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VIA FIRST CLASS MAIL

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File Number SR-NYSEArca-2012-28

Dear Ms. Murphy:

We are writing on behalf of RK Capital LLC, an international copper merchant, and four U.S. end-users of copper: Southwire Company, Encore Wire Corporation, Luvata and AmRod, in further opposition to the proposed rule change allowing the listing and trading of J.P. Morgan's proposed copper backed ETF and, in particular, in accordance with the SEC's July 19, 2012 Order in the above-referenced proceeding, to rebut certain of the assertions and arguments made by J.P. Morgan, as the ETF sponsor, in the comment letter submitted to the SEC by its counsel, Davis Polk, on August 24, 2012 ("JPM letter").

We also reiterate our request, pursuant to Section 19(b)2) of the Securities Exchange Act of 1934, as amended by the Securities Act Amendments of 1975, (15 U.S.C. 78s(b)(2)(B), for an opportunity to make an oral presentation. We propose to make ourselves and clients available at a mutually convenient time after October 10, 2012.

JPM, through its counsel, makes several arguments why its product would not, as we strongly suggest it will, deplete LME warehouses of copper on warrant, or otherwise "remove copper from the physical market." See JPM Letter at 7. These arguments are either based on misstatements of fact or are devoid of empirical support, or both.

First, they argue that they will not accept LME warranted copper. See JPM letter at 8. This, of course, is beside the point. JPM will not accept warranted copper because they do not want the copper the ETF holds to be subject to LME lending requirements which would protect the market against the economic effects of copper hoarding JPM's product will achieve. JPM and its authorized participants will instead almost certainly take LME warranted copper stored in JPM's Henry Bath warehouses, which is copper immediately available to them, take it "off-warrant," and deem it part of ETF inventory, and thus no longer subject to LME lending requirements.

They next argue that it would not make economic sense to take LME copper off-warrant, as we say they and their "authorized participants" will do, because taking such copper off-warrant requires that such copper be physically removed from an LME warehouse and that there are long queues that make such removal impractical and expensive. See JPM letter at 8, 34-35 ("The length of the queue is important because under the LME requirements applicable to an LME approved warehouse, metal must be physically delivered out of the warehouse before it can be considered de-warranted and removed from the LME Sword system"). However, not only are there no queues at many LME warehouse (and queues at St. Louis and New Orleans in particular are not very long), there is in fact no requirement that warranted copper must physically leave an LME warehouse in order to be taken off-warrant. To the contrary, if the copper is already stored in one of the warehouses owned by the Henry Bath Company, which is owned by the Sponsor, the copper can just be moved to another part of the warehouse, which is what we say will happen. All that's required is that the LME be notified that the copper is no longer on warrant, the copper lots themselves marked so as to indicate that they are no longer on warrant -- a practice known as "white lining" -- and notification to the LME that the lots being taken off-warrant are no longer part of the LME warehouse stocks. Indeed, as owners of the Henry Bath warehouses, JPM should know this happens all the time with lots that are either being transferred elsewhere or made subject to financing arrangements where once the lots may once again be re-warranted.

JPM further argues that there will be no need to take LME copper off-warrant because there are ample supplies of non-warranted copper available for the ETF to acquire. Indeed, the Sponsor in its letter represents that it "expects that deposited copper will come from diverse sources, including sources not previously known or reported to the market." JPM Letter at 8. However, all they point to are supplies of non-warranted copper belonging to producers, consumers and/or merchants and traders that is otherwise in the supply pipeline. Nowhere in its letter does JPM demonstrate that any of this copper is actually available for sale to itself or to the ETF's other authorized participants. Indeed, even though it was widely reported that in late 2010, after announcing its intention to launch this ETF, JPM began acquiring substantial quantities of physical copper for that purpose, JPM cites not one example of any copper that it has ever acquired itself for that purpose from anyone.

Instead, JPM argues that, in theory, producers, consumers and others with excess inventory would be able to sell their copper to an authorized participant and, in return, get cash to finance their hedging or other capital requirements. However, that is precisely what already happens when producers, consumers and others with excess inventory deliver their product to LME warehouses; brokers will immediately pay them cash for their inventory, deposit the copper in the LME warehouse and get issued warrants.

JPM suggests that having an alternative to the LME warehouse would promote competition and thus be in the public interest. However, JPM cites no evidence that any producers, consumers or others with excess inventory would actually have any interest in having their inventory be placed in an ETF. The copper that producers sell to the LME is branded copper. The LME warehouses do not disclose what specific brands of copper they may be

holding at any given time since all copper on warrant may be delivered to satisfy an LME short position, regardless of brand.

The ETF, however, will disclose what brands of copper it will be holding at any given time. Indeed, JPM represents in its letter that "[o]n each business day the Trust will publish, among other information, the identification number, brand, warehouse location, weight and date of receipt of each lot it holds -- information which may not previously have been regularly available to the market, because the copper accepted into the Trust will not be registered on any exchange." JPM Letter at 9. We know of no copper producer that would want the consuming public to know that its brand or brands have been deposited in an ETF because that would suggest to the consuming purchaser that its brands are somehow unsaleable compared to other brands.

By contrast, while precious metals gold, silver, platinum and palladium are branded products, the brand is not that important to end users Reports of such brands being acquired by an authorized participant in an ETF for deposit to an ETF warehouse would therefore have no commercial repercussions.

In short, even though copper producers would probably benefit in the short term from an increase in prices were copper-backed ETFs to be successful, it comes as no surprise to us, who deal with producers on a regular basis, that JPM nowhere cites to a single instance where a copper producer has ever indicated a willingness to allow its excess inventory to be sold to an authorized participant for deposit into an ETF.

There are also no reasons why consumers who may have excess inventory may want to have it transferred to an ETF. A consumer who sells its excess inventory to an authorized participant in an ETF will not likely be able to get that copper back from the ETF if it is needed at some future date. First, before a consumer can even try to redeem any copper from an ETF, it must first acquire shares in the ETF. Consumers generally do not purchase supply that way and JPM cites no evidence -- and we are aware of none -- that in the entire history of metal holding ETFs for precious metals, consumers have ever once exercised redemption rights in order to get actual delivery of metal. The exercise of redemption rights might be practical for authorized participants who are holding ETF shares they have not been able to sell and thus wish to redeem those shares for metal that can be sold, and indeed, that likely reflects the only redemption of ETF shares that ever takes place.

JPM nevertheless suggests that redemption would present no problem at all for consumers needing metal. As indicated, consumers would first need to acquire ETF shares. That assumes, of course, there will be shares available for sale when the consumer needs them. If the ETF launch is successful and shareholders expect copper prices to rise, there may not be shares available to acquire except at a relatively high price, a phenomenon known as "stickiness," in which investors tend to buy and hold shares for several years. If this holds true for the copper ETF, the impact would be to hold a chunk of metal away from the market for several years, thus causing prices to rise.

What is more, in that situation, the authorized participant acting as the consumer's broker may then have to acquire copper (presumably from the LME as that is the most likely source of such copper) for transfer to the ETF in exchange for the creation of new shares. Obviously, in that situation, it would probably be much easier for the broker simply to acquire LME copper warrants and, utilizing the LME sword system, trade it for copper that can be more readily delivered to the consumer.

But assuming arguendo that the broker, having previously tendered the copper to the ETF, actually has ETF shares to sell. In that case, the consumer would exercise his redemption rights through the authorized participant and, in theory, metal would be made available for delivery out of the ETF within three business days. However, the Sponsor represents that the copper to be delivered upon redemption would be the copper bearing the cheapest acquisition price. That usually means copper in the location where it is most plentiful.

JPM suggests that while purchasers may be concerned about the location where such copper may be delivered, they are otherwise indifferent to the brand that may be made available. Thus, their letter states that it is the Sponsor's "belief" that "purchasers generally consider all such brands to be interchangeable with one another." JPM Letter at 8, n. 21. That assumption, however, is not valid.

Thus, even if the copper happens to be in a location which is near to the purchaser, which may or may not be the case, copper in that location is not necessarily going to be the brand of copper the purchaser needs. Most copper fabricators can only use certain brands in their factories. Thus, the purchasing consumer, probably through its broker, will have to trade the copper being released from the ETF for copper that is of the correct brand.

However, unless that transaction can be arranged quickly, and the copper from the ETF warehouse sent elsewhere, it will have to be delivered to the consumer, possibly over a long distance at a substantial cost. Alternatively, until the exchange can be made, the consumer might be able to store the copper with the ETF warehouse (and incur a storage fee). Either way, though, the consumer will have to bear a substantial cost and may not get the copper it needs in a timely manner if indeed it can get it at all. In short, the redemption rights provided by the ETF are illusory, there is no history of any consumers who need metal ever invoking them for any other ETFs, and, in fact, all or almost all redemptions are, as indicated above, exercised solely by authorized participants, usually in a declining market, who are unable to sell their ETF shares.

JPM also suggests that even if LME warrants are used to acquire copper for its ETF, Comex copper can always be deposited into the LME warehouse to replenish whatever is lost. See JPM Letter at 30 ("With respect to the amount of copper in the non-LME exchange warehouses that is eligible to put on LME warrant, COMEX registered copper is the same quality as LME (grade A copper with a purity level of 99.9935%), and therefore, all 48,129 metric tons (approximately $365 million) would be LME-warrant eligible.") However, as we have shown, only certain Comex brands are deliverable to the LME; consequently, only a portion of the Comex inventory could potentially be delivered and, because the American producers that supply the Comex are themselves short of copper these days, it is unlikely that the Comex supply that could be delivered would itself be replenished anytime soon. Thus, the impact of drawing

down LME warranted stock would likely also be felt on the Comex -- which has traditionally been the case when the LME copper market is subject to a squeeze or a corner.

Finally, JPM suggests that there is no need for its ETF (or that of other ETFs such as BlackRock's companion copper offering) to deplete the stock of copper in LME warehouses because there is supposedly plenty of non-warranted copper "inventory" being held for "investment" that would be available to supply the copper needs of its ETF. See JPM Letter at 13-14. However, JPM does not demonstrate that any of this so-called "inventory" would actually be available for sale to an ETF. Thus, for example, the largest supposed off-warrant inventory is said to be in bonded warehouses in China. See JPM Letter at 30-32. However, this inventory has grown this year as demand for copper in Chinese industry has weakened, thus weakening Chinese copper prices as compared to copper prices on the LME. Because of the higher prices such copper would receive if placed on warrant on the LME, one would expect substantial amounts of such copper to leave China -- just as one would expect such copper to leave China for an ETF. However, as JPM knows, despite conditions on paper that might favor it, there has in fact been no such movement of copper out of China. One reason is that China levies a substantial export tax; the other reason is that, as the largest consuming country in the world, China is not likely to export metal, even when its own domestic demand weakens, because, even with a weakened demand, China is still the largest single copper consuming country in the world, and its level of consumption continues to grow.

JPM elsewhere suggests that hedge funds and copper trading companies are holding substantial inventories of copper that could be available for purchase. Thus, for example, JPM suggests that RK itself, by virtue of an offtake agreement it recently entered into for the output of a copper mine, represents one such potential source of copper. JPM Letter at 18, n. 49. However, there has been no demonstration that RK would have any interest in having its copper supply go to an ETF; in fact, RK uses the copper it acquires to supply copper fabricators around the world. What is more, the entire idea of companies holding copper for long term "investment" makes no sense. The reason is that the cost of storage, even for large financially substantial companies, generally makes long term holding of copper financially untenable, and we know of no companies that do it. Instead, those that are in the business of acquiring copper do so for the purpose of selling it to fabricators. Consequently, most copper is held only for a relatively short period as it makes its way from producer to merchant to fabricator.

JPM suggests that there are exceptions to that rule, such as when companies store copper in LME warehouses and use it as collateral to secure loans. That practice does in fact occur, largely as a function of both extremely low interest rates and favorable short term storage costs, but there is no evidence to suggest that any such copper, when no longer subject to such financing arrangements, would be moved to an ETF unless the copper were on warrant, held by a broker, and taken off-warrant and transferred to the ETF, which is what we expect will happen, thus depleting the LME warehouse of its supply of copper available for immediately delivery. In fact, as we have said all along, there is simply no evidence that there will be any source of supply to satisfy the copper needed for these ETFs other than warranted copper in LME warehouses and that, because the United States currently offers copper with the cheapest locational premia, the

first such LME inventory to be depleted will likely be the inventory of copper held in New Orleans, where the Sponsor's Henry Bath warehouses are located. JPM offers no evidence to the contrary.

Finally, JPM argues that even if the supply of copper on warrant in LME warehouses were to be reduced or otherwise depleted, allowing the listing and trading of shares of physical copper backed ETFs would still be in the public interest. Thus, JPM argues that its product would allow investors to purchase fractional interests in physical copper at much lower costs than having to purchase a copper forward or futures contract, that the ETF market it will create will be "transparent," and that consumers actually needing physical copper can always redeem ETF shares and get delivery. However, none of these reasons are valid or in the public interest.

Unlike the precious metals gold, silver, platinum and palladium, which have been stored for centuries and are the equivalent of currencies that may be traded around the world, all copper produced is ultimately fabricated into products, such as copper wire, cable, and tubing, which in turn is used for construction, plumbing, electrical generation, refrigeration and the automotive industry, among other applications. Thus, by definition, because the market for copper is so tight, the creation of ETFs will be definition reduce inventory available for fabrication.

JPM also argues that "[t]he Trust will track, and not drive, copper prices, which hare largely a function of global forces of supply and demand." JPM Letter at 9. However, once the market perceives that inventory available for fabrication is will be reduced in order to satisfy the demand for investors in ETFs, near term prices will rise and the market will become backward dated. This was apparent when JPM and BlackRock, along with ETFS, all announced that they intended to launch copper backed ETFs in the fall of 2010. Within three months, near term copper prices rose to their all-time high on the LME of more than $10,000 per metric ton.

Because of the huge costs involved in storing copper, holders of ETF shares will see the value of their investment decline over time unless the ETF can somehow keep acquiring more and more metal and thus itself drive prices upward so as to exceed the cost of monthly storage. JPM argues in its draft registration statement that, if its product is successfully launched, that is exactly what it suggests could happen. As the Financial Times reported last week, see "JPMorgan flip flops on commodity ETFs," Financial Times, September 6, 2012, "JPMorgan's defense appears to contradict its previous published views, in which it pointed to changes in ETF holdings as a major driver of prices." A copy of the Financial Times article is enclosed.

In fact, the removal of substantial amounts of copper on warrant from LME warehouses, including substantially all of the copper on warrant from LME warehouses in the United States, will have an immediate and dramatic impact on near term prices. We respectfully submit that allowing investors in ETFs to underwrite the costs of a corner or squeeze on the commodity markets is not consistent with the public interest, no matter what JPM says. However, even if the copper ETFs would be able to draw its copper from supplies other than those already on warrant with the LME, which we believe is unlikely, the inevitable tightening of

supply will still lead to higher prices and, as the Financial Times story points out, JPM itself has in the past pointed to the tightening of supply caused by the precious metals ETFs as a significant driver of precious metals prices. Thus, in November 2010, JPM argued, for example, that "ETF and Chinese demand could drive spot prices for [silver] to $30 per troy ounce by 1Q2011." And in March 2010, after the new palladium ETF acquired 505,000 ounces in two months (equivalent to 42 percent of mine production over the period) and prices hit a two year high, JPM said that ETF buying had "crowded out" the market. As the Financial Times reports, "Indeed, precious metals analysis generally see ETF buying as one of the most important drivers of prices, being a significant and very visible component of investment in the metals. As one well-regarded precious metals analyst put it: "To say that ETF demand has no impact on the price is nonsense."

JPM argues that concerns about market manipulation are greatly exaggerated and that regulatory agencies today, such as the SEC, the CFTC and the exchange itself, will be able to prevent any anti-manipulative behavior. However, neither the JPM or BlackRock ETF will allow itself to be governed by LME rules. Consequently, no matter how much copper may be acquired by these ETFs, none of its will be subject to the LME's lending guidance. The entire value of warranted stock in LME warehouses in the world today is worth about $1.4 billion. If a hedge fund decides to invest $1 billion in one or more ETFs, it can effectively acquire virtually all of the copper in the LME warehouses worldwide. Even if the hedge fund had no intent to squeeze or corner the market, its investment and transfer of so much copper into one or more ETFs would obviously not be in the public interest, but would U.S regulatory agencies and the exchange be able to prevent that from occurring or otherwise be able to do anything about it? And, even if acting independently, what if one or more large banks recommend that their high net worth customers purchase shares of an ETF? Here, too, the effect could conceivably be the same -- and likewise not be in the public interest. But would the SEC, CFTC and/or the Exchange be able to do anything about it?

And what of the remaining inventory in LME warehouses, if any? The cost of acquiring the remaining inventory would be relatively inexpensive, thus reducing one of the hurdles in trying to engineer a corner or squeeze. What will the CFTC, SEC and the Exchange be able to do to prevent one or more conspirators who own such inventory from buying long positions sufficient to squeeze short sellers who need such long positions or physical delivery to close out their positions?

These risks of corners and squeezes are not generally present in the precious metals markets because there are ample stored supplies of these metals that can always be released to the market in the event of a shortage. Banks and hedge funds that hold precious metals as an investment can always sell them in the event of an artificially induced shortage. But copper is different. Because there are no sources of copper held as an investment, one would have to dismantle a country's infrastructure to find enough copper tubing, wire and cable to be remelted and turned into cathode in order to rectify any artificially induced shortage created by one or more successful copper ETFs. That, we submit, is not likely to happen.

The bottom line is that, as we have said at the outset, the launch of these copper ETFs will almost certainly wreak havoc on the copper fabricating market, particularly in the

United States, virtually destroy the price discovery function of the LME, and, because of the huge ramifications in the many U.S. industries that rely on copper as a feedstock, it will likely undermine any U.S. economic recovery.

As indicated at the outset, we respectfully request an opportunity to respond more fully in an oral presentation, which we would like to schedule at a mutually convenient time on or after October 10.

Respectfully submitted,

Robert B. Bernstein

RBB:np

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Farchy, Jack. "JPMorgan Flip Flops on Commodity ETFs." *Financial Times*. N.p., 6 Sept. 2012. Web. 11 Sept. 2012. <http://www.ft.com/cms/s/0/a782c1c6-f772-11e1-ba54-00144feabdc0.html>.