



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102921; File No. SR-NYSEARCA-2024-70]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 3, 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 23, 2025.

#### I. Introduction

On August 19, 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”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the COTwo Advisors Physical European Carbon Allowance Trust (“Trust”) under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the Federal Register on September 5, 2024.<sup>3</sup>

On October 16, 2024, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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.<sup>5</sup> On November 22, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, and on December 3, 2024, the Commission issued notice of filing of Amendment No. 1

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

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

<sup>3</sup> See Securities Exchange Act Release No. 100877 (Aug. 29, 2024), 89 FR 72524. The Commission has not received any comments on the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 101360, 89 FR 84406 (Oct. 22, 2024).

to the proposed rule change and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.<sup>7</sup> On February 20, 2025, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> the Commission designated a longer period for Commission action on the proposed rule change.<sup>9</sup> On March 13, 2025, the Exchange filed Amendment No. 2 to the proposed rule change, and on March 20, 2025, the Exchange withdrew Amendment No. 2. On March 20, 2025, the Exchange filed Amendment No. 3 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety, and on March 21, 2025, the Commission issued notice of filing of Amendment No. 3 to the proposed rule change.<sup>10</sup> This order grants approval of the proposed rule change, as modified by Amendment No. 3.

## II. Description of the Proposal, as Modified by Amendment No. 3

The Exchange proposes to list and trade Shares of the Trust<sup>11</sup> under NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity-Based Trust Shares.<sup>12</sup> The sponsor

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

<sup>7</sup> See Securities Exchange Act Release No. 101806, 89 FR 97678 (Dec. 9, 2024).

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

<sup>9</sup> See Securities Exchange Act Release No. 102468, 90 FR 10738 (Feb. 26, 2025). The Commission, pursuant to Section 19(b)(2) of the Act, designated May 3, 2025, as the date by which the Commission shall either approve or disapprove the proposed rule change.

<sup>10</sup> See Securities Exchange Act Release No.102707, 90 FR 13953 (Mar. 27, 2025). Amendment No. 3 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nysearca-2024-70/srnysearca202470-582995-1678942.pdf>.

<sup>11</sup> According to the Exchange, 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) (“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 becomes effective. The Exchange states that the Trust, which was formed as a Delaware statutory trust on January 12, 2023, will not be registered, and is not required to register, as an investment company under the Investment Company Act of 1940, and is not a commodity pool for purposes of the Commodity Exchange Act, as amended. See Amendment No. 3, supra note 10, 90 FR at 13953.

<sup>12</sup> See NYSE Arca Rule 8.201-E(c)(1) (defining Commodity-Based Trust Shares as a security (a) that is issued by a trust that holds (1) a specified commodity deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash).

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, transfer agent, and custodian of the Trust’s cash, if any (“Cash Custodian”);<sup>13</sup> and Wilmington Trust serves as trustee of the Trust.

#### Operation of the Trust<sup>14</sup>

The investment objective of the Trust will be for the Shares to reflect the performance of the price of EU Carbon Emission Allowances for stationary installations (“EUAs”), less the Trust’s expenses. The Trust intends to achieve its objective by investing all of its assets in EUAs on a non-discretionary basis (*i.e.*, without regard to whether the value of EUAs is rising or falling over any particular period), and the Trust’s only ordinary recurring expense will be the Sponsor’s annual fee.<sup>15</sup> The Trust may purchase or sell EUAs in connection with the creation or redemption of Shares, and the Trust also may sell EUAs to pay the Sponsor’s annual fee.<sup>16</sup> The Exchange represents that the Trust will not hold any assets other than EUAs and cash, and will not invest in futures, options, options on futures, or swap contracts, and will not hold any EUA derivatives.<sup>17</sup>

#### Description of European Union (“EU”) Emissions Trading Scheme

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 (“GHG”) emissions

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<sup>13</sup> According to the Exchange, 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 (as defined herein) for creations and redemptions of Creation Units (as defined in Amendment No. 3) and in connection with the payment of Trust expenses. See Amendment No. 3, supra note 10, 90 FR at 13953.

<sup>14</sup> Additional descriptions of the operation of the Trust, Shares, carbon credit industry and markets, creations and redemptions, net asset value (“NAV”) and indicative fund value (“IFV”), availability of information, Exchange trading rules and halts, surveillance, and information bulletin, among other things, can be found in Amendment 3 and the Registration Statement, as applicable. See Amendment No. 3, supra note 10, and Registration Statement, supra note 11.

<sup>15</sup> See Amendment No. 3, supra note 10, 90 FR at 13953.

<sup>16</sup> See Amendment No. 3, supra note 10, 90 FR at 13954.

<sup>17</sup> According to the Exchange, the Trust will not hold or trade in commodity futures contracts, “commodity interests,” or any other instruments regulated by the Commodity Exchange Act. See Amendment No. 3, supra note 10, 90 FR at 13953-13954.

from installations and aircraft operators responsible for around 40% of EU GHG emissions.<sup>18</sup>

The EU ETS is administered by the EU Commission, which issues a predefined amount of EUAs through auctions or free allocation.<sup>19</sup> An EUA represents the right to emit one metric ton of carbon dioxide equivalent into the atmosphere by operators of stationary installations (“Covered Entities”).<sup>20</sup> 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.<sup>21</sup>

In 2012, EU ETS operations were centralized into a single EU registry operated by the EU Commission (“Union Registry”), which covers all countries participating in the EU ETS.<sup>22</sup> According to the Exchange, 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.<sup>23</sup> 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.<sup>24</sup> The European Union Transaction Log (“EUTL”)<sup>25</sup> checks, records, and authorizes all transactions that take place between accounts in the Union Registry to ensure that transfers are in accordance with the EU

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<sup>18</sup> According to the Exchange, 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. There are two types of EU emissions allowances: (i) general allowances for stationary installations, or EUAs; and (ii) allowances for the aviation sector. The Exchange represents that the Trust will hold EUAs only. See Amendment No. 3, supra note 10, 90 FR at 13954.

<sup>19</sup> According to the Exchange, the EU ETS is linked to small emissions trading systems in Europe, but not to any other major cap and trade market. 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. See Amendment No. 3, supra note 10, 90 FR at 13954.

<sup>20</sup> See Amendment No. 3, supra note 10, 90 FR at 13954.

<sup>21</sup> See id.

<sup>22</sup> See id.

<sup>23</sup> See id.

<sup>24</sup> See id.

<sup>25</sup> According to the Exchange, the EUTL is a central transaction log that checks and records all transactions taking place within the EU ETS. It is run by the EU Commission and provides access to emission trading data contained in the EUTL. See <https://www.eea.europa.eu/data-and-maps/dashboards/emissions-trading-viewer-1>.

ETS rules.<sup>26</sup> The Exchange represents that the Union Registry is at all times responsible for holding the EUAs, and 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.<sup>27</sup>

### Description of EUA Trading Markets

According to the Exchange, there are currently two avenues for trading EUAs: a primary market and a secondary market. The primary market involves participation in a regularly scheduled auction.<sup>28</sup> The secondary market involves transactions between buyers and sellers on regulated markets.<sup>29</sup> The instruments offered for trading are the following: (1) instruments with a daily expiry, which consist of spot EUAs and the Daily EUA Future (as defined herein); (2) futures contracts with various maturities; and (3) options on futures contracts.<sup>30</sup> Spot EUAs are traded exclusively on the European Energy Exchange AG (“EEX”),<sup>31</sup> and futures contracts and

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<sup>26</sup> See Amendment No. 3, supra note 10, 90 FR at 13954.

<sup>27</sup> See id.

<sup>28</sup> See Amendment No. 3, supra note 10, 90 FR at 13954-13955.

<sup>29</sup> See Amendment No. 3, supra note 10, 90 FR at 13955.

<sup>30</sup> According to the Exchange, the spot and futures markets for EUAs have existed since 2005 after the formal launch of the EU ETS on January 1, 2005. The Exchange states that there are also OTC transactions in EUAs, but they comprise a negligible percentage of transactions. See Amendment No. 3, supra note 10, 90 FR at 13955.

<sup>31</sup> The Exchange states that 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 an RM for spot and derivatives transactions, EEX is supervised by the Saxon State Ministry for Economic Affairs, Labour and Transport (“Supervisory Authority”). The 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. The Exchange further represents that EEX is recognized by the Commodity Futures Trading Commission (“CFTC”) as an authorized Foreign Board of Trade. See <https://www.cftc.gov/sites/default/files/filings/documents/2019/orgeexregistrationorder11519.pdf>.

options on futures contracts are traded on EEX, ICE Endex Markets B.V. (“ICE Endex”),<sup>32</sup> and Nasdaq Oslo.<sup>33</sup>

According to the Exchange, the single day futures contract on EUAs (“Daily EUA Future”) is exclusively traded on the ICE Endex, which settles each day at the close of trading.<sup>34</sup> The Daily EUA Future is a deliverable contract where each person with a position open at cessation of trading is obliged to make or take physical delivery of EUAs upon the expiration of the contract at the end of each trading day.<sup>35</sup> Settlement of the Daily EUA Future does not occur through cash transactions.<sup>36</sup> 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.<sup>37</sup> The Exchange represents 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.<sup>38</sup> In addition, the Exchange states that EEX also offers other monthly EUA futures contracts with various expirations, and options on EUA futures contracts also trade on EEX and ICE Endex for many of the available EUA futures.<sup>39</sup>

### Surveillance

The Exchange states that it has entered into a comprehensive surveillance sharing agreement (“CSSA”) with ICE Endex. Pursuant to the CSSA, the Exchange will communicate as

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<sup>32</sup> According to the Exchange, ICE Endex is regulated in the Netherlands by the Dutch Authority for the Financial Markets (AFM) as an RM, as defined in MIFID II. The Exchange represents that ICE Endex is 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>.

<sup>33</sup> According to the Exchange, Nasdaq Oslo offers a single day futures contract on EUAs, but the contract is not traded. In addition, the Exchange states that Nasdaq Oslo also offers quarterly futures contracts over a rolling six-year period, but currently, there is only de minimis trading volume in such futures, and that Nasdaq Oslo’s market share to date has been marginal. See Amendment No. 3, supra note 10, 90 FR at 13955.

<sup>34</sup> See Amendment No. 3, supra note 10, 90 FR at 13956.

<sup>35</sup> See id.

<sup>36</sup> See id.

<sup>37</sup> See id.

<sup>38</sup> See Amendment No. 3, supra note 10, 90 FR at 13958.

<sup>39</sup> See id.

needed regarding trading in the Shares and EUA derivatives, including Daily EUA Futures, with ICE Endex, and the Exchange may obtain trading information regarding trading in the Shares and EUA derivatives, including Daily EUA Futures, from ICE Endex.<sup>40</sup> In addition, the Exchange represents that EEX is a member of the Intermarket Surveillance Group (“ISG”).<sup>41</sup> Pursuant to its membership in ISG, EEX is obligated, and has undertaken a commitment, to share information, including, without limitation, with respect to spot EUAs, with other ISG members, including the Exchange, on an as-needed basis when such surveillance-sharing information is used for regulatory purposes.<sup>42</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>43</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,<sup>44</sup> which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest; and with Section 11A(a)(1)(C)(iii) of the Act,<sup>45</sup> which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

#### A. Exchange Act Section 6(b)(5)

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<sup>40</sup> See Amendment No. 3, supra note 10, 90 FR at 13963.

<sup>41</sup> See Amendment No. 3, supra note 10, 90 FR at 13958.

<sup>42</sup> See Amendment No. 3, supra note 10, 90 FR at 13963.

<sup>43</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>44</sup> 15 U.S.C. 78f(b)(5).

<sup>45</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

The Commission has previously recognized that surveillance-sharing agreements assist in the detection and deterrence of fraudulent and manipulative activity.<sup>46</sup> The Commission also has stated that it considers two markets that are members of the ISG to have a comprehensive surveillance-sharing agreement with one another, even if they do not have a separate bilateral surveillance-sharing agreement.<sup>47</sup>

As stated in Amendment No. 3, the Trust will seek to achieve its objective by holding only spot EUAs and possibly cash and will not hold any EUA derivatives. According to the Exchange, spot EUAs are traded exclusively on EEX, which is a member of ISG and is

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<sup>46</sup> See, e.g., Securities Exchange Act Release No. 35518 (Mar. 21, 1995), 60 FR 15804, 15807 (Mar. 27, 1995) (SR-Amex-94-30) (approving the exchange listing and trading of Commodity Linked Notes). In that matter, the Commission stated that the listing exchange had comprehensive surveillance-sharing agreements with all of the exchanges upon which the futures contracts underlying the notes traded and was able to obtain market surveillance information, including customer identity information, for transactions occurring on NYMEX and other futures exchanges. See *id.* at 15807 n.21; see also Securities Exchange Act Release No. 36885 (Feb. 26, 1996), 61 FR 8315, 8319 n.17 (Mar. 4, 1996) (SR-Amex-95-50) (approving the exchange listing and trading of Commodity Indexed Securities, and stating: (a) that through the comprehensive surveillance-sharing agreements, the listing exchange was able to obtain market surveillance information, including customer identity information, for transactions occurring on NYMEX and COMEX and that, through the ISG information-sharing agreement, the listing exchange was able to obtain, upon request, surveillance information with respect to trades effected on the London Metal Exchange, including client identity information and (b) that, if a different market were utilized for purposes of calculating the value of a designated futures contract, the listing exchange had represented that it would ensure that it entered into a surveillance-sharing agreement with respect to the new relevant market). The Commission has made similar statements about surveillance-sharing agreements with respect to the listing and trading of stock-index, currency, and currency-index warrants. See, e.g., Securities Exchange Act Release No. 36166 (Aug. 29, 1995), 60 FR 46660 (Sept. 7, 1995) (SR-PSE-94-28) (approving a proposal to adopt uniform listing and trading guidelines for stock-index, currency, and currency-index warrants). Specifically, the Commission stated that “a surveillance sharing agreement should provide the parties with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses” and stated that the Commission “generally requires that a surveillance sharing agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity, and the identity of the ultimate purchasers for securities.” *Id.* at 46665 n.35. In addition, the Commission stated that “[t]he ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.” *Id.* at 46665 n.36.

<sup>47</sup> 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) (stating the importance of ISG, which “was formed to coordinate, among other things, effective surveillance and investigative information sharing arrangements in the stock and options markets,” and that, if an exchange trades component securities underlying a new derivative securities product and is not a member of the ISG, the exchange seeking to list and trade such new derivative securities product should enter into a comprehensive information sharing agreement with the non-ISG market, and conversely, if an exchange seeks to list and trade a new derivative securities product and is not a member of the ISG, such exchange should enter into a comprehensive information sharing agreement with each market that trades securities underlying the new derivative securities product).

registered with the CFTC as an authorized Foreign Board of Trade.<sup>48</sup> In addition, although the Trust will not hold any EUA derivatives, the Exchange states that Daily EUA Futures market is “the functional equivalent of a ‘spot’ market for EUAs” as the “settlement, functionality and economic outcome for a spot purchase on the EEX and a Daily EUA future purchase... are identical.”<sup>49</sup> ICE Endex offers trading in EUA derivatives, including Daily EUA Futures traded exclusively on ICE Endex, other EUA futures, and options on futures.<sup>50</sup> The Exchange states that it has entered into CSSA with ICE Endex, which is registered with the CFTC as an authorized Foreign Board of Trade, and that, pursuant to the CSSA, the Exchange will communicate as needed regarding trading in the Shares and EUA derivatives, including Daily EUA Futures, with ICE Endex, and the Exchange may obtain trading information regarding trading in the Shares and EUA derivatives, including Daily EUA Futures, from ICE Endex.

Based on the record before it, the Commission is able to conclude that the Exchange’s surveillance sharing agreement by virtue of EEX’s ISG membership, with respect to the spot EUAs proposed to be held by the Trust, and the Exchange’s CSSA with ICE Endex, with respect to EUA derivatives, including Daily EUA Futures, can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices with respect to the spot EUAs proposed to be held by the Trust. These agreements, whether through ISG membership or CSSAs, should help to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares of the Trust less readily susceptible to manipulation. The Commission therefore finds that the proposed rule

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<sup>48</sup> See supra note 31 and accompanying text. Pursuant to its membership in ISG, EEX is obligated, and has undertaken a commitment, to share information, including, without limitation, with respect to spot EUAs, with other ISG members, including the Exchange. See supra note 42 and accompanying text.

<sup>49</sup> See Amendment No. 3, supra note 10, 90 FR at 13958.

<sup>50</sup> See supra note 34 and accompanying text. See also supra note 33 and accompanying text (noting that EUA single day futures contracts on Nasdaq Oslo are not traded and that there is only de minimis trading volume on Nasdaq Oslo in certain quarterly futures contracts). The Commission previously found that ICE Endex is a significant regulated market with respect to EUA futures. See Securities Exchange Act Release No. 101641 (Nov. 15, 2024), 89 FR 92252, at 92264-65 (Nov. 21, 2024) (SR-NYSEARCA-2024-27).

change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,<sup>51</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest.

B. Exchange Act Section 11A(a)(1)(C)(iii)

The proposed rule change, as modified by Amendment No. 3, sets forth aspects of the Trust, including the availability of EUA pricing and market information, transparency of Trust holdings, and types of surveillance procedures, that are consistent with other exchange-traded products that the Commission has approved.<sup>52</sup> This includes commitments regarding: the availability via the Consolidated Tape Association of quotation and last-sale information for the Shares; the availability on the Trust's website of certain information related to the Trust and the Shares, including NAV; the dissemination of the IFV by one or more major market data vendors, updated every 15 seconds throughout the Exchange's regular trading hours; the Exchange's surveillance procedures and ability to obtain information regarding trading in the Shares of the Trust and trading in the spot EUAs traded on EEX and other EUA derivatives traded on both EEX and ICE Endex; the conditions under which the Exchange would implement trading halts and suspensions; and the requirements of registered market makers in the Shares of the Trust. In addition, the Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's rules governing the trading of equity securities.<sup>53</sup> Further, the applicable listing rule of the Exchange requires that all statements and representations made in its filing regarding, among others, the description of the portfolio or

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<sup>51</sup> 15 U.S.C. 78f(b)(5). For avoidance of doubt, a surveillance-sharing agreement is not the only means by which an exchange may demonstrate consistency with Section 6(b)(5) of the Act.

<sup>52</sup> See, e.g., Securities Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895 (Dec. 29, 2009) (SR-NYSEARCA-2009-94) (Order Granting Approval of Proposed Rule Change Relating To Listing and Trading Shares of the ETFS Palladium Trust); and Securities Exchange Act Release No. 94518 (Mar. 25, 2022), 87 FR 18837 (Mar. 31, 2022) (SR-NYSEARCA-2021-65) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)).

<sup>53</sup> See Amendment No. 3, supra note 10, 90 FR at 13963.

reference assets, limitations on such portfolio holdings or reference assets, and the applicability of the Exchange's listing rules specified in the filing, will constitute continued listing requirements.<sup>54</sup> Moreover, the proposed rule change states that the Trust has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the applicable continued listing requirements; pursuant to obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor for compliance with the continued listing requirements; and if the Exchange becomes aware that the Trust is not in compliance with the applicable listing requirements, that Exchange will commence delisting procedures.<sup>55</sup>

The Commission therefore finds that the proposed rule change, as modified by Amendment No. 3, is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Trust's holdings, and to ensure fair and orderly markets for the Shares of the Trust.

#### IV. Conclusion

This approval order is based on all of the Exchange's representations and descriptions in the proposed rule change, as modified by Amendment No. 3, which the Commission has carefully evaluated as discussed above. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Act.<sup>56</sup>

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<sup>54</sup> See NYSE Arca Rule 8.201-E, Commentary .04. See also Amendment No. 3, supra note 10, 90 FR at 13964.

<sup>55</sup> See Amendment No. 3, supra note 10, 90 FR at 13964.

<sup>56</sup> 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k-1(a)(1)(C)(iii).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>57</sup> that the proposed rule change (SR-NYSEARCA-2024-70), as modified by Amendment No. 3, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>58</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>57</sup> 15 U.S.C. 78s(b)(2).

<sup>58</sup> 17 CFR 200.30-3(a)(12).