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated March 7, 2017.

[5] 15 U.S.C. 78s(b)(2).