

purposes of the Act. First, this proposed change would enable the Exchange to compete on more equal footing with at least one other options exchange that likewise prevents complex trading interest from being subject to simultaneous auctions.²⁰³ Furthermore, options exchanges are free to adopt (if they have not already done so) electronic crossing mechanisms with price improvement auctions that similarly prevent multiple complex auction mechanisms to occur in the same strategy at the same time.

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

Pursuant to Section 19(b)(3)(A) of the Act²⁰⁴ and Rule 19b-4(f)(6)²⁰⁵ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.²⁰⁶

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

²⁰³ See *supra* note 179 (citing to MIAx Options User Manual, which prohibits more than one complex auction at a time—whether in the same mechanism (*i.e.*, cPRIME) or in different auction mechanisms (*i.e.*, cPRIME versus MIAx's "Standard Complex auction").

²⁰⁴ 15 U.S.C. 78s(b)(3)(A).

²⁰⁵ 17 CFR 240.19b-4(f)(6).

²⁰⁶ In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-NYSEAMER-2024-24 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-NYSEAMER-2024-24. 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-NYSEAMER-2024-24 and should be submitted on or before May 22, 2024.

²⁰⁷ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰⁷

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100027; File No. SR-NYSE-2024-13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change for Amendments to Rule 7.35 and Rule 7.35B

April 25, 2024.

On March 1, 2024, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 7.35 and Rule 7.35B. The proposed rule change was published for comment in the **Federal Register** on March 18, 2024.³ The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 2, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates June 16, 2024, as the date by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99719 (Mar. 12, 2024), 89 FR 19370 (Mar. 18, 2024) (SR-NYSE-2024-13).

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSE–2024–13).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100029; File No. SR–NYSEARCA–2024–05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the COTwo Advisors Physical European Carbon Allowance Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

April 25, 2024.

I. Introduction

On January 10, 2024, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) ¹ and Rule 19b–4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the COTwo Advisors Physical European Carbon Allowance Trust under NYSE Arca Rule 8.201–E. The proposed rule change was published for comment in the **Federal Register** on January 26, 2024.³

On March 4, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has not received any comments on the proposed rule change. The Commission is publishing this order to institute

proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to disapprove the proposed rule change.

II. Description of the Proposed Rule Change ⁷

The Exchange proposes to list and trade Shares of the COTwo Advisors Physical European Carbon Allowance Trust (“Trust”) ⁸ under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares⁹ on the Exchange. The sponsor of the Trust is COTwo Advisors LLC, a Delaware limited liability company (“Sponsor”).

Description of the Operation of the Trust

According to the Exchange, 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.¹⁰ 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).¹¹ The Trust will not hold any assets other than EUAs and, possibly, a very limited amount of cash to pay Trust expenses.¹²

The Trust will not invest in futures, options, options on futures, or swap contracts.¹³ The Trust will not hold or trade in commodity futures contracts, “commodity interests,” or any other instruments regulated by the

Commodity Exchange Act.¹⁴ 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).¹⁵

The Trust will value its Shares daily based on the value of EUAs as reflected by the EUA End of Day Index value, as published by the European Energy Exchange AG (“EEX”).¹⁶ The administrator of the Trust will determine the net asset value (“NAV”) of the Trust once each Exchange trading day, which will be released after the end of the Core Trading Session, which is typically 4 p.m. New York time¹⁷ When the Trust sells or redeems its Shares, it will do so in “in-kind” transactions with authorized participants in blocks of 50,000 Shares.¹⁸

EUAs and the EUA Markets

According to the Exchange, the European Union Emissions Trading System (“EU ETS”) is a “cap and trade” system that caps the total volume of greenhouse gas emissions from installations and aircraft operators.¹⁹ The EU ETS is administered by the EU Commission, which issues a predefined amount of EUAs through auctions or free allocation.²⁰ An EUA represents the right to emit one metric ton of carbon

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See *id.* at 5279. The EUA End of Day Index methodology is available at https://www.eex.com/fileadmin/EEEX/Downloads/Trading/Specifications/Indices/DE/20211005_Index_Description_v010.pdf. According to the Exchange, the value of the EUA End of Day Index is calculated based on an algorithm using data regarding the prices of qualifying trades and the average bids and asks of orders that meet certain order quantity requirements. See Notice, *supra* note 3, 89 FR at 5276. In order for data regarding trades and orders to be used for calculating the value of the EUA End of Day Index, the trades or orders must satisfy certain requirements regarding (i) quantity of traded contracts, (ii) quantity of contracts per order, (iii) minimum duration of the cumulated valid best bid and best ask, and (iv) maximum spread per contract. The EUA End of Day Index calculation methodology depends on the number of valid trades and orders which fulfil the product-specific parameters. See *id.* The data used for calculating the EUA End of Day Index can also come from fair values collected in a price committee or from other price sources. See *id.* The EUA End of Day Index price calculated is then validated against actual market prices. See *id.*

¹⁷ See *id.* at 5279. 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. See *id.*

¹⁸ See *id.* at 5278.

¹⁹ There are two types of EU emissions allowances: (i) general allowances for stationary installations, or EUA; and (ii) allowances for the aviation sector. See *id.* at 5274. The Trust will not hold any assets other than EUAs and, possibly, a very limited amount of cash to pay Trust expenses. See *id.*

²⁰ See *id.* at 5274–75.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ Additional information regarding the Trust and the Shares can be found in the Notice, *supra* note 3.

⁸ On May 12, 2023, the Trust filed with the Commission a registration statement on Form S–1 (File No. 333–271910) (“Registration Statement”) under the Securities Act of 1933. The Exchange represents that 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. The Exchange further represents that the Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended, and that the Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended. See Notice, *supra* note 3, 89 FR at 5274.

⁹ The Exchange represents that the Shares will satisfy the requirements of NYSE Arca Rule 8.201–E and thereby qualify for listing on the Exchange, and that the Trust relies on the exemption contained in Rule 10A–3(c)(7) regarding the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act. See Notice, *supra* note 3, 89 FR at 5274.

¹⁰ See Notice, *supra* note 3, 89 FR at 5274.

¹¹ See *id.*

¹² See *id.* 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. See *id.*

¹³ See *id.*

⁶ 17 CFR 200.30–3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 99409 (January 22, 2024), 89 FR 5273 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99668, 89 FR 16808 (March 8, 2024). The Commission designated April 25, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.