

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 70

Amendment No. (req. for Amendments *) 1

Filing by NYSE Arca, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to list and trade shares of the COtwo Advisors Physical European Carbon Allowance Trust

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Samir Last Name * Patel

Title * Senior Counsel, NYSE Group Inc.

E-mail * Samir.Patel@ice.com

Telephone * (212) 656-2030 Fax (212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange of 1934, NYSE Arca, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 11/22/2024

(Title *)

By Patrick Troy

Associate General Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Patrick Troy Digitally signed by Patrick Troy
Date: 2024.11.22 14:45:19 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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COtwo Advisors Physical European C

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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Ex. 1 Am. 1 COtwo Advisors Physical

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Act”)¹ and Rule 19b-4 thereunder,² NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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). This Amendment No.1 replaces SR-NYSEARCA-2024-70 as originally filed and supersedes such filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

- (b) The Exchange does not believe that the proposed rule change would have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Samir M. Patel
Senior Counsel
NYSE Group, Inc.
(212) 656-2030

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

- (a) 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.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

The Trust was formed as a Delaware statutory trust on January 12, 2023.⁴ 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,⁵ 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.⁶

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”).⁷

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 Trust⁸

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 cash. The Trust may purchase or sell EUAs in connection with the creation or redemption of Shares by Authorized Participants (as defined below). In addition to selling EUAs to distribute cash to Authorized Participants redeeming Shares, the Trust may sell EUAs to pay the Sponsor’s annual fee. All EUAs will be held in the Union Registry (defined below).

⁴ On May 12, 2023, the Trust filed with the Commission a registration statement on Form S-1, as amended on January 16, 2024 and April 4, 2024 (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.

⁵ 15 U.S.C. 80a-1.

⁶ 17 U.S.C. 1.

⁷ The Cash Custodian is responsible for holding the Trust’s cash as well as receiving and dispensing cash on behalf of the Trust. Deposits of cash held by the Cash Custodian will be used in connection with the purchase of an applicable amount of EUAs for creations and redemptions of Creation Units and in connection with the payment of Trust expenses.

⁸ 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 4, supra.

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.

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.⁹ 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 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

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There are two types of EU emissions allowance: (i) general allowances for stationary installations, or EUA; and (ii) allowances for the aviation sector (“EUAA”). The Trust will hold EUAs only.

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”)¹⁰ 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, regardless of whether the EUAs are acquired through transactions on an exchange or in over-the-counter (“OTC”) transactions.

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.

¹⁰

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>.

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 instruments 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 EUAs are traded exclusively on the European Energy Exchange AG (“EEX”),¹¹ and futures contracts and options on futures contracts are traded on EEX, ICE Endex Markets B.V. (“ICE Endex”)¹² and Nasdaq Oslo, although the latter’s market share is marginal.

¹¹ 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. See also Rules and Regulations at <https://www.eex.com/en/markets/trading-ressources/rules-and-regulations>. EEX is also recognized by the CFTC as an authorized Foreign Board of Trade. See <https://www.cftc.gov/sites/default/files/filings/documents/2019/orgeexregistrationorder11519.pdf>.

¹² 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

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 under the EU ETS.¹³ According to the European Union Transaction Log, there are over 18,773 registry accounts.¹⁴ 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 2021.¹⁵ In an October 2024 publication, the European Securities Markets Authority (“ESMA”) estimated that approximately 10.75 billion EUAs were traded across all markets in 2023, amounting to approximately €764.1 billion.¹⁶ Out of the total EUA market, approximately 523 million EUAs (amounting to €43.6 billion) were attributable to the EUA primary (auction) market, 9.3 billion EUAs (€648 billion) were attributable to the EUA on-exchange secondary market,¹⁷ and 900 million EUAs (€72.5 billion) were attributable to OTC transactions. In this context, the “on-exchange secondary market” includes (1) the EEX spot EUA market, (2) the Daily EUA Futures market, (3) the markets for other EUA futures contracts (together with Daily EUA Futures, “EUA Futures”), and (4) options contracts on EUA Futures. Data regarding each of the trading of each of these instruments is provided below. During 2023, approximately 99% of on-exchange secondary market transactions in EUAs, representing 81% of total trading volumes, occurred through futures contracts.¹⁸

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/idc/groups/public/@otherif/documents/ifdocs/orgiceeregorder170110.pdf>.

¹³ See [esma70-445-38 final report on emission allowances and associated derivatives.pdf \(europa.eu\)](#).

¹⁴ See <https://ec.europa.eu/clima/ets/>.

¹⁵ 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>.

¹⁶ See “ESMA Market Report: EU carbon markets 2024” (October 2024): available at https://www.esma.europa.eu/sites/default/files/2024-10/ESMA50-43599798-10379_Carbon_markets_report_2024.pdf.

¹⁷ The EUA on-exchange secondary market in 2023 included 7.6 billion EUAs traded through EUA Futures (as defined below), 1.7 billion EUAs traded through options of EUA Futures, and 30 million EUAs traded through other instruments, including spot EUAs. *Id.*

¹⁸ *Id.*

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. For the year-to-date period ended September 30, 2024, the year ended December 31, 2023 and year ended December 31, 2022, the number of EUAs auctioned off on the EEX was 453,034,000, 523,307,500 and 491,194,000, respectively. The auctions cleared at an average discount to the current EUA on-exchange secondary market price of €0.04, €0.08 and €0.11, respectively, for the same time periods, based on the prevailing best bid and offer for EUA instruments with daily expiry (as discussed below) at the time the auction clears. These narrowing discounts as the auction volumes increase is indicative of a maturing marketplace that can provide accurate price discovery.

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

Exchange-Traded Instruments with a Daily Expiry

Exchange-traded instruments with daily expiry traded on an exchange 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, 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.¹⁹

Secondary Spot EUA Market

As noted above, exchange-traded spot EUAs are traded exclusively on the EEX. The current value (spot price) for an 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 twelve-month period ended September 30, 2024, the average daily, monthly and annual trading volumes of spot EUAs on the EEX was 146, 2,917 and 35,009 round lots of 1000 EUAs, respectively. Over the same period, spot EUAs traded in the secondary market on EEX at their highest volume of 5,010 round lots of EUAs on December 1, 2023, and their lowest

¹⁹

See [esma70-445-38_final_report_on_emission_allowances_and_associated_derivatives.pdf \(europa.eu\)](https://esma.europa.eu/media/1000000/2024/09/esma70-445-38_final_report_on_emission_allowances_and_associated_derivatives.pdf).

volume of 0 EUAs on five different occasions. The EEX calculates and publishes each trading day an index (the “EUA End of Day Index”) reflecting the end of day price of EUAs traded in the secondary market on EEX.²⁰

Daily EUA Futures

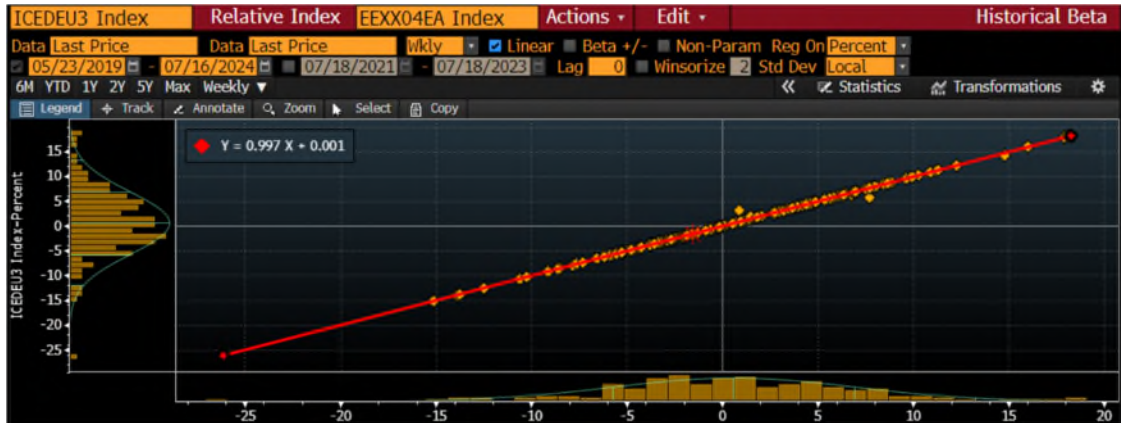
Most liquidity in the secondary market is achieved by trading futures contracts. These contracts have expiration going out as far as 2030. A single day futures contract on EUAs is exclusively traded on the ICE Endex (the “Daily EUA Future”), which settles each day at the close of trading.²¹ The Daily EUA Future is a deliverable contract where each person with a position open at cessation of trading is obliged to make or take physical delivery of EUAs upon the expiration of the contract at the end of each trading day. Settlement of the Daily EUA Future does not occur through cash transactions. 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 settlement of the requisite number of EUAs versus cash occurs the first business day following the expiry day (T+1). In the twelve-month period ended September 30, 2024, the average daily, monthly and annual trading volumes of Daily EUA Futures was approximately 3,829, 78,189 and 938,279, respectively, which represents trading volumes of 3,829,000, 78,189,000 and 938,279,000 EUAs, respectively. Over the same period, Daily EUA Futures traded at their highest volume of 27,749 on April 17, 2024, representing 27,749,000 EUAs, and their lowest volume of 174 on July 26, 2024, representing 174,000 EUAs.

Comparison of Spot EUA Market and Daily EUA Futures Market

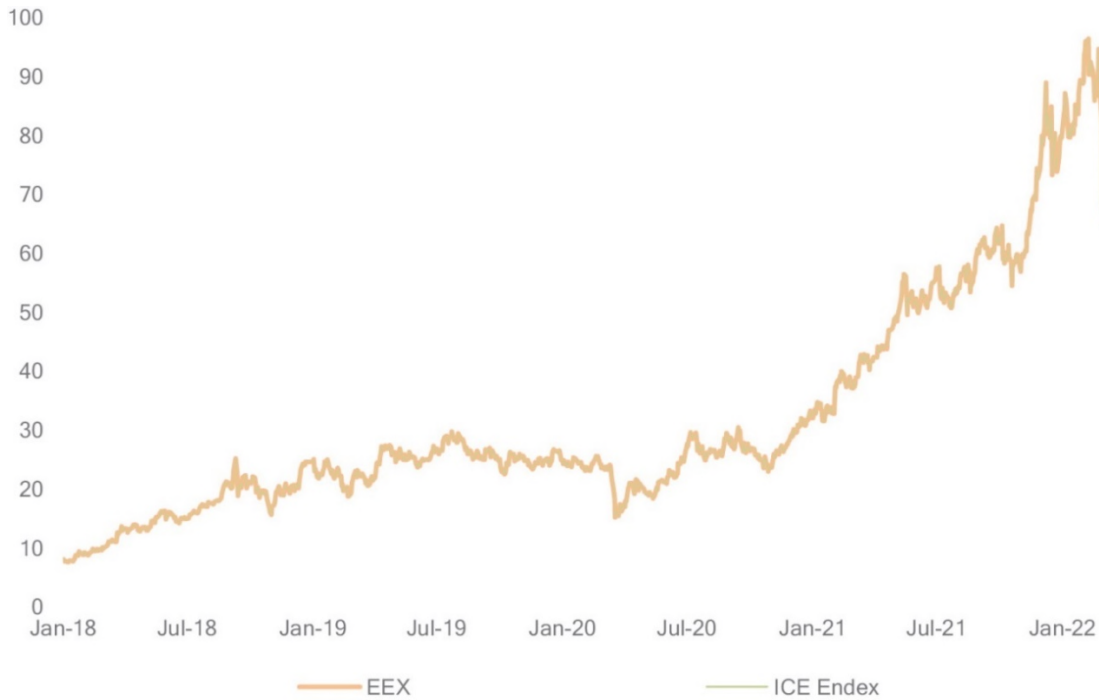
The daily EUA End of Day Index value can be expected to be substantially identical to the daily settlement price of the Daily EUA Future. The comparison below shows a 99.8% correlation between the movements of the two values over the five years from May 23, 2019 through May 23, 2024.

²⁰ The EUA End of Day Index methodology is available at https://www.eex.com/fileadmin/EEX/Downloads/Trading/Specifications/Indeces/DE/20211005_Index_Description_v010.pdf.

²¹ All references to the “Daily EUA Future” refer to the single day EUA futures contract traded on ICE Endex. NASDAQ Oslo also offers a single day futures contract on EUAs, but the contract is not traded.



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 prices of EUAs on the EEX and the Daily EUA Futures on ICE Exend, in EUR/tCO₂ from January 2018 to January 2022. No major differences can be observed, with an average absolute difference of €0.015 between the daily settlement prices for EUAs on the EEX and ICE Exend.



(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 quarterly futures contracts over a rolling six year period. There is only *de minimis* trading volume in EUA Futures on Nasdaq Oslo.²² The EUA Futures are fungible, meaning any EUA Futures contract acquired on one exchange can be sold on the other exchange.

During 2023, approximately 7.6 billion EUAs, amounting to €643 billion, were traded through EUA Futures (including the Daily EUA Future). The trading volumes of the EUA Futures, including Daily EUA Futures, with expiration dates through the end of 2026 on EEX and ICE Endex for the period from January 1, 2024, through September 30, 2024, were as follows:

Year-to-Date Trading Volumes, January 1, 2024 – September 30, 2024		
	EEX (in round lots of 1,000 EUAs)	ICE Endex (in round lots of 1,000 EUAs)
Spot EUAs/ Daily EUA Future	22,239 (Spot)	741,416 (Daily EUA Futures)
October 2024 EUA Future	--	38,816
November 2024 EUA Future	--	4
December 2024 EUA Future	222,168	5,482,537
March 2025 EUA Future	1,228	57,386
June 2025 EUA Future	2	5,535
August 2025 EUA Future	--	17,471
September 2025 EUA Future	602	25,726
December 2025 EUA Future	55,075	558,240
March 2026 EUA Future	--	14,348
June 2026 EUA Future	--	--
August 2026 EUA Future	--	5,873

22

For 2023, Nasdaq Oslo reported only 64 transactions in EUA Futures, for a total volume of 417 EUA Futures contracts. See <https://www.nasdaq.com/path-file/11506>.

September 2026 EUA Future	--	--
December 2026 EUA Future	7,027	120,807
Total	308,341	7,068,159

Options on EUA Futures Contracts

Options on EUA futures contracts are also traded on EEX and ICE Endex for many of the available EUA Futures. In 2023, approximately 1.7 billion EUAs, amounting to €900 million, were traded through options on EUA Futures. The options on EUA Futures, like the EUA Futures, are fungible and can be traded on any of the participating exchanges, regardless of the exchange on which a particular contract is acquired.

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that ICE Endex is a regulated market of significant size for trading EUAs.

Designed to Prevent Fraudulent and Manipulative Acts and Practices

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 because (1) the Exchange has entered into a comprehensive surveillance-sharing agreement ("CSSA") with ICE Endex, a regulated market of "significant size" and (2) there are sufficient "other means to prevent fraudulent and manipulative acts and practices."

Comprehensive Surveillance-Sharing Agreement

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 CSSA with a regulated "market of significant size" relating to the underlying assets.²³ With respect to the Trust, the underlying assets are EUAs. The relevant analysis, therefore, is

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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).

whether the Exchange has a CSSA with a regulated market of significant size related to EUAs. 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.’”²⁴

The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading the underlying assets for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.²⁵ Comprehensive surveillance-sharing agreements “provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.”²⁶ The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.²⁷

The ICE Endex Futures Market is a Regulated Market

As discussed more below, ICE Endex is subject to the EU regulatory framework for EUAs and EUA derivatives.²⁸ The EU regulatory framework includes the Markets in Financial Instruments Directive and Regulation (“MiFID II” and “MiFIR”), the Market Abuse Regulation (“MAR”) and the European Market Infrastructure Regulation (“EMIR”). MiFID II and MiFIR together is a framework governing investment firms, trading venues, data reporting service providers and non-EU investment firms that provide investment services in the EU. The MAR prohibits insider dealing, unlawful disclosure of inside information and market manipulation and provides broad powers to the national competent authorities (“NCAs”) for detection and prosecution of violations.

²⁴ 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) (the “Winklevoss Order”).

²⁵ See Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70959 (Dec. 22, 1998)

²⁶ *Id.* See also Winklevoss Order, 83 FR at 37594.

²⁷ See Winklevoss Order, 83 FR at 37592-93 (discussing Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O’Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm>).

²⁸ See *supra*, note 12.

EMIR regulates OTC derivatives transactions, central counterparties and trade repositories. It is critical for ICE Endex to maintain fair and orderly markets. A fair and orderly market is necessary to maintain a level playing field for trading participants, to attract new participants, and to attract trading activity. ICE Endex has an extensive framework in place to facilitate the existence of such fair and orderly markets, including the performance of market surveillance activities that allow for the monitoring of market activity, including intra-day activity, and the detection of irregular trading behavior that could negatively impact the integrity of ICE Endex or constitute breaches of statutory law or regulations in the form of market abuse by market participants.

The ICE Endex Futures Market is a Market of Significant Size

In the Winklevoss Order, the Commission stated that the term “significant market” or “market of significant size” includes a market (or group of markets) as to which (1) there is a reasonable likelihood that a person attempting to manipulate the Trust would also have to trade on that market to successfully manipulate the Trust, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (2) it is unlikely that trading in the Trust would be the predominant influence on prices in that market.²⁹ The Commission explained that this definition is illustrative and not exclusive, and that there could be other types of “significant markets” and “markets of significant size.”³⁰

Any manipulator would have to trade on ICE Endex

The first prong of the analysis addresses whether the surveillance-sharing agreement on which the fund’s listing exchange proposes to rely would assist in detecting and deterring fraudulent or manipulative misconduct related to the assets held by the fund. In the present proposal, the Trust’s only non-cash holdings will be EUAs. The predominant market for trading EUA instruments with daily expiry is the ICE Endex Daily EUA Futures market, with de minimis secondary market trading taking place on EEX or over-the-counter. The EEX’s primary role in the EUA ecosystem is to serve as the venue for the daily auctions of EUAs.

The regulated market of significant size test does not require that the spot EUA market be subject to direct surveillance by the Exchange in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a surveilled market would actually be an exception to the norm. These largely un-surveilled currency and commodity markets do not provide the same protections as the markets that are subject to the Commission’s oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the ICE Endex EUA Futures market is an appropriate market to consider in determining whether there is a related regulated market of

²⁹ See Winklevoss Order, 83 FR at 37594.

³⁰ Id.

significant size.

ICE Endex is the only market for trading Daily EUA Futures and, as noted above, for the twelve-months ended September 30, 2024, the average daily trading volume of Daily EUA Futures on the ICE Endex was 3,829 contracts, representing 3,829,000 EUAs, whereas the average daily trading volume on the EEX was 146 round lots, representing 146,000 EUAs. Therefore, over that one year period, over 96% of all on-exchange secondary market trading of EUA spot instruments with daily expiry (which, as described above, includes spot EUAs and Daily EUA Futures) occurred on the ICE Endex. With respect to EUAs and EUA based derivatives more broadly, the chart above shows that, year-to-date through September 30, 2024, approximately 96% of all trades in EUAs and EUA Futures dated through December 2026 occurred on ICE Endex.³¹

Given the size of the ICE Endex futures markets, especially the Daily EUA Futures market, the Sponsor believes such markets meet the Commission’s definition of “significant market” because there is a reasonable likelihood that a person attempting to manipulate the Trust would also have to trade on that market to successfully manipulate the Trust, since arbitrage between the derivative and spot markets would tend to counter an attempt to manipulate the spot market alone. Of the 256 members of ICE Endex, 151 are also members of EEX. Each of these exchange members acts on behalf of their clients, each member in common between the exchanges represents potentially hundreds of accounts that can and do act on both markets to effect arbitrage transactions. Therefore, a sufficient number of arbitrageurs have access to both the EEX and ICE Endex such that any attempt to manipulate one market that causes a difference between the EUA spot price and the Daily EUA Futures price will quickly be exploited. This will serve to maintain the EUA price correlation between EEX and ICE Endex. Any attempt to manipulate the spot EUA market alone would be impossible because arbitrage would correct any movements in the spot market to bring the prices of spot EUAs back in line with the settlement price of the Daily EUA Future. Therefore, any person attempting to manipulate the Trust Shares would also have to trade in the Daily EUA Futures market (ICE Endex) to manipulate the spot and futures markets in tandem.³²

³¹ See [esma70-445-38 final report on emission allowances and associated derivatives.pdf \(europa.eu\)](#).

³² 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

Similarly, it is impossible to manipulate the prices of EUAs by trading the other EUA based derivatives on the EEX alone. With respect to EUA Futures other than the Daily EUA Future, the size and predominance of ICE Endex would make it impossible to manipulate the price of EUAs through trading EUA Futures on the EEX alone. The fungibility of EUA Futures and the significant overlap in exchange membership would cause arbitrage activity to bring the settlement prices of EUA Futures traded on EEX in line with the settlement price of EUA Futures traded on ICE Endex. In addition, because the options on EUA Futures reference EUA Futures, the prices of EUA Futures would reflect any attempt by a would-be manipulator to manipulate the price of the Fund's Shares through the use of options. Therefore, any would-be manipulator would have to manipulate the prices of EUA Futures Contracts in order to manipulate the price of the Fund's Shares, and the size of predominance of the ICE Endex would require that would-be manipulator to trade on ICE Endex.

The Trust is unlikely to be the predominant influence on price

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 (meaning the Daily EUA Futures market, in effect). In 2023, the total EUA market size was approximately €764.1 billion with approximately €67.1 billion of that attributable to the Daily EUA Futures market and €3.4 billion attributable to spot EUAs. The daily average trading volume in 2023 for EUAs across the on-exchange secondary market was approximately €2.6 billion, with approximately €266.3 million attributable to trading in the Daily EUA Futures

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

market and €13.5 million attributable to trading in spot EUAs. 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 or that investors would be able to trade Trust Shares at such a volume as to influence Daily EUA Futures prices on ICE Endex. Additionally, the trading hours for the ICE Endex (i.e., EUA Futures market) are approximately 2:00 a.m. E.T. to approximately 12:00 p.m. E.T. The majority of this time period (7.5 hours) is outside of the Trust's trading hours of 9:30 a.m. E.T. to 4:00 p.m. E.T. As such, it is unlikely that trading in the Trust's Shares would be the primary influencer of the EUA Futures prices traded on ICE Endex, because the ICE Endex is actively traded for 7.5 hours during which the Trust Shares cannot be traded.

Other Means to Prevent Fraudulent and Manipulative Acts and Practices

The Exchange has a CSSA with the market on which the Trust's sole asset trades

In the present proposal, the Trust's only non-cash holdings will be EUAs. Moreover, the proposed "significant" regulated market (i.e., the ICE Endex) with which the listing exchange has a surveillance-sharing agreement is the principal market on which these assets trade.

The Daily EUA Futures market functions as the "spot" market for EUAs. The purchase and sale of Daily EUA Futures is the functional and economic equivalent of transactions in spot EUAs. The settlement, functionality and economic outcome for a spot purchase on the EEX and a Daily EUA Future purchase on the ICE Endex are identical. Because the Daily EUA Future is physically settled through the delivery of one lot of EUAs to the purchaser of the Daily EUA Future, whether the Trust acquires an EUA through a transaction on the EEX or through the acquisition of a Daily EUA Future on ICE Endex, the Trust will acquire the same EUA on a T+1 basis. It is not possible for an acquirer to roll a same day futures contract to a later dated future, as each day it would expire and the market participant would end up holding physical EUAs. Therefore, the Daily EUA Futures market functions as a spot market.

The EEX's primary role in the EUA ecosystem is to serve as the venue for the daily auctions of EUAs. The predominant market for trading EUA instruments with daily expiry is the ICE Endex Daily EUA Futures market, with *de minimis* secondary market trading taking place on EEX or in the OTC market. As noted above, for the twelve-month period ended September 30, 2024, the average daily trading volume of Daily EUA Futures on ICE Endex was approximately 3,829 contracts, representing 3,829,000 EUAs, whereas the average daily trading volume of spot EUAs on the EEX was 146 lots, representing 146,000 EUAs. Therefore, over that one year period, approximately 96% of all secondary market trading of EUA spot instruments with daily expiry occurred on the ICE Endex. Therefore, because a Daily EUA Future is functionally identical to a physical EUA, and the ICE Endex serves as the predominant market for the trading of "spot" EUAs, the Exchange's CSSA with ICE Endex will serve to detect and deter fraudulent

and manipulative acts and practices in the EUA market.

EU's oversight and monitoring of EUA markets serves to prevent fraudulent and manipulative acts and practices

In addition to Exchange's CSSA with ICE Endex, there are other mechanisms in place to deter and detect misconduct across both the EUA spot and derivatives markets. Both EEX and ICE Endex are subject to the EU regulatory framework for EUAs and EUA derivatives. The EU regulatory framework includes the Markets in Financial Instruments Directive and Regulation ("MiFID II" and "MiFIR"), the Market Abuse Regulation ("MAR") and the European Market Infrastructure Regulation ("EMIR").³³ MiFID II and MiFIR together is a framework governing investment firms, trading venues, data reporting service providers and non-EU investment firms that provide investment services in the EU.³⁴ The MAR prohibits insider dealing, unlawful disclosure of inside information and market manipulation and provides broad powers to the national competent authorities ("NCAs") for detection and prosecution of violations.³⁵ EMIR regulates OTC derivatives transactions, central counterparties and trade repositories.³⁶ ESMA is the EU's overall financial markets regulator that has supervisory authority over the NCAs.³⁷ Under the EU regulatory framework, there are three lines of defense against market abuse.³⁸ At the firm level (first line), firms are required to have systems and procedures in place to ensure that abusive trading is detected and reported to NCAs. At the market operator, investment firm and trading venue level (second line), these entities are required to identify and report suspicious transactions and maintain policies and procedures to prevent market abuse. Additionally, exchanges such as EEX and ICE Endex are required to report information to the relevant authorities on a daily basis. At the NCA level (third line), NCAs have market surveillance systems in place to monitor markets and identify and investigate suspicious transactions. NCAs have broad enforcement power and cooperate with each other and ESMA to obtain the information needed for optimal surveillance and in order to prosecute violations.³⁹ Exchanges (such as EEX and ICE Endex) and governmental authorities share information and

³³ Carbon trading in the European Union: An economic assessment of market functioning in 2021, Oxera, p. 26 (February 15, 2022); available at <https://www.oxera.com/wp-content/uploads/2022/02/Oxera-EU-carbon-trading-report-3.pdf>.

³⁴ MiFID II Overview, Practical Law Financial Services.

³⁵ See [esma70-445-38_final_report_on_emission_allowances_and_associated_derivatives.pdf](#) (europa.eu).

³⁶ Carbon trading in the European Union: An economic assessment of market functioning in 2021, Oxera, p. 61 (February 15, 2022); available at <https://www.oxera.com/wp-content/uploads/2022/02/Oxera-EU-carbon-trading-report-3.pdf>.

³⁷ <https://www.esma.europa.eu/about-esma>.

³⁸ See [esma70-445-38_final_report_on_emission_allowances_and_associated_derivatives.pdf](#) (europa.eu).

³⁹ Id.

communicate frequently regarding monitoring activities.⁴⁰

While the Exchange is not a participant in the EU regulatory framework, the Exchange believes that the EU's robust oversight and monitoring regime, in addition to the Exchange's CSSA with ICE Endex which would allow for the sharing of information and thus provide sufficient means to prevent fraudulent and manipulative acts and practices.

Designed to Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed for this proposal to be consistent with the Act. As such, the Exchange believes that approving this proposal provides the Commission with the opportunity to allow U.S. investors to access EUAs in a regulated and transparent exchange-traded vehicle that would act to limit risk and benefit U.S. investors by: (i) reducing premium and discount volatility as compared to OTC investment vehicles; (ii) increasing competitive pressure on management fees resulting in fee compression/reductions; (iii) reducing risks and costs as compared to those associated with investing in EUAs; and (iv) providing an alternative to maintaining custody of EUAs.

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 made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of EUAs, or the amount of cash sufficient to purchase the amount of EUAs, represented by the Creation Units being created or redeemed. The amount of EUAs or cash 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

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Carbon trading in the European Union: An economic assessment of market functioning in 2021, Oxera, p. 26-27 (February 15, 2022); available at <https://www.oxera.com/wp-content/uploads/2022/02/Oxera-EU-carbon-trading-report-3.pdf>.

open for regular trading.

For a cash creation, an Authorized Participant will deliver the cash to the Trust's account at the Cash Custodian, which the Sponsor will then use to purchase EUAs from a third party selected by the Sponsor who (1) is not an Authorized Participant and (2) will not be acting as an agent, nor at the discretion, of the Authorized Participant with respect to the delivery of EUAs to the Trust (such third party, a "Liquidity Provider"). For a cash redemption, the Sponsor shall arrange for the EUAs represented by the Creation Units to be sold to a Liquidity Provider selected by the Sponsor and the cash proceeds distributed from the Trust's account at the Cash Custodian to the Authorized Participant in exchange for its Shares. In the case of "in-kind" creation or redemption orders for Shares, an Authorized Participant may deliver or direct the delivery of EUAs by third parties, or take delivery or direct the taking of delivery of EUAs by third parties.

For cash creations, an Authorized Participant who places a purchase order is responsible for arranging for the delivery to the Trust's account with the Cash Custodian of the required cash deposit by 2:00 p.m. New York time on the first business day following the purchase order date. The Liquidity Provider delivers EUAs to the Trust's Union Registry account in exchange for the cash purchase price. Upon settlement of the EUA purchase from the Liquidity Provider into the Trust's Union Registry account, the Trust instructs the Transfer Agent to release the Shares to the Authorized Participant, and the Transfer Agent directs DTC to credit the number of Shares ordered to the applicable DTC account, by close of business on the purchase settlement date.

For in-kind creation orders, an Authorized Participant who places a purchase order is responsible for arranging for the delivery to the Trust's Union Registry account the required EUA deposit by 2:00 p.m. New York time on the first 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 first business day following the order date.

For cash redemptions, on the redemption settlement date, the Liquidity Provider delivers cash to the Trust's account with the Cash Custodian in exchange for the redemption EUAs amount. Upon settlement of the EUA sale by the Trust to the Liquidity Provider and the receipt of the Liquidity Provider's cash in the Trust's Cash Custodian account, the Trust instructs the Transfer Agent to deliver the Authorized Participant's Shares to be redeemed back to the Trust, in exchange for which the Trust instructs the Cash Custodian to transfer the requisite cash to the Authorized Participant's designated bank account and the redemption order is settled.

For in-kind redemptions, 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 Union Registry account of the Authorized Participant or its agent.

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 the Union Registry accounts of the Authorized Participants and Liquidity Providers, their agents or the Sponsor.

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 the settlement price for the Daily EUA Futures established by ICE Endex 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 mid-point of the bid-ask spread of the Daily EUA Future. 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 last reported mid-point of the bid-ask spread of the Daily EUA Future in the immediately preceding trading session until the day's settlement price is reported, in which case the day's settlement price will be used.

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 Daily EUA Futures 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.

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) 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 Price⁴¹ 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,

⁴¹ 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.

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 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-3⁴² under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 50,000 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

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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).

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.⁴³

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.⁴⁴ 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 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 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 ISG⁴⁵ or with which the Exchange has in place a comprehensive surveillance sharing agreement.

⁴³ See NYSE Arca Rule 7.12-E.

⁴⁴ 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.

⁴⁵ For a list of the current members of ISG, see www.isgportal.org.

Additionally, the Exchange is able to obtain information regarding trading in the Shares in connection with ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. Additionally, under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in any underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). 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 and that subsidiary or affiliate is a member of another regulatory organization, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through a surveillance sharing agreement with that regulatory organization.

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.⁴⁶ 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.

(b) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁴⁷ 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. Further, the Exchange has demonstrated that the proposed rule change satisfies Section 6(b)(5) of the Act by showing that the ICE Endex is a regulated market of significant size

⁴⁶ 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>.

⁴⁷ 15 U.S.C. 78f(b)(5).

that shares surveillance with the Exchange. 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. Also, pursuant to NYSE Arca Rule 8.201-E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying commodity through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary trades which they effect on any relevant market. 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 ICE Endex is the principal market for EUAs in which the Trust may invest, and that the Exchange can monitor those EUAs through its CSSA with ICE Endex.⁴⁸

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 will be disseminated by on-line subscription services or by one or more major market data vendors during the NYSE Arca Core Trading Session. 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) 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 NYSE Arca is open for regular trading and will also 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

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See the discussion in the "Section 6(b)(5) and the Applicable Standards" section, supra.

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 from ICE Endex pursuant to the CSSA between the Exchange and ICE Endex. In addition, as noted above, investors will have ready access to information regarding the Trust's NAV, IFV, and quotation and last sale information for the Shares.

4. 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, and the first such product relating to physical carbon credits, which will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 - Form of Notice of Proposed Rule Change for Federal Register.

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSEARCA-2024-70, Amendment No. 1)

[Date]

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

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 22, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and 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). This Amendment No.1 replaces SR-NYSEARCA-2024-70 as originally filed and supersedes such filing in its entirety. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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.⁴

The Trust was formed as a Delaware statutory trust on January 12, 2023.⁵ 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,⁶ 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.⁷

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

⁴ 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.

⁵ On May 12, 2023, the Trust filed with the Commission a registration statement on Form S-1, as amended on January 16, 2024 and April 4, 2024 (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.

⁶ 15 U.S.C. 80a-1.

⁷ 17 U.S.C. 1.

“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”).⁸

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 Trust⁹

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 cash. The Trust may purchase or sell EUAs in connection with the creation or redemption of Shares by Authorized Participants (as defined below). In addition to selling EUAs to distribute cash to Authorized Participants redeeming Shares, the Trust may sell EUAs to pay the Sponsor’s annual fee. All EUAs will be held in the Union Registry (defined below).

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

⁸ The Cash Custodian is responsible for holding the Trust’s cash as well as receiving and dispensing cash on behalf of the Trust. Deposits of cash held by the Cash Custodian will be used in connection with the purchase of an applicable amount of EUAs for creations and redemptions of Creation Units and in connection with the payment of Trust expenses.

⁹ 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.

instruments regulated by the Commodity Exchange Act.

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.¹⁰ 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 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”)¹¹ 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, regardless of whether the EUAs are acquired through

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

¹¹ 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>.

transactions on an exchange or in over-the-counter (“OTC”) transactions.

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 instruments 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 EUAs are traded exclusively on the European Energy Exchange AG (“EEX”),¹² and futures contracts and options on futures contracts are traded on EEX, ICE Endex Markets B.V. (“ICE Endex”)¹³ and Nasdaq Oslo, although the latter’s market share is marginal.

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 under the EU ETS.¹⁴ According to the European Union Transaction Log, there are over 18,773 registry accounts.¹⁵ The number of participants in the market have a direct

¹¹ 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. See also Rules and Regulations at <https://www.eex.com/en/markets/trading-ressources/rules-and-regulations>. EEX is also recognized by the CFTC as an authorized Foreign Board of Trade. See <https://www.cftc.gov/sites/default/files/filings/documents/2019/orgeexregistrationorder11519.pdf>.

¹³ 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/idc/groups/public/@otherif/documents/ifdocs/orgiceeregorder170110.pdf>.

¹⁴ See [esma70-445-38 final report on emission allowances and associated derivatives.pdf \(europa.eu\)](#).

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

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 2021.¹⁶ In an October 2024 publication, the European Securities Markets Authority (“ESMA”) estimated that approximately 10.75 billion EUAs were traded across all markets in 2023, amounting to approximately €764.1 billion.¹⁷ Out of the total EUA market, approximately 523 million EUAs (amounting to €43.6 billion) were attributable to the EUA primary (auction) market, 9.3 billion EUAs (€648 billion) were attributable to the EUA on-exchange secondary market,¹⁸ and 900 million EUAs (€72.5 billion) were attributable to OTC transactions. In this context, the “on-exchange secondary market” includes (1) the EEX spot EUA market, (2) the Daily EUA Futures market, (3) the markets for other EUA futures contracts (together with Daily EUA Futures, “EUA Futures”), and (4) options contracts on EUA Futures. Data regarding each of the trading of each of these instruments is provided below. During 2023, approximately 99% of on-exchange secondary market transactions in EUAs, representing 81% of total trading volumes, occurred through futures contracts.¹⁹

¹⁶ 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>.

¹⁷ See “ESMA Market Report: EU carbon markets 2024” (October 2024): available at https://www.esma.europa.eu/sites/default/files/2024-10/ESMA50-43599798-10379_Carbon_markets_report_2024.pdf.

¹⁸ The EUA on-exchange secondary market in 2023 included 7.6 billion EUAs traded through EUA Futures (as defined below), 1.7 billion EUAs traded through options of EUA Futures, and 30 million EUAs traded through other instruments, including spot EUAs. *Id.*

¹⁹ *Id.*

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. For the year-to-date period ended September 30, 2024, the year ended December 31, 2023 and year ended December 31, 2022, the number of EUAs auctioned off on the EEX was 453,034,000, 523,307,500 and 491,194,000, respectively. The auctions cleared at an average discount to the current EUA on-exchange secondary market price of €0.04, €0.08 and €0.11, respectively, for the same time periods, based on the prevailing best bid and offer for EUA instruments with daily expiry (as discussed below) at the time the auction clears. These narrowing discounts as the auction volumes increase is indicative of a maturing marketplace that can provide accurate price discovery.

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

Exchange-Traded Instruments with a Daily Expiry

Exchange-traded instruments with daily expiry traded on an exchange 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, 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.²⁰

Secondary Spot EUA Market

As noted above, exchange-traded spot EUAs are traded exclusively on the EEX. The current value (spot price) for an 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 twelve-month period ended September 30, 2024, the average daily, monthly and annual trading volumes of spot EUAs on the EEX was 146, 2,917 and 35,009 round lots of 1000 EUAs, respectively. Over the same period, spot EUAs traded in the secondary market on EEX at their highest volume of 5,010 round lots of EUAs on December 1, 2023, and their lowest volume of 0 EUAs on five different occasions. The EEX calculates and publishes each trading day an index (the “EUA End of Day Index”) reflecting the end of day price of EUAs traded in the secondary market on EEX.²¹

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

²⁰ See [esma70-445-38 final report on emission allowances and associated derivatives.pdf \(europa.eu\)](https://www.esma.europa.eu/press-material/press-conferences-and-material/2023/04/esma70-445-38-final-report-on-emission-allowances-and-associated-derivatives).

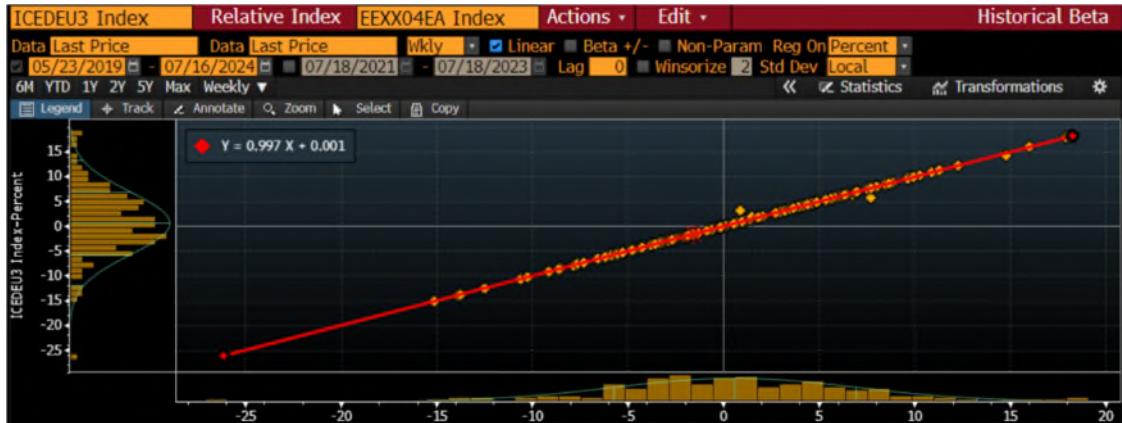
²¹ The EUA End of Day Index methodology is available at https://www.eex.com/fileadmin/EEX/Downloads/Trading/Specifications/Indices/DE/20211005_Index_Description_v010.pdf.

close of trading.²² 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 physical delivery of EUAs upon the expiration of the contract at the end of each trading day. Settlement of the Daily EUA Future does not occur through cash transactions. 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 settlement of the requisite number of EUAs versus cash occurs the first business day following the expiry day (T+1). In the twelve-month period ended September 30, 2024, the average daily, monthly and annual trading volumes of Daily EUA Futures was approximately 3,829, 78,189 and 938,279, respectively, which represents trading volumes of 3,829,000, 78,189,000 and 938,279,000 EUAs, respectively. Over the same period, Daily EUA Futures traded at their highest volume of 27,749 on April 17, 2024, representing 27,749,000 EUAs, and their lowest volume of 174 on July 26, 2024, representing 174,000 EUAs.

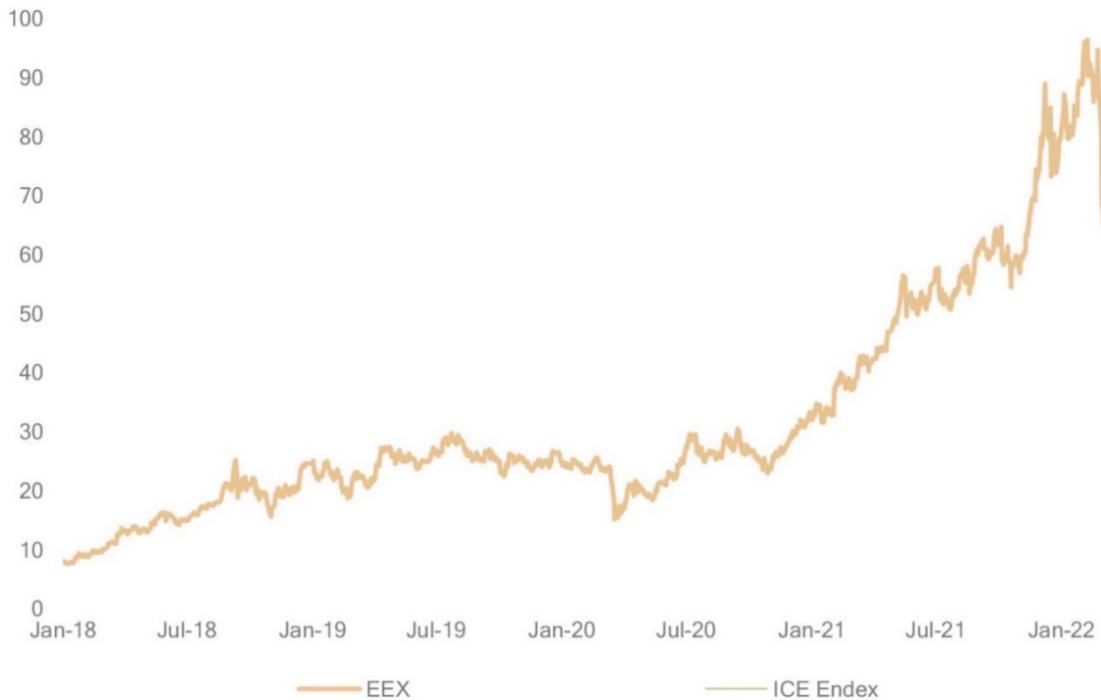
Comparison of Spot EUA Market and Daily EUA Futures Market

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. The comparison below shows a 99.8% correlation between the movements of the two values over the five years from May 23, 2019 through May 23, 2024.

²² All references to the “Daily EUA Future” refer to the single day EUA futures contract traded on ICE Endex. NASDAQ Oslo also offers a single day futures contract on EUAs, but the contract is not traded.



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 prices of EUAs on the EEX and the Daily EUA Futures on ICE Endx, in EUR/tCO₂ from January 2018 to January 2022. No major differences can be observed, with an average absolute difference of €0.015 between the daily settlement prices for EUAs on the EEX and ICE Endx.



(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 quarterly futures contracts over a rolling six year period. There is only *de minimis* trading volume in EUA Futures on Nasdaq Oslo.²³ The EUA Futures are fungible, meaning any EUA Futures contract acquired on one exchange can be sold on the other exchange.

During 2023, approximately 7.6 billion EUAs, amounting to €643 billion, were traded through EUA Futures (including the Daily EUA Future). The trading volumes of the EUA Futures, including Daily EUA Futures, with expiration dates through the end of 2026 on EEX and ICE Endex for the period from January 1, 2024, through September 30, 2024, were as follows:

Year-to-Date Trading Volumes, January 1, 2024 – September 30, 2024		
	EEX (in round lots of 1,000 EUAs)	ICE Endex (in round lots of 1,000 EUAs)
Spot EUAs/ Daily EUA Future	22,239 (Spot)	741,416 (Daily EUA Futures)
October 2024 EUA Future	--	38,816
November 2024 EUA Future	--	4

²³ For 2023, Nasdaq Oslo reported only 64 transactions in EUA Futures, for a total volume of 417 EUA Futures contracts. See <https://www.nasdaq.com/path-file/11506>.

December 2024 EUA Future	222,168	5,482,537
March 2025 EUA Future	1,228	57,386
June 2025 EUA Future	2	5,535
August 2025 EUA Future	--	17,471
September 2025 EUA Future	602	25,726
December 2025 EUA Future	55,075	558,240
March 2026 EUA Future	--	14,348
June 2026 EUA Future	--	--
August 2026 EUA Future	--	5,873
September 2026 EUA Future	--	--
December 2026 EUA Future	7,027	120,807
Total	308,341	7,068,159

Options on EUA Futures Contracts

Options on EUA futures contracts are also traded on EEX and ICE Endex for many of the available EUA Futures. In 2023, approximately 1.7 billion EUAs, amounting to €900 million, were traded through options on EUA Futures. The options on EUA Futures, like the EUA Futures, are fungible and can be traded on any of the participating exchanges, regardless of the exchange on which a particular contract is acquired.

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement

that a national securities exchange’s rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that ICE Endex is a regulated market of significant size for trading EUAs.

Designed to Prevent Fraudulent and Manipulative Acts and Practices

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 because (1) the Exchange has entered into a comprehensive surveillance-sharing agreement (“CSSA”) with ICE Endex, a regulated market of “significant size” and (2) there are sufficient “other means to prevent fraudulent and manipulative acts and practices.”

Comprehensive Surveillance-Sharing Agreement

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 CSSA with a regulated “market of significant size” relating to the underlying assets.²⁴ With respect to the Trust, the underlying assets are EUAs. The relevant analysis, therefore, is whether the Exchange has a CSSA with a regulated market of significant size related to EUAs. 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

²⁴ 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).

underlying asset, provided that the market or markets with which there is such an agreement constitute a ‘significant market.’”²⁵

The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading the underlying assets for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.²⁶ Comprehensive surveillance-sharing agreements “provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.”²⁷ The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.²⁸

The ICE Endex Futures Market is a Regulated Market

As discussed more below, ICE Endex is subject to the EU regulatory framework for

²⁵ 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) (the “Winklevoss Order”).

²⁶ See Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70959 (Dec. 22, 1998)

²⁷ *Id.* See also Winklevoss Order, 83 FR at 37594.

²⁸ See Winklevoss Order, 83 FR at 37592-93 (discussing Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O’Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm>).

EUAs and EUA derivatives.²⁹ The EU regulatory framework includes the Markets in Financial Instruments Directive and Regulation (“MiFID II” and “MiFIR”), the Market Abuse Regulation (“MAR”) and the European Market Infrastructure Regulation (“EMIR”). MiFID II and MiFIR together is a framework governing investment firms, trading venues, data reporting service providers and non-EU investment firms that provide investment services in the EU. The MAR prohibits insider dealing, unlawful disclosure of inside information and market manipulation and provides broad powers to the national competent authorities (“NCAs”) for detection and prosecution of violations. EMIR regulates OTC derivatives transactions, central counterparties and trade repositories. It is critical for ICE Endex to maintain fair and orderly markets. A fair and orderly market is necessary to maintain a level playing field for trading participants, to attract new participants, and to attract trading activity. ICE Endex has an extensive framework in place to facilitate the existence of such fair and orderly markets, including the performance of market surveillance activities that allow for the monitoring of market activity, including intra-day activity, and the detection of irregular trading behavior that could negatively impact the integrity of ICE Endex or constitute breaches of statutory law or regulations in the form of market abuse by market participants.

The ICE Endex Futures Market is a Market of Significant Size

In the Winklevoss Order, the Commission stated that the term “significant market” or “market of significant size” includes a market (or group of markets) as to which (1) there is a reasonable likelihood that a person attempting to manipulate the Trust would also have to trade on that market to successfully manipulate the Trust, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (2) it is unlikely that trading in the Trust

²⁹ See supra, note 13.

would be the predominant influence on prices in that market.³⁰ The Commission explained that this definition is illustrative and not exclusive, and that there could be other types of “significant markets” and “markets of significant size.”³¹

Any manipulator would have to trade on ICE Endex

The first prong of the analysis addresses whether the surveillance-sharing agreement on which the fund’s listing exchange proposes to rely would assist in detecting and deterring fraudulent or manipulative misconduct related to the assets held by the fund. In the present proposal, the Trust’s only non-cash holdings will be EUAs. The predominant market for trading EUA instruments with daily expiry is the ICE Endex Daily EUA Futures market, with de minimis secondary market trading taking place on EEX or over-the-counter. The EEX’s primary role in the EUA ecosystem is to serve as the venue for the daily auctions of EUAs.

The regulated market of significant size test does not require that the spot EUA market be subject to direct surveillance by the Exchange in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a surveilled market would actually be an exception to the norm. These largely un-surveilled currency and commodity markets do not provide the same protections as the markets that are subject to the Commission’s oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the ICE Endex EUA Futures market is an appropriate market to consider in determining whether there is a related regulated market of significant size.

³⁰ See Winklevoss Order, 83 FR at 37594.

³¹ Id.

ICE Endex is the only market for trading Daily EUA Futures and, as noted above, for the twelve-months ended September 30, 2024, the average daily trading volume of Daily EUA Futures on the ICE Endex was 3,829 contracts, representing 3,829,000 EUAs, whereas the average daily trading volume on the EEX was 146 round lots, representing 146,000 EUAs. Therefore, over that one year period, over 96% of all on-exchange secondary market trading of EUA spot instruments with daily expiry (which, as described above, includes spot EUAs and Daily EUA Futures) occurred on the ICE Endex. With respect to EUAs and EUA based derivatives more broadly, the chart above shows that, year-to-date through September 30, 2024, approximately 96% of all trades in EUAs and EUA Futures dated through December 2026 occurred on ICE Endex.³²

Given the size of the ICE Endex futures markets, especially the Daily EUA Futures market, the Sponsor believes such markets meet the Commission's definition of "significant market" because there is a reasonable likelihood that a person attempting to manipulate the Trust would also have to trade on that market to successfully manipulate the Trust, since arbitrage between the derivative and spot markets would tend to counter an attempt to manipulate the spot market alone. Of the 256 members of ICE Endex, 151 are also members of EEX. Each of these exchange members acts on behalf of their clients, each member in common between the exchanges represents potentially hundreds of accounts that can and do act on both markets to effect arbitrage transactions. Therefore, a sufficient number of arbitrageurs have access to both the EEX and ICE Endex such that any attempt to manipulate one market that causes a difference between the EUA spot price and the Daily EUA Futures price will quickly be exploited. This will serve to maintain the EUA price correlation between EEX and ICE Endex. Any attempt to

³² See [esma70-445-38_final_report_on_emission_allowances_and_associated_derivatives.pdf \(europa.eu\)](#).

manipulate the spot EUA market alone would be impossible because arbitrage would correct any movements in the spot market to bring the prices of spot EUAs back in line with the settlement price of the Daily EUA Future. Therefore, any person attempting to manipulate the Trust Shares would also have to trade in the Daily EUA Futures market (ICE Endex) to manipulate the spot and futures markets in tandem.³³

³³ 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 and NYMEX’s membership, or from exchanges “with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement.”)

Similarly, it is impossible to manipulate the prices of EUAs by trading the other EUA based derivatives on the EEX alone. With respect to EUA Futures other than the Daily EUA Future, the size and predominance of ICE Endex would make it impossible to manipulate the price of EUAs through trading EUA Futures on the EEX alone. The fungibility of EUA Futures and the significant overlap in exchange membership would cause arbitrage activity to bring the settlement prices of EUA Futures traded on EEX in line with the settlement price of EUA Futures traded on ICE Endex. In addition, because the options on EUA Futures reference EUA Futures, the prices of EUA Futures would reflect any attempt by a would-be manipulator to manipulate the price of the Fund's Shares through the use of options. Therefore, any would-be manipulator would have to manipulate the prices of EUA Futures Contracts in order to manipulate the price of the Fund's Shares, and the size of predominance of the ICE Endex would require that would-be manipulator to trade on ICE Endex.

The Trust is unlikely to be the predominant influence on price

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 (meaning the Daily EUA Futures market, in effect). In 2023, the total EUA market size was approximately €764.1 billion with approximately €67.1 billion of that attributable to the Daily EUA Futures market and €3.4 billion attributable to spot EUAs. The daily average trading volume in 2023 for EUAs across the on-exchange secondary market was approximately €2.6 billion, with approximately €266.3 million attributable to trading in the Daily EUA Futures market and €13.5 million attributable to trading in spot EUAs. 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 or that investors would be able to trade Trust Shares at such a volume as to influence Daily EUA Futures prices on ICE Endex. Additionally, the trading hours for the ICE Endex (i.e., EUA Futures market) are approximately 2:00 a.m. E.T. to approximately 12:00 p.m. E.T. The majority of this time period (7.5 hours) is outside of the Trust's trading hours of 9:30 a.m. E.T. to 4:00 p.m. E.T. As such, it is unlikely that trading in the Trust's Shares would be the primary influencer of the EUA Futures prices traded on ICE Endex, because the ICE Endex is actively traded for 7.5 hours during which the Trust Shares cannot be traded.

Other Means to Prevent Fraudulent and Manipulative Acts and Practices

The Exchange has a CSSA with the market on which the Trust's sole asset trades

In the present proposal, the Trust's only non-cash holdings will be EUAs. Moreover, the proposed "significant" regulated market (i.e., the ICE Endex) with which the listing exchange has a surveillance-sharing agreement is the principal market on which these assets trade.

The Daily EUA Futures market functions as the "spot" market for EUAs. The purchase and sale of Daily EUA Futures is the functional and economic equivalent of transactions in spot EUAs. The settlement, functionality and economic outcome for a spot purchase on the EEX and a Daily EUA Future purchase on the ICE Endex are identical. Because the Daily EUA Future is physically settled through the delivery of one lot of EUAs to the purchaser of the Daily EUA Future, whether the Trust acquires an EUA through a transaction on the EEX or through the acquisition of a Daily EUA Future on ICE Endex, the Trust will acquire the same EUA on a T+1 basis. It is not possible for an acquirer to roll a same day futures contract to a later dated future, as each day it would expire and the market participant would end up holding physical EUAs. Therefore, the Daily EUA Futures market functions as a spot market.

The EEX's primary role in the EUA ecosystem is to serve as the venue for the daily auctions of EUAs. The predominant market for trading EUA instruments with daily expiry is the ICE Endex Daily EUA Futures market, with *de minimis* secondary market trading taking place on EEX or in the OTC market. As noted above, for the twelve-month period ended September 30, 2024, the average daily trading volume of Daily EUA Futures on ICE Endex was approximately 3,829 contracts, representing 3,829,000 EUAs, whereas the average daily trading volume of spot EUAs on the EEX was 146 lots, representing 146,000 EUAs. Therefore, over that one year period, approximately 96% of all secondary market trading of EUA spot instruments with daily expiry occurred on the ICE Endex. Therefore, because a Daily EUA Future is functionally identical to a physical EUA, and the ICE Endex serves as the predominant market for the trading of "spot" EUAs, the Exchange's CSSA with ICE Endex will serve to detect and deter fraudulent and manipulative acts and practices in the EUA market.

EU's oversight and monitoring of EUA markets serves to prevent fraudulent and manipulative acts and practices

In addition to Exchange's CSSA with ICE Endex, there are other mechanisms in place to deter and detect misconduct across both the EUA spot and derivatives markets. Both EEX and ICE Endex are subject to the EU regulatory framework for EUAs and EUA derivatives. The EU regulatory framework includes the Markets in Financial Instruments Directive and Regulation ("MiFID II" and "MiFIR"), the Market Abuse Regulation ("MAR") and the European Market Infrastructure Regulation ("EMIR").³⁴ MiFID II and MiFIR together is a framework governing investment firms, trading venues, data reporting service providers and non-EU investment firms

³⁴ Carbon trading in the European Union: An economic assessment of market functioning in 2021, Oxera, p. 26 (February 15, 2022); available at <https://www.oxera.com/wp-content/uploads/2022/02/Oxera-EU-carbon-trading-report-3.pdf>.

that provide investment services in the EU.³⁵ The MAR prohibits insider dealing, unlawful disclosure of inside information and market manipulation and provides broad powers to the national competent authorities (“NCAs”) for detection and prosecution of violations.³⁶ EMIR regulates OTC derivatives transactions, central counterparties and trade repositories.³⁷ ESMA is the EU’s overall financial markets regulator that has supervisory authority over the NCAs.³⁸ Under the EU regulatory framework, there are three lines of defense against market abuse.³⁹ At the firm level (first line), firms are required to have systems and procedures in place to ensure that abusive trading is detected and reported to NCAs. At the market operator, investment firm and trading venue level (second line), these entities are required to identify and report suspicious transactions and maintain policies and procedures to prevent market abuse. Additionally, exchanges such as EEX and ICE Endex are required to report information to the relevant authorities on a daily basis. At the NCA level (third line), NCAs have market surveillance systems in place to monitor markets and identify and investigate suspicious transactions. NCAs have broad enforcement power and cooperate with each other and ESMA to obtain the information needed for optimal surveillance and in order to prosecute violations.⁴⁰ Exchanges (such as EEX and ICE Endex) and governmental authorities share information and communicate frequently regarding monitoring activities.⁴¹

³⁵ MiFID II Overview, Practical Law Financial Services.

³⁶ See [esma70-445-38_final_report_on_emission_allowances_and_associated_derivatives.pdf](#) (europa.eu).

³⁷ Carbon trading in the European Union: An economic assessment of market functioning in 2021, Oxera, p. 61 (February 15, 2022); available at <https://www.oxera.com/wp-content/uploads/2022/02/Oxera-EU-carbon-trading-report-3.pdf>.

³⁸ <https://www.esma.europa.eu/about-esma>.

³⁹ See [esma70-445-38_final_report_on_emission_allowances_and_associated_derivatives.pdf](#) (europa.eu).

⁴⁰ Id.

⁴¹ Carbon trading in the European Union: An economic assessment of market functioning in 2021, Oxera, p. 26-27 (February 15, 2022); available at <https://www.oxera.com/wp-content/uploads/2022/02/Oxera-EU->

While the Exchange is not a participant in the EU regulatory framework, the Exchange believes that the EU's robust oversight and monitoring regime, in addition to the Exchange's CSSA with ICE Endex which would allow for the sharing of information and thus provide sufficient means to prevent fraudulent and manipulative acts and practices.

Designed to Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed for this proposal to be consistent with the Act. As such, the Exchange believes that approving this proposal provides the Commission with the opportunity to allow U.S. investors to access EUAs in a regulated and transparent exchange-traded vehicle that would act to limit risk and benefit U.S. investors by: (i) reducing premium and discount volatility as compared to OTC investment vehicles; (ii) increasing competitive pressure on management fees resulting in fee compression/reductions; (iii) reducing risks and costs as compared to those associated with investing in EUAs; and (iv) providing an alternative to maintaining custody of EUAs.

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 made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of EUAs, or the amount of cash sufficient to purchase the amount of EUAs, represented by the Creation Units being created or redeemed. The amount of EUAs or cash 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.

For a cash creation, an Authorized Participant will deliver the cash to the Trust’s account at the Cash Custodian, which the Sponsor will then use to purchase EUAs from a third party selected by the Sponsor who (1) is not an Authorized Participant and (2) will not be acting as an agent, nor at the discretion, of the Authorized Participant with respect to the delivery of EUAs to the Trust (such third party, a “Liquidity Provider”). For a cash redemption, the Sponsor shall arrange for the EUAs represented by the Creation Units to be sold to a Liquidity Provider selected by the Sponsor and the cash proceeds distributed from the Trust’s account at the Cash Custodian to the Authorized Participant in exchange for its Shares. In the case of “in-kind” creation or redemption orders for Shares, an Authorized Participant may deliver or direct the

delivery of EUAs by third parties, or take delivery or direct the taking of delivery of EUAs by third parties.

For cash creations, an Authorized Participant who places a purchase order is responsible for arranging for the delivery to the Trust's account with the Cash Custodian of the required cash deposit by 2:00 p.m. New York time on the first business day following the purchase order date. The Liquidity Provider delivers EUAs to the Trust's Union Registry account in exchange for the cash purchase price. Upon settlement of the EUA purchase from the Liquidity Provider into the Trust's Union Registry account, the Trust instructs the Transfer Agent to release the Shares to the Authorized Participant, and the Transfer Agent directs DTC to credit the number of Shares ordered to the applicable DTC account, by close of business on the purchase settlement date.

For in-kind creation orders, an Authorized Participant who places a purchase order is responsible for arranging for the delivery to the Trust's Union Registry account the required EUA deposit by 2:00 p.m. New York time on the first 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 first business day following the order date.

For cash redemptions, on the redemption settlement date, the Liquidity Provider delivers

cash to the Trust's account with the Cash Custodian in exchange for the redemption EUAs amount. Upon settlement of the EUA sale by the Trust to the Liquidity Provider and the receipt of the Liquidity Provider's cash in the Trust's Cash Custodian account, the Trust instructs the Transfer Agent to deliver the Authorized Participant's Shares to be redeemed back to the Trust, in exchange for which the Trust instructs the Cash Custodian to transfer the requisite cash to the Authorized Participant's designated bank account and the redemption order is settled.

For in-kind redemptions, 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 Union Registry account of the Authorized Participant or its agent.

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 the Union Registry accounts of the Authorized Participants and Liquidity Providers, their agents or the Sponsor.

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 the settlement price for the Daily EUA Futures established by ICE Endex 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 mid-point of the bid-ask spread of the Daily EUA Future. 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 last reported mid-point of the bid-ask spread of the Daily EUA Future in the immediately preceding trading session until the day’s settlement price is reported, in which case the day’s settlement price will be used.

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 Daily EUA Futures 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.

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) 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 Price⁴² 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

⁴² 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.

(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 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-3⁴³ under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 50,000 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

⁴³ 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).

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.⁴⁴

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.⁴⁵ 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

⁴⁴ See NYSE Arca Rule 7.12-E.

⁴⁵ 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.

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 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 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 ISG⁴⁶ or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Additionally, the Exchange is able to obtain information regarding trading in the Shares in connection with ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. Additionally, under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in any underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the

⁴⁶ For a list of the current members of ISG, see www.isgportal.org.

Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). 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 and that subsidiary or affiliate is a member of another regulatory organization, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through a surveillance sharing agreement with that regulatory organization.

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.⁴⁷ 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)⁴⁸ 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. Further, the Exchange has demonstrated that the proposed rule change satisfies Section 6(b)(5) of the Act by showing that the ICE Endex is a regulated market of significant size that shares surveillance with the Exchange. 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

⁴⁷ 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>.

⁴⁸ 15 U.S.C. 78f(b)(5).

regarding trading in the Shares and Daily EUA Futures from ICE Endex with which the Exchange has entered into a CSSA. Also, pursuant to NYSE Arca Rule 8.201-E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying commodity through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary trades which they effect on any relevant market. 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 ICE Endex is the principal market for EUAs in which the Trust may invest, and that the Exchange can monitor those EUAs through its CSSA with ICE Endex.⁴⁹

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 will be disseminated by on-line subscription services or by one or more major market data vendors during the NYSE Arca Core Trading Session. 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.

⁴⁹ See the discussion in the "Section 6(b)(5) and the Applicable Standards" section, supra.

In addition, the Trust's website (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 NYSE Arca is open for regular trading and will also 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 from ICE Endex pursuant to the CSSA between the Exchange and ICE Endex. In addition, as noted above, investors will have ready access to information regarding the Trust's NAV, IFV, and quotation

and last sale information for the Shares.

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, and the first such product relating to physical carbon credits, which will enhance competition among market participants, to the benefit of investors and the marketplace.

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.

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. Please include file number SR-NYSEARCA-2024-70 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-2024-70. 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-2024-70 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁰

Sherry R. Haywood,

Assistant Secretary.

⁵⁰ 17 CFR 200.30-3(a)(12).