

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97653; File No. SR-NYSEARCA-2023-37]

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

June 6, 2023.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on May 23, 2023, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

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

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

##### 1. Purpose

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

The Trust was formed as a Delaware statutory trust on January 12, 2023.<sup>5</sup> The Trust has no fixed termination date. The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended,<sup>6</sup> and is not required to register under such act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.<sup>7</sup>

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

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

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

The investment objective of the Trust will be for the Shares to reflect the

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

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

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

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

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

<sup>9</sup> The description of the operation of the Trust, the Shares, and the carbon credit industry

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 or, possibly, cash. The Trust may hold a very limited amount of cash to pay Trust expenses. The Trust may also cause the Sponsor to receive EUAs from the Trust in such a quantity as may be necessary to pay the Sponsor’s annual fee.

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

The Trust is not a proxy for investing in physical carbon credits. Rather, the Shares are intended to provide a cost-effective means of obtaining investment exposure to the price of EUAs through the securities markets that is similar to an investment in futures contracts or other derivatives.

#### EUAs and the EUA Industry

##### Description of EU Emissions Trading Scheme

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

contained herein are based, in part, on the Registration Statement. *See* note 5, *supra*.

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

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

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

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

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. 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. An account must be opened in the Union Registry in order to transact in EUAs and the Union Registry is at all times responsible for holding the EUAs. All EUAs are held in the Union Registry.

#### Major Holders and Allowance Use Cases

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

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

(b) Providing financial services for hedging purposes or speculation, such as clearing houses for the European Energy Exchange or the Intercontinental Exchange, or banks holding allowances for their clients.

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

In addition to holding physical allowances, there is a liquid secondary futures and options market that is

primarily used for hedging future emissions or speculating.

#### Trading Location

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

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

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

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

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

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

#### Pricing of Allowances and Trading Volume

According to the Registration Statement, there are 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 via trading in spot, options, and futures contracts. There are also over-the-counter transactions, but they comprise a negligible percentage of transactions.

The EUA markets are generally liquid. EUA auctions are held on a near-daily basis throughout the year, other than between mid-December to mid-January, when auctions are paused. Prices achieved in these auctions are published on various publicly-accessible websites, including the European Commission’s primary website.

The secondary market trading takes place predominantly on the European Energy Exchange AG (“EEX”) and ICE Endex. As of January 2023, the secondary market had average daily trading volume of €2 billion, with the majority of the liquidity in the futures

market. Prices for secondary market transactions are published on various publicly-accessible websites, including those of EEX and ICE Endex. Both EEX and ICE Endex are affiliates of Exchange groups that are members of the Intermarket Surveillance Group (“ISG”).

Most liquidity in the secondary market is achieved by trading futures contracts. These contracts have expiration going out as far as 2030. The most liquid contract is the single day futures contract on EUAs (the “Daily EUA Future”), which settles each day at the close of trading. Generally, Daily EUA Futures trade from approximately 2:00 a.m. Eastern Time (“E.T.”) to approximately 12:00 p.m. E.T. The settlement price is fixed each business day and is published by the exchange at approximately 12:15 E.T. Final cash settlement occurs the first business day following the expiry day.

In 2021, the secondary spot market for EUAs (including the Daily EUA Future) averaged around 2.4 million EUAs daily and the primary auctions accounted for almost 2.5 million EUAs being auctioned several times per week. The current value (spot price) for a EUA is greatly influenced by a number of factors, including regulatory changes, world events and general level of economic activity.

#### Creation and Redemption of Shares

According to the Registration Statement, the Trust will create and redeem Shares on a continuous basis in one or more Creation Units. A Creation Unit equals a block of 50,000 Shares, which amount may be revised from time-to-time. The Trust will issue Shares in Creation Units to certain authorized participants (“Authorized Participants”) on an ongoing basis. Each Authorized Participant must be a registered broker-dealer or other securities market participant such as a bank or other financial institution which is not required to register as a broker-dealer to engage in securities transactions, a participant in The Depository Trust Company (“DTC”) and have entered into an agreement with the Sponsor and the Transfer Agent (the “Participant Agreement”).

Creation Units may be created or redeemed only by Authorized Participants. The creation and redemption of Creation Units is only made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of EUAs represented by the Creation Units being created or redeemed. The amount of EUAs required to be delivered to the Trust in connection with any creation, or paid out upon redemption, is based on the

combined net asset value of the number of Shares included in the Creation Units being created or redeemed as determined on the day the order to create or redeem Creation Units is properly received and accepted. Orders must be placed by 11:00 a.m. New York time. The day on which the Administrator receives a valid purchase or redemption order is the order date. Creation Units may only be issued or redeemed on a day that the Exchange is open for regular trading.

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

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

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

Net Asset Value ("NAV")

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

The Administrator will calculate the NAV of the Trust once each Exchange trading day. The NAV for a normal trading day will be released after the end of the Core Trading Session, which is typically 4 p.m. New York time. The NAV for the Trust's Shares will be

disseminated daily to all market participants at the same time. The Administrator will use 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 end of day price of EUAs immediately preceding the trading session.

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

Availability of Information

The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time. The intraday, closing prices, and settlement prices for EUAs will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors. The IFV per Share for the Shares will be

disseminated by one or more major market data vendors on at least a 15 second delayed basis as required by NYSE Arca Rule 8.201-E(e)(2)(v).

Complete real-time data for EUAs and Daily EUA Futures is available by subscription through on-line information services. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The IFV will be available through on-line information services. The trading prices for EUAs and 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. Additionally, the NAV may be influenced by non-concurrent trading hours between the Exchange and the EUA markets. While the Trust's Shares trade on the Exchange from 9:30 a.m. to 4:00 p.m. E.T., the trading hours for EUA markets do not coincide during all of this time. EEX provides on its website, on a daily basis, transaction volumes and transaction prices for the EUA spot market. ICE Endex provides on its website, on a daily basis, transaction volumes, transaction prices, daily settlement prices and historical settlement prices for Daily EUA Futures that were traded outside of block trades by EUA futures brokers. In addition, transaction volumes, transaction prices, daily settlement prices and historical settlement prices for Daily EUA Futures traded in block trades by futures brokers are available on a daily basis through a subscription service to ICE Endex. However, ICE Endex provides the daily settlement price change of the Daily EUA Future on its website.

In addition, the Trust's website ([www.cotwoadvisors.com](http://www.cotwoadvisors.com)) will contain the following information, on a per Share basis, for the Trust: (a) the prior business day's end of day closing NAV; (b) the Official Closing Price<sup>11</sup> or the midpoint of the national best bid and the national best offer ("NBBO") as of the time the NAV is calculated ("Bid-Ask Price"); (c) calculation of the premium or discount of the Official Closing Price against the NAV expressed as a percentage of such NAV; (d) the prospectus; and (e) other applicable quantitative information. The Trust will also provide website disclosure of its

<sup>11</sup> The term "Official Closing Price" is defined in NYSE Arca Rule 1.1(l) as the reference price to determine the closing price in a security for purposes of Rule 7-E Equities Trading, and the procedures for determining the Official Closing Price are set forth in that rule.

EUA holdings before 9:30 a.m. E.T. on each trading day.

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

#### Trading Rules

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

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201–E. The trading of the Shares will be subject to NYSE Arca Rule 8.201–E(g), which sets forth certain restrictions on Equity Trading Permit (“ETP”) Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A–3<sup>12</sup> under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares

<sup>12</sup> With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

will be outstanding at the commencement of trading on the Exchange.

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

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying carbon credit market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's “circuit breaker” rule.<sup>13</sup>

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

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority Inc. (“FINRA”), on behalf of the Exchange, which are designed to detect violations of

Exchange rules and applicable federal securities laws.<sup>14</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>15</sup>

Also, pursuant to NYSE Arca Rule 8.201–E(g), 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.

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

<sup>14</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>15</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>13</sup> See NYSE Arca Rule 7.12–E.

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 while last sale information regarding EUAs would be subject to regulation by EEX and ICE Endex, the Commission and the CFTC do not have jurisdiction over the trading of EUAs as a commodity. The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the

Shares will be publicly available on the Trust's website.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)<sup>16</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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 available on public websites and through professional and subscription services. In addition, the Trust's website 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. The NAV of the Trust will be published on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website. The IFV relating to the Shares will be widely disseminated by one or more major market data vendors at least once every 15 seconds as required by NYSE Arca Rule 8.201–E(e)(2)(v). The Trust's website will also provide its prospectus and other relevant quantitative information regarding the Shares. 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 via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

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

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

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

#### 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:

<sup>16</sup> 15 U.S.C. 78f(b)(5).

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2023-37 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-2023-37. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2023-37, and should be submitted on or before July 3, 2023.

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

**Sherry R. Haywood,**

*Assistant Secretary.*

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

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-97654; File No. SR-CBOE-2023-029]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Automated Price Improvement Auction Rules**

June 6, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 25, 2023, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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**

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its automated price improvement auction rules. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

1. Purpose

The Exchange proposes to amend Rule 5.37 (Automated Price Improvement Mechanism ("AIM" or "AIM Auction")) and Rule 5.38 (Complex Automated Improvement Mechanism ("C-AIM" or "C-AIM Auction")) to modify the stop price requirements for auto-match orders submitted to AIM and C-AIM, respectively.

By way of background, Rules 5.37 and 5.38 contain the requirements applicable to the execution of orders using AIM and C-AIM, respectively. The AIM and C-AIM auctions are electronic auctions intended to provide an Agency Order with the opportunity to receive price improvement (over the National Best Bid or Offer ("NBBO") in AIM, or the synthetic best bid or offer ("SBBO") on the Exchange in C-AIM. Upon submitting an Agency Order into an AIM or C-AIM auction, the initiating Trading Permit Holder ("Initiating TPH") must also submit a contra-side second order ("Initiating Order") for the same size as the Agency Order. The Initiating Order guarantees that the Agency Order will receive an execution at no worse than the auction price (*i.e.*, acts as a stop). During an AIM or C-AIM Auction, market participants submit responses to trade against the Agency Order. At the end of an auction, depending on the contra-side interest available, the contra order may be allocated a certain percentage of the Agency Order.<sup>5</sup>

An Initiating TPH may initiate an AIM or C-AIM auction provided that the Agency Order is in a class and of sufficient size as determined by the Exchange. Further, there are requirements regarding the price at which the Initiating Order must stop the entire Agency Order, set forth in Rule 5.37(b) for AIM Auctions and Rule 5.38(b) for C-AIM Auctions. Requirements for the stop price depend on the order submitted, but in general, the stop price must be either better than the then-current NBBO (SBBO) or, in some cases, at or better than the NBBO (SBBO).<sup>6</sup>

Further, under Rules 5.37(b)(5) and 5.38(b)(4), an Initiating TPH, in entering the contra-side order, must either (1) specify a single price at which it seeks to execute the Agency Order against the Initiating Order, or (2) specify an initial

<sup>5</sup> See generally Rules 5.37(e) and 5.38(e).

<sup>6</sup> See generally Rules 5.37(b) and 5.38(b).