

consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-04 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-2024-04. 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 website (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-NYSEARCA-2024-04, and should be submitted on or before February 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2024-01507 Filed 1-25-24; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99407; File No. SR-EMERALD-2023-13]

##### **Self-Regulatory Organizations; MIAx Emerald, LLC; Notice of Withdrawal of Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product**

January 22, 2024.

On June 7, 2023, MIAx Emerald, LLC ("MIAx Emerald" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (File Number SR-EMERALD-2023-13) to increase fees for the MIAx Emerald Top of Market ("ToM") market data product and establish fees for the MIAx Emerald Complex Top of Market ("cToM") market data product. The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed

rule change was published for comment in the **Federal Register** on June 26, 2023.<sup>4</sup> On August 3, 2023, the Commission issued an order temporarily suspending the proposed rule change pursuant to section 19(b)(3)(C) of the Act<sup>5</sup> and simultaneously instituting proceedings under section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On December 20, 2023, pursuant to section 19(b)(2) of the Exchange Act,<sup>8</sup> the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.<sup>9</sup> On January 17, 2024, the Exchange withdrew the proposed rule change (SR-EMERALD-2023-13).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2024-01509 Filed 1-25-24; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99409; File No. SR-NYSEARCA-2024-05]

##### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the COTwo Advisors Physical European Carbon Allowance Trust Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)**

January 22, 2024.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 10, 2024, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

or not the person is a member of the self-regulatory organization." 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> See Securities Exchange Act Release No. 97767 (June 20, 2023), 88 FR 41442 ("Notice").

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 98051, 88 FR 53937 (August 9, 2023) ("Order Instituting Proceedings").

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See Securities Exchange Act Release No. 99209, 88 FR 89485 (December 27, 2023). The Commission designated February 21, 2024, as the date by which the Commission shall approve or disapprove the proposed rule change.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as "establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to list and trade shares of the COTwo Advisors Physical European Carbon Allowance Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### **A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Exchange proposes to list and trade shares ("Shares") of the COTwo Advisors Physical European Carbon Allowance Trust (the "Trust"), under NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity-Based Trust Shares.<sup>4</sup>

The Trust was formed as a Delaware statutory trust on January 12, 2023.<sup>5</sup> The Trust has no fixed termination date. The Trust will not be registered as an investment company under the Investment Company Act of 1940, as

amended,<sup>6</sup> and is not required to register under such act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.<sup>7</sup>

The sponsor of the Trust is COTwo Advisors LLC, a Delaware limited liability company ("Sponsor"). State Street Bank and Trust Company serves as the Trust's administrator (the "Administrator") to perform various administrative, accounting and recordkeeping functions on behalf of the Trust. Wilmington Trust serves as trustee of the Trust (the "Trustee"). State Street Bank and Trust Company serves as the Trust's transfer agent (the "Transfer Agent") and as custodian of the Trust's cash, if any ("Cash Custodian").<sup>8</sup>

The Exchange represents that the Shares will satisfy the requirements of NYSE Arca Rule 8.201-E and thereby will qualify for listing on the Exchange.

##### **Operation of the Trust<sup>9</sup>**

The investment objective of the Trust will be for the Shares to reflect the performance of the price of EU Carbon Emission Allowances for stationary installations ("EUAs"), less the Trust's expenses. The Trust intends to achieve its objective by investing all of its assets in EUAs on a non-discretionary basis (*i.e.*, without regard to whether the value of EUAs is rising or falling over any particular period). Shares of the Trust will represent units of fractional undivided beneficial interest in and ownership of the Trust. The Trust's only ordinary recurring expense will be the Sponsor's annual fee. The Trust will not hold any assets other than EUAs and, possibly, a very limited amount of cash to pay Trust expenses. The Trust may also cause the Sponsor to receive EUAs from the Trust in such a quantity as may be necessary to pay the Sponsor's annual fee.

The Trust will not invest in futures, options, options on futures, or swap contracts. The Trust will not hold or trade in commodity futures contracts, "commodity interests," or any other instruments regulated by the Commodity Exchange Act. As stated above, the Trust's Cash Custodian may hold cash proceeds from EUA sales to pay Trust expenses. All EUAs will be held in the Union Registry (defined below).

The Trust is not a proxy for investing in EUAs. Rather, the Shares are intended to provide a cost-effective means of obtaining investment exposure through the securities markets that is similar to an investment in EUAs. Specifically, the Shares are intended to constitute a simple and cost-efficient means of gaining investment benefits similar to those of holding EUAs directly, by providing investors an opportunity to participate in the EUA market through an investment in the Shares, instead of the traditional means of purchasing and storing EUAs. Trust shareholders will be exposed to the risks of investing in EUAs, as well as to additional risks that are unrelated to EUAs. For example, the public trading price at which an investor buys or sells Shares during the day from their broker may be different from the value of the Trust's holdings. Price differences may relate primarily to supply and demand forces at work in the secondary trading market for the Trust's Shares that are closely related to, but not identical to, the same forces influencing the prices of EUAs, cash and cash equivalents that constitute the Trust's assets. In addition, EUAs will have to be sold to pay Trust expenses that would not be associated with an investment in EUAs. Additional risks related to the Trust's structure, the Sponsor's management of the Trust, and the tax treatment of an investment in Shares are further in the Registration Statement.

##### **EUAs and the EUA Industry**

##### **Description of EU Emissions Trading Scheme**

According to the Registration Statement, the European Union Emissions Trading System ("EU ETS") is a "cap and trade" system that caps the total volume of greenhouse gas ("GHG") emissions from installations and aircraft operators responsible for around 40% of European Union ("EU") GHG emissions.<sup>10</sup> The EU ETS is the largest cap and trade system in the world and covers more than 11,000 power stations and industrial plants in 31 countries, and flights between airports of participating countries. The EU ETS is administered by the EU Commission, which issues a predefined amount of EUAs through auctions or

<sup>4</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust.

<sup>5</sup> On May 12, 2023, the Trust filed with the Commission a registration statement on Form S-1 (File No. 333-271910) (the "Registration Statement") under the Securities Act of 1933 (15 U.S.C. 77a) (the "Securities Act"). The description of the operation of the Trust herein is based, in part, on the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

<sup>6</sup> 15 U.S.C. 80a-1.

<sup>7</sup> 17 U.S.C. 1.

<sup>8</sup> The Cash Custodian is responsible for holding the Trust's cash as well as receiving and dispensing cash on behalf of the Trust in connection with the payment of Trust expenses.

<sup>9</sup> The description of the operation of the Trust, the Shares, and the carbon credit industry contained herein are based, in part, on the Registration Statement. See note 5, *supra*.

<sup>10</sup> There are two types of EU emissions allowance: (i) general allowances for stationary installations, or EUA; and (ii) allowances for the aviation sector ("EUA"). The Trust will hold EUAs only.

free allocation. An EUA represents the right to emit one metric ton of carbon dioxide equivalent into the atmosphere by operators of stationary installations ("Covered Entities"). By the end of April each year, all Covered Entities are required to surrender EUAs equal to the total volume of actual emissions from their installation for the last calendar year. EU ETS operators can buy or sell EUAs to achieve EU ETS compliance.

In 2012, EU ETS operations were centralized into a single EU registry operated by the EU Commission (the "Union Registry"), which covers all countries participating in the EU ETS. According to the Registration Statement, the Union Registry is an online database that holds accounts for all entities covered by the EU ETS as well as for participants (such as the Trust) not covered under the EU ETS. The Union Registry can be accessed online in a similar manner to online banking systems. An account must be opened in the Union Registry by a legal or natural person before being able to participate in the EU ETS and transact in EUAs. The European Union Transaction Log ("EUTL")<sup>11</sup> checks, records and authorizes all transactions that take place between accounts in the Union Registry to ensure that transfers are in accordance with the EU ETS rules. The Union Registry is at all times responsible for holding the EUAs. All EUAs are held in the Union Registry.

#### Major Holders and Allowance Use Cases

According to the Registration Statement, while there is limited publicly available data on individuals or individual organizations' holdings in physical carbon allowances, carbon allowances are primarily held for three different use cases:

(a) **Complying with the EU ETS:** Companies that need to surrender allowances under the EU ETS hold allowances to surrender them annually. These positions are typically built over time and ultimately surrendered at time of compliance. Therefore, the largest emitters in the EU ETS hold a significant amount of allowances, which include entities such as large utilities with a substantial share of fossil fuel fired power plants, cement companies, steel producers, chemical producers, oil and gas majors and airlines.

(b) **Providing financial services for hedging purposes or speculation, such**

as clearing houses for the European Energy Exchange or the Intercontinental Exchange, or banks holding allowances for their clients.

(c) **Trading on and speculating around price moves, using physical emission allowances.** This can take many forms, including "yield trades", which includes holding a physical allowance and selling an EUA future at a premium to gain the yield in the forward curve; or outright positions for short term or long term speculation.

In addition to holding physical allowances, there is a liquid secondary futures and options market that is primarily used for hedging future emissions or speculating.

#### Trading Location

According to the Registration Statement, the EU ETS is linked to small emissions trading systems in Europe (Norway, Switzerland, Iceland and Liechtenstein), but not to any other major cap and trade markets. Therefore, allowances handed out in the EU ETS are not transferable to any registry outside of the EU ETS and cannot be used for compliance in any other cap and trade market.

There are a number of other trading systems globally, and like the EU ETS, no allowances of any of these systems can be used in any other system:

(a) **Western Climate Initiative (WCI):** The State of California and the Canadian province Quebec created a linked cap and trade market, that covers >80% of emissions.

(b) **Regional Greenhouse Gas Initiative (RGGI):** a group of US east coast states created a linked market that covers power generators only.

(c) **The China National ETS:** Technically not a cap and trade scheme (as the amount of allowances is not fixed but calculated according to historic production of units).

(d) **South Korea ETS:** A comprehensive market covering the majority of Korean emissions.

#### Pricing of Allowances and Trading Volume

According to the Registration Statement, there are currently two primary avenues for trading EUAs: a primary market and a secondary market. The primary market involves participation in a regularly scheduled auction. The secondary market involves transactions between buyers and sellers on regulated markets. The contracts offered for trading are the following (1) instruments with a daily expiry, including spot EUAs and the Daily EUA Future (as defined below), (2) futures contracts with various maturities; and

(3) options on futures contracts. There are also over-the-counter transactions, but they comprise a negligible percentage of transactions.

The spot and futures markets for EUAs have existed since 2005 after the formal launch of the EU ETS on January 1, 2005. Spot EUA contracts are traded exclusively on the European Energy Exchange AG ("EEX"),<sup>12</sup> and futures contracts are traded on EEX, and ICE Endex Markets B.V. ("ICE Endex")<sup>13</sup> and Nasdaq Oslo, although the latter's market share is marginal. Additionally, options on EUA futures contracts are traded on EEX and ICE Endex, but not on Nasdaq Oslo.

According to the Registration Statement, the EUA markets are generally liquid. The classifications for market participants include five basic categories—(1) investment firms or credit institutions, (2) investment funds, (3) other financial institutions, (4) operators with compliance obligations and, (5) commercial undertakings which are non-financial firms without compliance obligations.<sup>14</sup> According to

<sup>12</sup> EEX is an exchange under the German Exchange Act and a Regulated Market ("RM"), as defined in the Markets in Financial Instruments Directive (Directive 2014/65/EC) ("MIFID II"). As a RM for spot and derivatives transactions, EEX is supervised by the Saxon State Ministry for Economic Affairs, Labour and Transport (the "Exchange Supervisory Authority"). The Exchange Supervisory Authority is in charge of the legal supervision of EEX and of market supervision of the trading participants according to the German Exchange Act. The members of EEX are supervised by the Federal Financial Supervisory Authority (BaFin). All trading participants are required to comply with the market abuse regulations within the German Securities Trading Act. Beside this supervision, the market behavior at the spot and derivatives markets of all exchange participants is supervised on a daily basis by the Market Surveillance Office, an independent body of the exchange according to Section 7 of the German Exchange Act. See [https://www.esma.europa.eu/sites/default/files/EEX\\_1.pdf](https://www.esma.europa.eu/sites/default/files/EEX_1.pdf). See also Rules and Regulations at <https://www.eex.com/en/markets/trading-ressources/rules-and-regulations>.

<sup>13</sup> ICE Endex is regulated in the Netherlands by the Dutch Authority for the Financial Markets ("AFM") as a RM, as defined in MIFID II, which is implemented in Dutch Act on Financial Supervision ("DFSA"). The license as a RM is obtained under Section 5:26(1) of the DFSA, resulting in an authorization by the Minister of Dutch Ministry of Finance to operate a RM and supervised by the AFM. In the UK, ICE Endex is a Recognized Overseas Investment Exchange by the Financial Conduct Authority. See <https://www.ice.com/endex/regulation#:~:text=The%20Dutch%20Authority%20for%20Consumers,energy%20industry%20and%20wholesale%20trading>. ICE Endex is also recognized by the CFTC as an authorized Foreign Board of Trade. See <https://www.cftc.gov/sites/default/files/ido/groups/public/@otherif/documents/ifdocs/orgiceeregorder170110.pdf>.

<sup>14</sup> See [esma70-445-38\\_final\\_report\\_on\\_emission\\_allowances\\_and\\_associated\\_derivatives.pdf](https://www.esma.europa.eu/sites/default/files/2024-01/esma70-445-38_final_report_on_emission_allowances_and_associated_derivatives.pdf) (europa.eu).

<sup>11</sup> The EUTL is a central transaction log that checks and records all transactions taking place within the EU ETS. It is run by the European Commission and provides an easy access to emission trading data contained in the EUTL. See <https://www.eea.europa.eu/data-and-maps/dashboards/emissions-trading-viewer-1>.

the European Union Transaction Log, there are over 18,773 registry accounts.<sup>15</sup> The number of participants in the market have a direct bearing on the quality of trading. An Oxera report indicates that as the number of participants trading EUA futures has increased consistently since January 2017, relative spreads, calculated as the average quoted spread divided by the closing price, have decreased significantly—from just under 0.4% in January 2017 to roughly 0.06% in October 2021.<sup>16</sup> In a February 2023 publication, Refinitiv estimated the total EUA market size to be €751.5 billion, up 10% versus 2021.<sup>17</sup> As of January 2023, the secondary market had average daily trading volume of €2 billion, with the majority of the liquidity in the futures market. EUA auctions are held on a near-daily basis throughout the year, other than between mid-December to mid-January, when auctions are paused. Twenty-eight countries (25 EU member states plus Liechtenstein, Norway, and Iceland) have agreed to use EEX to conduct their regularly scheduled auctions. Germany and Poland have opted out of the common auction but also utilize the EEX for auctions. Hence, EUA auctions take place exclusively on EEX. These auctions take place on a regularly scheduled basis; the number of allowances being auctioned is disclosed on a schedule prior to auction. Prices achieved in these auctions are published on various publicly-accessible websites, including the European Commission's primary website.

Below is a discussion of the secondary markets for EUAs and associated derivatives. The Trust will only hold EUAs, and will not hold any of the related derivatives.

#### Instruments With a Daily Expiry

Instruments with daily expiry include spot EUAs traded on the EEX and the Daily EUA Future traded on ICE Endex. The Exchange notes that the settlement and economic outcome for a spot purchase on the EEX and a same day futures purchase on the ICE Endex are identical (as further detailed below). In fact, the European Securities Markets Authority ("ESMA"), in its "Final

Report: Emission Allowances and Associated Derivatives," uses the term "spot" EUAs to include both spot EUAs traded on EEX and the Daily EUA Future traded on ICE Endex.<sup>18</sup>

#### Spot EUA Market

As noted above, spot EUA contracts are traded exclusively on the EEX. The current value (spot price) for a EUA is greatly influenced by a number of factors, including regulatory changes, world events and general levels of economic activity. The trading hours for spot EUAs on EEX are 8:00 a.m. to 6:00 p.m. Central European Time ("C.E.T."), and trade registrations are possible until 6:45 p.m. C.E.T. Trades concluded before 4:00 p.m. C.E.T. are settled on the next business day, or T+1, while trades after 4:00 p.m. C.E.T. are settled on the day after the first business day, or T+2. In the year-to-date period ended December 6, 2023, the average daily, monthly and annual trading volumes of spot EUAs on the EEX was 165,000, 3,332,000 and 39,983,000 EUAs, respectively. Over the same period, spot EUA contracts traded at their highest volume of 5,010,000 EUAs on December 1, 2023, and their lowest volume of 1000 EUAs on January 9, 2023.

The EEX calculates and publishes an EEX end of day index on the price of EEX EUA spot contracts (the "EUA End of Day Index"). The value of the EUA End of Day Index is calculated based on an algorithm using data regarding the prices of qualifying trades and the average bids and asks of orders that meet certain order quantity requirements. In order for data regarding trades and orders to be used for calculating the value of the EUA End of Day Index, the trades or orders must satisfy certain requirements regarding (i) quantity of traded contracts, (ii) quantity of contracts per order, (iii) minimum duration of the cumulated valid best bid and best ask, and (iv) maximum spread per contract. The EUA End of Day Index calculation methodology depends on the number of valid trades and orders which fulfil the product-specific parameters.<sup>19</sup> The data used for calculating the EUA End of Day Index can also come from fair values collected in a price committee or from other price

sources. The EUA End of Day Index price calculated is then validated against actual market prices.

#### Daily EUA Futures

Most liquidity in the secondary market is achieved by trading futures contracts. These contracts have expiration going out as far as 2030. A single day futures contract on EUAs is exclusively traded on the ICE Endex (the "Daily EUA Future"), which settles each day at the close of trading.<sup>20</sup> The Daily EUA Future is a deliverable contract where each person with a position open at cessation of trading is obliged to make or take delivery of EUAs upon the expiration of the contract at the end of each trading day. Each Daily EUA Future represents one lot of 1,000 EUAs, with each EUA providing an entitlement to emit one ton of carbon dioxide equivalent gas. Generally, Daily EUA Futures trade on ICE Endex from approximately 2:00 a.m. Eastern Time ("E.T.") to approximately 12:00 p.m. E.T. The settlement price is fixed each business day and is published by the exchange at approximately 12:15 E.T. Final cash settlement occurs the first business day following the expiry day. In the year-to-date period ended December 6, 2023, the average daily, monthly and annual trading volumes of Daily EUA Futures was 3,144, 68,758 and 761,046, respectively, which represents trading volumes of 3,144,000, 68,758,000 and 761,046,000 EUAs, respectively. Over the same period, Daily EUA Futures traded at their highest volume of 20,473 on July 12, 2023, representing 20,473,000 EUAs, and their lowest volume of 218 on May 8, 2023, representing 218,000 EUAs.

#### Comparison of Spot EUA Market and Daily EUA Futures Market

The daily EUA End of Day Index value can be expected to be substantially identical to the daily settlement price of the Daily EUA Future. Below is a comparison of the daily EUA End of Day Index value and the Daily EUA Future settlement price over a recent 45 calendar day period.

<sup>15</sup> See <https://ec.europa.eu/clima/ets/>.

<sup>16</sup> Carbon trading in the European Union: An economic assessment of market functioning in 2021, Oxera, p. 42 (February 15, 2022); available at <https://www.oxera.com/wp-content/uploads/2022/02/Oxera-EU-carbon-trading-report-3.pdf>.

<sup>17</sup> See "Review of Carbon Markets in 2022" (February 2023); available at [https://www.refinitiv.com/content/dam/marketing/en\\_us/](https://www.refinitiv.com/content/dam/marketing/en_us/)

<documents/gated/reports/carbon-market-year-in-review-2022.pdf>. The report presents Refinitiv's assessment of the world's major carbon markets in 2022 and the total EUA market size includes spot, auctions and futures.

<sup>18</sup> See [esma70-445-38\\_final\\_report\\_on\\_emission-allowances\\_and-associated-derivatives.pdf](https://www.esma.europa.eu/press-material/press-conferences/2023/01/26/esma70-445-38-final-report-on-emission-allowances-and-associated-derivatives.pdf) (europa.eu).

<sup>19</sup> The EUA End of Day Index methodology is available at [https://www.eex.com/fileadmin/EEX/Downloads/Trading/Specifications/Indexes/DE/20211005\\_Index\\_Description\\_v010.pdf](https://www.eex.com/fileadmin/EEX/Downloads/Trading/Specifications/Indexes/DE/20211005_Index_Description_v010.pdf).

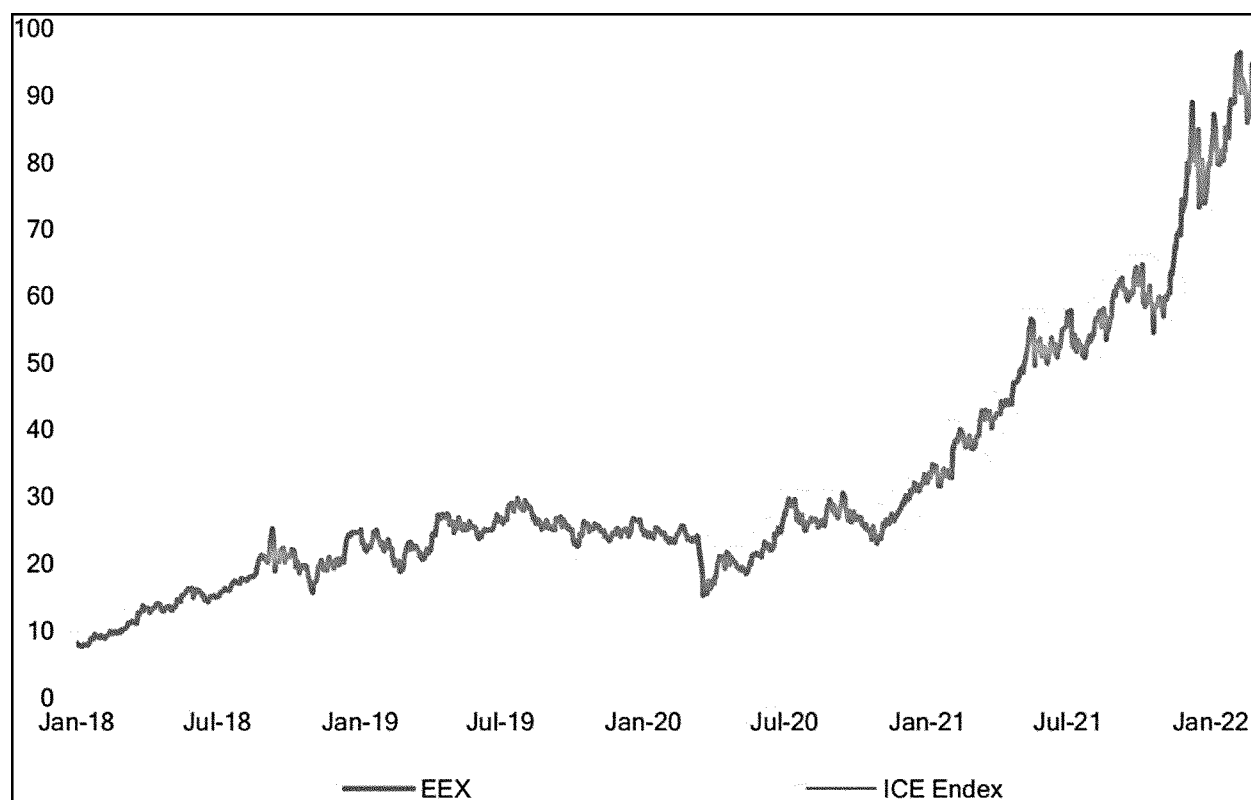
<sup>20</sup> NASDAQ Oslo also offers a single day futures contract on EUAs, but the contract is not traded. All references to the "Daily EUA Future" refer to the single day EUA futures contract traded on ICE Endex.

| Date           | EEX End of<br>Day Index | ICE final<br>settlement | Difference—<br>EEX v. ICE |
|----------------|-------------------------|-------------------------|---------------------------|
| 12/8/23 .....  | €68.56                  | €68.56                  | €0.00                     |
| 12/7/23 .....  | 69.58                   | 69.58                   | 0.00                      |
| 12/6/23 .....  | 68.73                   | 68.73                   | 0.00                      |
| 12/5/23 .....  | 68.54                   | 68.54                   | 0.00                      |
| 12/4/23 .....  | 70.26                   | 70.26                   | 0.00                      |
| 12/1/23 .....  | 72.38                   | 72.38                   | 0.00                      |
| 11/30/23 ..... | 70.69                   | 70.69                   | 0.00                      |
| 11/29/23 ..... | 70.87                   | 70.87                   | 0.00                      |
| 11/28/23 ..... | 72.78                   | 72.78                   | 0.00                      |
| 11/27/23 ..... | 73.45                   | 73.45                   | 0.00                      |
| 11/24/23 ..... | 76.37                   | 76.37                   | 0.00                      |
| 11/23/23 ..... | 76.35                   | 76.35                   | 0.00                      |
| 11/22/23 ..... | 74.96                   | 74.96                   | 0.00                      |
| 11/21/23 ..... | 75.12                   | 75.12                   | 0.00                      |
| 11/20/23 ..... | 76.35                   | 76.35                   | 0.00                      |
| 11/17/23 ..... | 76.28                   | 76.28                   | 0.00                      |
| 11/16/23 ..... | 76.73                   | 76.73                   | 0.00                      |
| 11/15/23 ..... | 79.42                   | 79.42                   | 0.00                      |
| 11/14/23 ..... | 78.29                   | 78.29                   | 0.00                      |
| 11/13/23 ..... | 77.14                   | 77.14                   | 0.00                      |
| 11/10/23 ..... | 78.33                   | 78.33                   | 0.00                      |
| 11/9/23 .....  | 77.03                   | 77.02                   | 0.01                      |
| 11/8/23 .....  | 75.33                   | 75.33                   | 0.00                      |
| 11/7/23 .....  | 74.88                   | 74.88                   | 0.00                      |
| 11/6/23 .....  | 75.46                   | 75.46                   | 0.00                      |
| 11/3/23 .....  | 77.24                   | 77.24                   | 0.00                      |
| 11/2/23 .....  | 78.20                   | 78.20                   | 0.00                      |
| 11/1/23 .....  | 78.10                   | 78.10                   | 0.00                      |
| 10/31/23 ..... | 78.59                   | 78.59                   | 0.00                      |
| 10/30/23 ..... | 78.25                   | 78.25                   | 0.00                      |
| 10/27/23 ..... | 78.84                   | 78.84                   | 0.00                      |
| 10/26/23 ..... | 79.14                   | 79.14                   | 0.00                      |

Additionally, the chart below illustrates how closely the Daily EUA Future, in fact, reflects the EUA spot price during the trading day. This chart

shows the spot prices in continuous trading on the EEX and the intra-day prices of Daily EUA Futures on ICE Endex, in EUR/tCO<sub>2</sub> from January 2018

to January 2022. This shows an average absolute difference of €0.015 between the daily prices for EUAs on the EEX and ICE Endex.



([https://www.esma.europa.eu/sites/default/files/library/esma70-445-38\\_final\\_report\\_on\\_emission\\_allowances\\_and\\_associated\\_derivatives.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-445-38_final_report_on_emission_allowances_and_associated_derivatives.pdf):p37).

#### Other EUA Futures Contracts

EEX offers monthly EUA futures contracts for the current and next two months unless a quarterly or December future expires at that month's maturity date; quarterly futures for the current and next 11 quarters unless a December future expires at that quarter's maturity date; and yearly, or December, futures for the next 8 years which mature in December of each respective year. ICE Endex offers up to seven December futures contracts, nine quarterly futures contracts, three August futures contracts and two monthly futures contracts. Nasdaq Oslo offers a quarterly futures contracts over a rolling six year period.

#### Options on EUA Futures Contracts

Options on EUA futures contracts are also traded on EEX and ICE Endex for the December futures contracts.

#### Creation and Redemption of Shares

According to the Registration Statement, the Trust will create and redeem Shares on a continuous basis in one or more Creation Units. A Creation Unit equals a block of 50,000 Shares, which amount may be revised from time-to-time. The Trust will issue

Shares in Creation Units to certain authorized participants ("Authorized Participants") on an ongoing basis. Each Authorized Participant must be a registered broker-dealer or other securities market participant such as a bank or other financial institution which is not required to register as a broker-dealer to engage in securities transactions, a participant in The Depository Trust Company ("DTC") and have entered into an agreement with the Sponsor and the Transfer Agent (the "Participant Agreement").

Creation Units may be created or redeemed only by Authorized Participants. The creation and redemption of Creation Units is only made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of EUAs represented by the Creation Units being created or redeemed. The amount of EUAs required to be delivered to the Trust in connection with any creation, or paid out upon redemption, is based on the combined net asset value of the number of Shares included in the Creation Units being created or redeemed as determined on the day the order to create or redeem Creation Units is properly received and accepted. Orders must be placed by 11:00 a.m. New York time. The day on which the Administrator receives a valid purchase or redemption order is the order date. Creation Units may only be issued or

redeemed on a day that the Exchange is open for regular trading.

An Authorized Participant who places a purchase order is responsible for crediting the Trust's Union Registry account with the required EUA deposit by 2:00 p.m. New York time on the second business day following the order date. Upon receipt of the EUA deposit amount in the Trust's Union Registry account, the Union Registry will notify the Sponsor that the EUAs have been deposited. Upon receipt of confirmation from the Union Registry that the EUA deposit amount has been received, the Administrator will direct DTC to credit the number of Shares created to the Authorized Participant's DTC account.

According to the Registration Statement, the redemption distribution due from the Trust will be delivered once the Administrator notifies the Sponsor that the Authorized Participant has delivered the Shares to be redeemed to the Trust's DTC account. The redemption distribution will be delivered to the Authorized Participant on the second business day following the order date. Once the Administrator notifies the Sponsor that the Shares have been received in the Trust's DTC account, the Sponsor instructs the Union Registry to transfer the redemption EUA amount from the Trust's Union Registry account to the Authorized Participant's Union Registry account.

The Sponsor is the only entity that may initiate a withdrawal of EUAs from the Trust's Union Registry account, and the only accounts that may receive EUAs from the Trust's Union Registry account are Authorized Participants' or the Sponsor's Union Registry accounts.

#### Net Asset Value ("NAV")

The Trust's NAV is calculated by taking the current market value of its total assets, less any liabilities of the Trust, and dividing that total by the total number of outstanding Shares.

The Administrator will calculate the NAV of the Trust once each Exchange trading day. The NAV for a normal trading day will be released after the end of the Core Trading Session, which is typically 4 p.m. New York time. The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time. The Administrator will use that day's EUA End of Day Index value, as published by EEX, to calculate the NAV. The Administrator also converts the value of Euro denominated assets into US Dollar equivalent using published foreign currency exchange prices by an independent pricing vendor. Third parties supplying quotations or market data may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

#### Indicative Fund Value ("IFV")

In order to provide updated information relating to the Trust for use by investors and market professionals, an updated IFV will be made available through on-line information services throughout the Exchange Core Trading Session (normally 9:30 a.m. to 4:00 p.m. E.T.) on each trading day. The IFV will be calculated by using the prior day's closing NAV per Share of the Trust as a base and updating that value throughout the trading day to reflect changes in the most recently reported bid-ask spread of the spot EUA market on EEX. The IFV disseminated during NYSE Arca Core Trading Session hours should not be viewed as an actual real time update of the NAV, because the NAV will be calculated only once at the end of each trading day based upon the relevant end of day values of the Trust's investments. Although the IFV will be disseminated throughout the Core Trading Session, the customary trading hours for EUAs are 2 a.m. to 12 p.m. Eastern Time. During the gap in time at the end of each trading day during which the Shares are traded on the Exchange, but real-time trading prices for EUAs are not available, the IFV will

be calculated based on the end of day price of EUAs immediately preceding the trading session.

The IFV will be disseminated on a per Share basis every 15 seconds during regular NYSE Arca Core Trading Session.

#### Availability of Information

The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time. The intraday, closing prices, and settlement prices for EUAs will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors. The IFV per Share for the Shares will be disseminated by one or more major market data vendors on at least a 15 second delayed basis as required by NYSE Arca Rule 8.201-E(e)(2)(v).

Complete real-time data for EUAs and Daily EUA Futures is available by subscription through on-line information services. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The IFV will be available through on-line information services. The trading prices for EUAs and the daily EUA End of Day Index value and historical EUA End of Day Index values will be disseminated by on-line subscription services or by one or more major market data vendors during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. E.T. The EUA End of Day Index value is also published daily on the EEX website.

EEX also provides on its website, on a daily basis, transaction volumes and transaction prices for the EUA spot market. ICE Endex provides on its website, on a daily basis, transaction volumes, transaction prices, daily settlement prices and historical settlement prices for Daily EUA Futures that were traded outside of block trades by EUA futures brokers. In addition, transaction volumes, transaction prices, daily settlement prices and historical settlement prices for Daily EUA Futures traded in block trades by futures brokers are available on a daily basis through a subscription service to ICE Endex. However, ICE Endex provides the daily settlement price change of the Daily EUA Future on its website.

In addition, the Trust's website ([www.cotwoadvisors.com](http://www.cotwoadvisors.com)) will contain the following information, on a per Share basis, for the Trust: (a) the prior business day's end of day closing NAV;

(b) the Official Closing Price<sup>21</sup> or the midpoint of the national best bid and the national best offer ("NBBO") as of the time the NAV is calculated ("Bid-Ask Price"); (c) calculation of the premium or discount of the Official Closing Price against the NAV expressed as a percentage of such NAV; (d) the prospectus; and (e) other applicable quantitative information. The Trust will also provide website disclosure of its EUA holdings before 9:30 a.m. E.T. on each trading day.

The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge. The website disclosure of the Trust's daily holdings will occur at the same time as the disclosure by the Trust of the daily holdings to Authorized Participants so that all market participants are provided daily holdings information at the same time. Therefore, the same holdings information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current daily holdings of the Trust through the Trust's website. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under

<sup>21</sup> The term "Official Closing Price" is defined in NYSE Arca Rule 1.1(l) as the reference price to determine the closing price in a security for purposes of Rule 7-E Equities Trading, and the procedures for determining the Official Closing Price are set forth in that rule.

NYSE Arca Rule 8.201–E. The trading of the Shares will be subject to NYSE Arca Rule 8.201–E(g), which sets forth certain restrictions on Equity Trading Permit (“ETP”) Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A–3<sup>22</sup> under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 10,000 Shares will be outstanding at the commencement of trading on the Exchange.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying carbon credit market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange’s “circuit breaker” rule.<sup>23</sup>

The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IFV, as described above. If the interruption to the dissemination of the IFV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants

at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority Inc. (“FINRA”), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>24</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest, consistent with section 6(b)(5) of the Act. The Commission has explained that a proposal could satisfy the requirements of the Act in the first instance by demonstrating that the listing exchange has entered into a comprehensive surveillance-sharing agreement (“CSSA”) with a regulated “market of significant size” relating to the underlying assets.<sup>25</sup> The Commission has further stated that “[c]onsistent with the discussion of ‘significant market’ . . . , the Commission has not previously, and does not now, require that [a] listing exchange be able to enter into a surveillance-sharing agreement with each regulated spot or derivatives

market relating to an underlying asset, provided that the market or markets with which there is such an agreement constitute a ‘significant market.’”<sup>26</sup>

The Exchange has entered into a CSSA with ICE Endex. Pursuant to the CSSA, the Exchange will communicate as needed regarding trading in the Shares and Daily EUA Futures with ICE Endex, and the Exchange may obtain trading information regarding trading in the Shares and Daily EUA Futures from ICE Endex.

The Exchange believes that ICE Endex is a regulated<sup>27</sup> market of significant size related to EUAs and that it is reasonably likely that any bad actor trying to manipulate the price of the Trust would have to trade the Daily EUA Futures traded on ICE Endex. Therefore, ICE Endex is an appropriate market to surveil in order to detect and deter fraud and manipulation of EUAs. The term “market of significant size” includes a market as to which (a) there is a reasonable likelihood that a person attempting to manipulate the Trust Shares would also have to trade on that market to successfully manipulate the Trust Shares, and (b) it is unlikely that trading in the Trust Shares would be the predominant influence on prices in that market.

ICE Endex is the only market for trading Daily EUA Futures and it accounts for 95% of the trading volume for EUAs with “daily expiry” (which, as described above, includes spot EUAs and Daily EUA Futures). While the Trust will hold EUAs traded on EEX, this is economically equivalent to holding EUAs received after settling Daily EUA Futures that trade on ICE Endex. As described above, the correlation between the EUA End of Day Index value that reflects the value of the spot EUAs traded on EEX and the Daily EUA Future settlement price is nearly perfect. Thus, on any given day, the value of an EUA purchased on EEX or an EUA received after settling a Daily EUA Future traded on ICE Endex is the same.

Given the significant size of ICE Endex, there is a reasonable likelihood that a market participant attempting to manipulate the Trust Shares would also have to trade on ICE Endex to successfully manipulate the Trust Shares. While it is possible that a potential manipulator could choose to trade only in the spot EUA market

<sup>24</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

<sup>25</sup> See Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E).

<sup>22</sup> With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

<sup>23</sup> See NYSE Arca Rule 7.12–E.

<sup>26</sup> See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust).

<sup>27</sup> See note 13, *supra*.



(EEX), the near-perfect correlation between the EUA End of Day Index value and the Daily EUA Future settlement price means that a price distortion in the spot EUA market would be reflected in the Daily EUA Futures market and vice versa.<sup>28</sup>

<sup>28</sup> The Commission has granted several prior proposals to list and trade shares of physical commodity-based exchange-traded products, noting in every case that there was at least one regulated market of significant size for trading futures in the underlying commodity—whether gold, silver, platinum, palladium or copper—and the product's listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group ("ISG") membership in common with, that market. See Securities Exchange Act Release Nos. 61220 (December 22, 2009), 74 FR 68895, 68896 (December 29, 2009) (SR-NYSEArca-2009-94) (notice of proposed rule change included NYSE Arca's representation that "[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange," that "NYMEX is the largest exchange in the world for trading precious metals futures and options," and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which NYMEX is a member; 61219 (December 22, 2009), 74 FR 68886, 68887–88 (December 29, 2009) (SR-NYSEArca-2009-95) (notice of proposed rule change included NYSE Arca's representation that "[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange," that "NYMEX is the largest exchange in the world for trading precious metals futures and options," and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which NYMEX is a member; 62692 (August 11, 2010), 75 FR 50789, 50790 (August 17, 2010) (SR-NYSEArca-2010-56) (notice of proposed rule change included NYSE Arca's representation that "the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member; 62875 (September 9, 2010), 75 FR 56156, 56158 (September 15, 2010) (SR-NYSEArca-2010-71) (notice of proposed rule change included NYSE Arca's representation that "the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member; 63464 (December 8, 2010), 75 FR 77926, 77928 (December 14, 2010) (SR-NYSEArca-2010-95) (notice of proposed rule change included NYSE Arca's representation that "the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange," that "COMEX is the largest exchange in the world for trading precious metals futures and options," and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member; 68430 (December 13, 2012), 77 FR 75239, 75240–41 (December 19, 2012) (SR-NYSEArca-2012-111) (notice of proposed rule change included NYSE Arca's representation that "[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member; 71378 (January 23, 2014), 79 FR 4786, 4786–87 (January 29, 2014) (SR-NYSEArca-2013-137) (notice of proposed rule change included NYSE Arca's representation that "COMEX is the largest gold futures and options exchange" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," including with respect to transactions occurring on COMEX pursuant to CME

It is unlikely that trading in the Trust Shares would be the predominant influence on Daily EUA Futures prices traded on ICE Endex for a number of reasons, including the significant volume in and size of the EUA daily expiry market. The total EUA market size is approximately €695.8 billion with approximately €64.1 billion of that attributable to the Daily EUA Futures market. The daily average trading volume for EUAs across the secondary market is approximately €2 billion, with approximately €264.8 million attributable to trading in the Daily EUA Futures market. The Trust has not yet launched and cannot predict its future inflows; however, given the size of the Daily EUA Futures market and the EUA market, as a whole, the Sponsor does not anticipate that the Trust will have available capital to buy and sell EUAs in an amount that would move the EUA market.

Based on the foregoing, the Exchange believes that prices on the Daily EUA Futures market (ICE Endex) can reasonably be relied upon to reflect the effects on the Daily EUA Futures market caused by a market participant attempting to manipulate the Trust Shares whether that attempt is made by directly trading on ICE Endex or indirectly by trading on the EUA spot market (EEX). In other words, to the extent that the price of Daily EUA Futures might be affected by trading in either the futures and spot markets, the price impact of potential fraud in either market would be reflected by a corresponding change to the price of the Daily EUA Futures Market (with which the Exchange has a CSSA).

The Exchange represents that all EUAs held by the Trust will be held and maintained in the Union Registry and that the Trust will not invest in futures, options, options on futures, or swap contracts. It is possible that EUAs and Daily EUA Futures may become listed on other exchanges that are members of ISG<sup>29</sup> or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange further represents that EEX is the principal market for all EUAs in which the Trust may invest, that the Exchange has a CSSA in place with ICE Endex, and that, because of the near-perfect correlation between the EUA End of Day Index value and the Daily EUA Future settlement price, the price impact of potential fraud in the spot market on

and NYMEX's membership, or from exchanges "with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement.").

<sup>29</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

EEX will be reflected in a corresponding change to the price of futures traded on ICE Endex.

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding accounts for trading in the Shares in connection with ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The Trust has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IFV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the premium or discount on the Shares may widen as a result of reduced liquidity of EUAs during the Core and Late Trading Sessions; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the

commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as will be described in the Registration Statement. The Information Bulletin will also reference the fact that last sale information regarding EUAs is subject to regulation by EEX and ICE Endex, that the Commission and the CFTC do not have jurisdiction over the trading of EUAs as a commodity, and that jurisdiction over the trading of EUAs is held by the relevant competent authority of the individual EU member states in which the trading takes place, namely the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) in Germany and the Autoriteit Financiële Markten (AFM) in the Netherlands.<sup>30</sup> The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Trust's website.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)<sup>31</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule

8.201–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information regarding trading in the Shares and Daily EUA Futures from ICE Endex with which the Exchange has entered into a CSSA. The Exchange represents that all EUAs held by the Trust will be held and maintained in the Union Registry and that the Trust will not invest in futures, options, options on futures, or swap contracts. The Exchange further represents that EEX is the principal market for all EUAs in which the Trust may invest, and that the Exchange can monitor those EUAs through its CSSA with ICE Endex.<sup>32</sup>

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of information on EUAs and Daily EUA Futures available on public websites and through professional and subscription services. The trading prices for EUAs and the daily EUA End of Day Index value and historical EUA End of Day Index values will be disseminated by on-line subscription services or by one or more major market data vendors during the NYSE Arca Core Trading Session. The daily EUA End of Day Index value is also published on the EEX website. EEX also provides on its website, on a daily basis, transaction volumes and transaction prices for the EUA spot market. Additionally, ICE Endex provides on its website, on a daily basis, transaction volumes, transaction prices, daily settlement prices and historical settlement prices for Daily EUA Futures that were traded outside of block trades by EUA futures brokers. In addition, transaction volumes, transaction prices, daily settlement prices and historical settlement prices for Daily EUA Futures traded in block trades by futures brokers are available on a daily basis through a subscription service to ICE Endex. ICE Endex also provides the daily settlement price change of the Daily EUA Future on its website.

In addition, the Trust's website ([www.cotwoadvisors.com](http://www.cotwoadvisors.com)) will provide pricing information for EUAs and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. Quotation and last-sale information regarding the Shares will be

disseminated through the facilities of the Consolidated Tape Association. The NAV of the Trust will be published on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website. The IFV relating to the Shares will be widely disseminated by one or more major market data vendors at least once every 15 seconds as required by NYSE Arca Rule 8.201–E(e)(2)(v). The Trust's website will also provide its prospectus and other relevant quantitative information regarding the Shares. The Trust will also provide website disclosure of its EUA holdings before 9:30 a.m. E.T. on each trading day. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information regarding trading in the Shares, EUAs and Daily EUA Futures via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical carbon credits.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

<sup>30</sup> Article 22 of Regulation (EU) No. 596/2014 on market abuse (market abuse regulation) ("MAR") requires each EU member state to designate a single administrative competent authority to ensure that the provisions of MAR are applied on its territory. Commission Regulation 596/2014, 2014 O.J. (L 173) 42. For a list of the competent authorities for each EU Member State. See <https://www.esma.europa.eu/sites/default/files/mar.pdf>.

<sup>31</sup> 15 U.S.C. 78f(b)(5).

<sup>32</sup> See the discussion in the "Surveillance" section, *supra*.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-05 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 number SR-NYSEARCA-2024-05. 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also

will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-05 and should be submitted on or before February 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

Sherry R. Haywood,  
Assistant Secretary.

[FR Doc. 2024-01511 Filed 1-25-24; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99411; File No. SR-IEX-2024-03]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify Two Aspects of its Recent Post Only Filing and to Correct One Nonsubstantive Typographical Error Introduced in the Post Only Filing

January 22, 2024.

Pursuant to section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 16, 2024, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> Investors Exchange LLC ("IEX" or "Exchange") is filing with the Securities and Exchange Commission

("Commission") a proposed rule change to clarify two aspects of its recent Post Only Filing<sup>6</sup> and to correct one nonsubstantive typographical error introduced in the Post Only Filing. The Exchange has designated this rule change as "non-controversial" under section 19(b)(3)(A) of the Act<sup>7</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange recently filed a rule change to introduce a Post Only<sup>9</sup> order parameter instruction and a related Trade Now<sup>10</sup> order instruction.<sup>11</sup> The Post Only Filing was effective on filing, and IEX expects to implement the new functionality in February 2024.<sup>12</sup> IEX will issue a Trading Alert at least ten (10) days in advance of the implementation date.<sup>13</sup>

The Exchange is making this filing to clarify two aspects of the Post Only Filing and to correct one nonsubstantive typographical error introduced in the Post Only Filing. First, IEX proposes to amend IEX Rule 11.190(a)(1)(H), which currently states that a non-displayed limit order "May include a Trade Now instruction. . .," to replace the word

<sup>6</sup> See Securities Exchange Act Release No. 98988 (November 20, 2023), 88 FR 82926 (November 27, 2023) (SR-IEX-2023-13) ("Post Only Filing").

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4.

<sup>9</sup> See IEX Rule 11.190(b)(20).

<sup>10</sup> See IEX Rule 11.190(b)(21).

<sup>11</sup> See *supra* note 6.

<sup>12</sup> See IEX Trading Alert # 2024-002, available at [iextrading.com/alerts/#/238](http://iextrading.com/alerts/#/238).

<sup>13</sup> See *supra* note 6.

<sup>33</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.