

U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

#### CONTACT PERSON FOR MORE INFORMATION:

For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: April 24, 2025.

Vanessa A. Countryman,  
Secretary.

[FR Doc. 2025-07415 Filed 4-25-25; 11:15 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102920; File No. SR-CboeBZX-2025-057]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fidelity Blue Chip Growth ETF, Fidelity Blue Chip Value ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and the Fidelity Fundamental Small-Mid Cap ETF, Shares of Which Are Listed and Traded on the Exchange Pursuant to BZX Rule 14.11(m)

April 23, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 11, 2025, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“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 BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to permit the Fidelity Blue Chip Growth ETF, Fidelity Blue Chip Value ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and the Fidelity Fundamental Small-Mid Cap ETF<sup>5</sup> (collectively referred to as the “Funds”), shares of which are listed and traded on the Exchange pursuant to BZX Rule 14.11(m), to operate a “Semi-Transparent Sleeve” and “Fully-Transparent Sleeve” and to expand the investible universe for the proposed Fully-Transparent Sleeve.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), 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.

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

###### 1. Purpose

The Exchange adopted BZX Rule 14.11(m) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Tracking Fund Shares, which are securities issued by an actively managed open-end management investment

company.<sup>6</sup> Exchange Rule 14.11(m)(2)(A) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Tracking Fund Shares on the Exchange. Pursuant to this provision, the Exchange submitted proposals to list and trade shares (“Shares”) of Tracking Fund Shares of the Fidelity Blue Chip Growth ETF, Fidelity Blue Chip Value ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and the Fidelity Fundamental Small-Mid Cap ETF<sup>7</sup> (collectively referred to as the “Funds”).<sup>8</sup>

<sup>6</sup> Rule 14.11(m)(3)(A) provides that “[t]he term ‘Tracking Fund Share’ means a security that (i) represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. Rule 14.11(m)(3)(E) provides that “[t]he term ‘Tracking Basket’ means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares.” Rule 14.11(m)(3)(F) provides that “the term ‘Custom Basket’ means a portfolio of securities that is different from the Tracking Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares.

<sup>7</sup> The Fidelity Small-Mid Cap Opportunities ETF was renamed the Fidelity Fundamental Small-Mid Cap ETF on February 26, 2024.

<sup>8</sup> See Securities Exchange Act Nos. 88887 (May 15, 2020) 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, To Adopt Rule 14.11(m), Tracking Fund Shares, and To List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF) (the “Original Order”); 90530 (November 30, 2020) 85 FR 78366 (December 4, 2020) (SR-CboeBZX-2020-085) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF Under Rule 14.11(m)) (the “Original Notice”); 92946 (September 13, 2021) 86 FR 51941 (September 17, 2021) (SR-CboeBZX-2021-060) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect an Amendment to the Application and Exemptive Order Governing the Following Funds, Shares of Which Are Listed and Traded on the Exchange Under BZX Rule

Continued

<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).

<sup>5</sup> The Fidelity Small-Mid Cap Opportunities ETF was renamed the Fidelity Fundamental Small-Mid Cap ETF on February 26, 2024.

The Funds are actively-managed exchange-traded funds for which Fidelity Covington Trust, among others, submitted an application for exemptive relief (the “Original Application”) which was granted under an exemptive order (the “Original Exemptive Order”, and the Original Exemptive Order together with the Original Application the “Original Exemptive Relief”) issued on December 10, 2019.<sup>9</sup> Pursuant to the Original Exemptive Relief, the Funds are generally excluded from investing in asset classes that are not U.S. Equities. Furthermore, the Original Order and Original Notice to list and trade shares of the Funds provided that each of the Fund’s holdings will conform to the permissible investments as set forth in the Original Exemptive Relief.<sup>10</sup>

On March 3, 2025, the issuer filed an amendment to the Original Application (the “Amended Application”) <sup>11</sup> for which the Commission issued an exemptive order on March 31, 2025 (the “Amended Exemptive Order”, <sup>12</sup> and the Amended Exemptive Order together with the Amended Application, the “Amended Exempted Relief”) to allow the Funds to operate a “Fully-Transparent Sleeve” and “Semi-Transparent Sleeve” and allow the

Fully-Transparent Sleeve of the Funds additional flexibility to invest in securities and instruments including fixed income securities, foreign investments that do not trade contemporaneously with the Shares, and derivatives (the “Amended Exemptive Order Investments”).

Pursuant to the Amended Exemptive Relief, for the Fully-Transparent Sleeve, each Fund will comply with the portfolio holdings disclosure requirements of Rule 6c–11 under the Investment Company Act of 1940 (the “1940 Act”) and will publish, on a daily basis, its portfolio holdings only with respect to the Fully-Transparent Sleeve as of the end of the prior business day in accordance with the requirements of Rule 6c–11(c)(1)(i). The remainder of a Funds’ portfolio will invest solely in the permissible investments provided for in the Original Exemptive Relief, which constitutes the Semi-Transparent Sleeve, and will continue to disclose portfolio holdings in a manner consistent with the Original Exemptive Relief. Flexibility to operate the Fully-Transparent Sleeve would allow a Fund to pursue investment strategies similar to those utilized by Exchange-Traded Funds (“ETFs”) that operate pursuant to Rule 6c–11 under the 1940 Act because, with respect to the Fully-Transparent Sleeve only, a Fund would be able to invest in the Amended Exemptive Order Investments not permitted under the Original Exemptive Relief.

Now, the Exchange is submitting this proposal to modify representations made in the Original Order and Original Notice to allow the Funds to operate a Fully-Transparent Sleeve and Semi-Transparent Sleeve and also to expand the list of permissible instruments for the Fully-Transparent Sleeves of each Fund to include the Amended Exemptive Order Investments.<sup>13</sup> The Fully-Transparent Sleeve would comply with the portfolio holdings disclosure requirements of Rule 6c–11 of the 1940 Act, and both the Fully-Transparent Sleeve and the Semi-Transparent Sleeve would continue to comply with Exchange Rule 14.11(m) (Tracking Fund Shares).

The principal difference between Tracking Fund Shares and ETFs operating under Rule 6c–11 is that, in

lieu of disclosing their full portfolio holdings daily, a series of Tracking Fund Shares provides daily disclosure of the Tracking Basket <sup>14</sup> and discloses its full portfolio holdings within at least 60 days following the end of every fiscal quarter.<sup>15</sup> Under the Amended Exemptive Order, the ratio of the Fully-Transparent Sleeve portion of the Tracking Basket to the total Tracking Basket will correspond to the ratio of the Amended Exemptive Order Investments to the ETF’s aggregate portfolio holdings. The ratio of the Semi-Transparent portion of the Tracking Basket to the total Tracking Basket will correspond to the ratio of all investments other than Amended Exemptive Order Investments to the ETF’s aggregate portfolio holdings.<sup>16</sup> All Amended Exemptive Order Investments held by a Fund will be included in the Fund’s Tracking Basket in their actual weights (*i.e.*, they will be fully disclosed).<sup>17</sup> Additionally, the Funds will continue to publicly disclose the Fund Portfolio <sup>18</sup> within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time as required under Rule 14.11(m)(4)(B)(iii). Consistent with the Amended Exemptive Order, each Fund, to the extent it invests in Amended Exemptive Order Investments, will publish a new Tracking Basket that consists of two distinct portions: (1) a first portion corresponding to the Semi-Transparent Sleeve; and (2) a second portion corresponding to the Fully-Transparent Sleeve that fully discloses all Amended Exemptive Order Investments in a manner consistent with Rule 6c–11(c)(1).

The Exchange also proposes to expand the universe of investments for the Fully-Transparent Sleeve of each Fund. Specifically, the Exchange proposes to provide the Fully-Transparent Sleeve of each Fund the flexibility to invest in the Amended Exemptive Order Investments as well as the permissible investments provided in the Original Exemptive Relief. The Semi-Transparent Sleeve of each Fund would continue to invest only in the permissible investments noted in the Original Order, Original Notice, and the Original Exemptive Relief.

Each of the Funds will comply with the conditions of the Amended Exemptive Order and the Exchange is

14.11(m): Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, Fidelity Small-Mid Cap Opportunities ETF, Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF) (the “First Subsequent Notice”); 94401 (March 11, 2022) 87 FR 15296 (March 17, 2022) (SR–ChoeBZX–2022–018) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Certain Series of Tracking Fund Shares Issued by Fidelity Covington Trust, Which Are Listed and Traded on the Exchange Pursuant to Rule 14.11(m), To Use Custom Baskets) (the “Second Subsequent Notice”, and together with the Original Order, Original Notice, and First Subsequent Notice the “Prior Filings”).

<sup>9</sup> See Investment Company Act Release No. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) (the “Original Application”) and 33712 (December 10, 2019) (the “Original Exemptive Order”) (File No. 812–14364).

<sup>10</sup> Pursuant to the Original Exemptive Relief, each Fund’s permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (“foreign common stocks”), exchange-traded preferred stocks, exchange-traded American Depositary Receipts, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of each Fund will be listed on a U.S. national securities exchange.

<sup>11</sup> See Investment Company Act Release No. 35486 (March 3, 2025) 90 FR 11445 (March 6, 2025) (File No. 81215606) (the “Amended Application”).

<sup>12</sup> See Investment Company Act Release No. 35517 (March 31, 2025) (File No. 812–15606) (the “Amended Exemptive Order”).

<sup>13</sup> See File No. 812–15606, dated February 24, 2025. The Funds sought the same investment flexibility to choose its investments as ETFs relying on Rule 6c–11 under the 1940 Act (“Rule 6c–11”) subject to the same portfolio holdings disclosure requirements as Rule 6c–11 ETFs with respect to Amended Exemptive Order Investments. The Funds are not able to operate in reliance on Rule 6c–11 under the Amended Exemptive Order because they do not and will not disclose all of their portfolio holdings daily as required by the rule.

<sup>14</sup> See Exchange Rule 14.11(m)(3)(E).

<sup>15</sup> See Exchange Rule 14.11(m)(4)(B)(iii).

<sup>16</sup> See Investment Company Act Release No. 812–15606 (March 31, 2025).

<sup>17</sup> *Id.*

<sup>18</sup> See Exchange Rule 14.11(m)(3)(B).

updating representations in the Original Order and Original Notice accordingly. Except for the changes noted above, all other representations made in the Prior Filings for each of the Funds<sup>19</sup> remain unchanged and will continue to constitute continued listing requirements for each of the Shares.<sup>20</sup> Both the Semi-Transparent Sleeve and Fully-Transparent Sleeve of the Funds will continue to comply with all of the requirements of Rule 14.11(m) as the proposal would only add more transparency to the Tracking Basket.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>21</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>22</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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. The proposed amendment would permit each of the Funds the use of a Semi-Transparent Sleeve and Fully-Transparent Sleeve, as provided in the Amended Exemptive Relief. The amendment would also expand the investible universe for the Fully-Transparent Sleeve to include the Amended Exemptive Order Investments in addition to the permitted investments provided in the Original Order, Original Notice, and the Original Exemptive Relief. As the proposed Fully-Transparent Sleeve of each Fund would comply with the portfolio holdings disclosure requirements of Rule 6c–11 of the 1940 Act and Rule 14.11(m), the proposal would only add more transparency to the Tracking Basket. Each of the Funds would continue to comply with the requirements of Rule

14.11(m) and would be able to operate in a manner consistent with the Amended Exemptive Relief.

Except for the changes noted above, all other representations made in the Prior Filings remain unchanged and, as noted, will continue to constitute continued listing requirements for the Funds.

### *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. As noted, the proposed amendment is intended to permit each Fund to use a Fully-Transparent Sleeve and Semi-Transparent Sleeve, and to expand the investible universe of the Fully-Transparent Sleeve to include the Amended Exemptive Order Investments, as provided in the Amended Exemptive Order. The proposal will allow for the listing and trading of a unique series of Tracking Fund Shares that will encourage competition. The Exchange believes that these changes will not impose any burden on competition.

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

The Exchange neither solicited nor received comments on 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 Act<sup>23</sup> and Rule 19b–4(f)(6)<sup>24</sup> 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.<sup>25</sup>

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the

Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)<sup>26</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that, pursuant to the Amended Exemptive Order,<sup>27</sup> the Funds are permitted to operate a Fully-Transparent Sleeve and Semi-Transparent Sleeve, and that the Fully-Transparent Sleeve of the Funds is able to invest in Amended Exemptive Order Investments. The proposed rule change seeks to revise certain descriptions of the Funds made in the Prior Filings to permit the Funds to operate a Fully-Transparent Sleeve and Semi-Transparent Sleeve, and, with respect to the Fully-Transparent Sleeve, to invest in Amended Exemptive Order Investments, in accordance with the requirements set forth in the Amended Exemptive Order. The Exchange also represents that the Fully-Transparent Sleeve will comply with the portfolio holdings disclosure requirements of Rule 6c–11 under the 1940 Act, and both the Fully-Transparent Sleeve and the Semi-Transparent Sleeve will continue to comply with the requirements of BZX Rule 14.11(m). In addition, the Exchange represents that, except for the changes noted above, all other representations made in the Prior Filings remain unchanged and will continue to constitute continued listing requirements for the Funds. As such, the proposal, which seeks to conform to certain of the requirements of the Amended Exemptive Order (as described above), raises no novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>28</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

<sup>19</sup> Supra note 8.

<sup>20</sup> The Funds' use of Custom Baskets would remain the same as described in the Second Subsequent Notice.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b–4(f)(6).

<sup>25</sup> 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. See *id.* The Exchange has satisfied this requirement.

<sup>26</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>27</sup> See *supra* note 12 and accompanying text.

<sup>28</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeBZX-2025-057 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-CboeBZX-2025-057. 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-CboeBZX-2025-057 and should be submitted on or before May 20, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

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

[FR Doc. 2025-07315 Filed 4-28-25; 8:45 am]

**BILLING CODE 8011-01-P**

#### 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 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 of the Trust

<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).

<sup>29</sup> 17 CFR 200.30-3(a)(12), (59).

<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).

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