May 9, 2012

Re: File Number SR-NYSEArca-2012-28

Comments of Vandenberg & Feliu LLP on Proposed Rule change To List and Trade Shares of the JPM XF Physical Copper Trust Pursuant to NYSE Arca Equities Rule 8.201.

Vandenberg & Feliu is a U.S. law firm based in New York that represents a major copper merchant company and several copper fabricators around the United States. Our clients are active traders of copper on the LME. From time to time, merchants are net short sellers of copper on the LME, which means they may require physical copper from LME warehouses to close out their hedge positions. Fabricators and/or merchants may from time to time purchase physical copper from LME warehouses in order to satisfy short-term needs for additional supply.

We oppose the rule-change. If approved, the NYSE will permit the JPM XF Physical Copper Trust to sell shares of an ETF backed by physical copper that must meet the LME requirements for copper available for immediate delivery. The copper backing this ETF will be removed from the market. For the most part, the only such copper available to satisfy the ETF's requirements is copper in LME warehouses. This is physical copper available to satisfy short positions on the LME and is also used as a market of last resort by physical sellers who may have a surplus not otherwise committed to fabricators in sudden need of supply. There is currently only around 200,000 metric tons of copper stored in LME warehouses, which represents a 57% drop in inventory since last year.

JMP's offering initially calls for the immediate removal from the market of as much as 61,800 metric tons of such copper, or the withdrawal of more than 30% of the copper available for immediate delivery worldwide. JPM's offering will therefore result in a substantial artificially-induced rise in near-term copper prices on the LME, which will severely disrupt the world market for the trading of such copper by, among other things, simulating the effects of an artificial squeeze or corner being financed by unsuspecting investors in JPM's ETF. What is worse, as explained in greater detail below, the effects are likely to be felt most severely in the United States, where the premiums for copper stored in LME warehouses are the cheapest and where JPM will likely acquire most if not all of its supply.

Like all commodity squeezes and corners, this activity, which the NYSE's rules will not only be powerless to stop – but will legally allow to occur -- will have the effect of enticing investors seeking quick profits to participate in an artificially inflated market because the more that is invested in physical copper backed ETFs, the more such copper will be removed from the market -- literally taken "off-warrant" and not available for sale -- thus forcing prices even higher.

However, like all bubbles, as investor demand for this product wanes, as it inevitably will, the bubble will burst, leaving in its wake a glut of physical copper that the JPM Trust will be forced to dump on the market, causing prices to plummet, and leaving in its wake unsuspecting investors who will have lost the value of their investment. In short, this proposed rule-change will allow the trading of an ETF whose sole purpose is to remove from the market a physical metal in short supply that, unlike other ETFs backed by physical metals that have been successfully offered for sale in the United States, is used only in manufacturing and for no other purpose. Adopting this rule change will therefore undermine the integrity of the very markets that the NYSE and the SEC are supposed to protect, grossly and artificially inflate prices for an industrial commodity already in short supply and, as a consequence, wreak havoc on the U.S. and global economy.

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

1. The Purpose is Flawed

The Exchange first tries to convey the impression that a copper –backed ETF is no different conceptually from previously approved ETFs backed by physical gold, silver, platinum and palladium. Thus, in seeking approval, the Exchange states that the SEC has previously approved listing on the Exchange commodity-based trust shares, or ETF's backed by physical commodities, for gold, silver, platinum and palladium, as well as "baskets" of precious and other metals. Notice at 2. However, gold, silver, platinum and palladium are all precious metals which have traditionally been held for investment purposes, while physical copper is used exclusively for industrial purposes and is not generally held for investment .

In fact, gold, silver, platinum and palladium are not only precious metals, but they are the only precious metals in the world that are actually treated as currency. Thus, for purposes of global banking and trade, the International Standards Organization specifically includes gold, silver, platinum and palladium on its list of tradable currencies, see, i.e., ISO 4217, and the international standard unit of such precious metal currency is the "troy ounce." Indeed, the ISO has assigned these metals their own international currency codes. Thus, gold is XAU 959, silver is OAG 961, palladium is XPO 964 and platinum is XPT 962. Copper is obviously not a precious metal and it is certainly not tradable as a currency.

Because they are tradable as currencies, there are ample stored sources of gold, silver, platinum and palladium that can easily be acquired to back an ETF without any disruption in the market. For example, approximately 40% of the gold produced every year worldwide is held for investment purposes, while about 46% of the silver produced is held investment purposes. Large amounts of platinum and palladium are likewise stored worldwide. Consequently, because there is already a substantial quantity of these precious metals being held for investment purposes, the introduction of ETFs backed by these precious metals had virtually no impact on the available supply.

That would not be true for physical copper. The Exchange states that there are around 18 million metric tons of refined copper produced each year. However, the copper produced is not only used exclusively for industrial purposes, but the demand for copper each year generally

exceeds the available supply. In fact, almost all copper produced in the world is delivered pursuant to long term contracts to copper fabricators, with the result that, at any given time, there is only a limited amount of copper not otherwise committed that is available for immediate delivery. Such copper is generally stored in LME warehouses around the world. These warehouses are generally located at ports where copper can be delivered to countries that are net importers of copper. The amount of copper stored in LME warehouses generally reflects the delicate global balance of supply and demand for such copper. Thus, it is usually deposited there by producers with excess supply or by copper merchants looking for purchasers, and sold either to traders seeking to close out short positions on the LME or to fabricators in sudden need of additional supply.

Today, even though as much as 18 million metric tons are produced annually, as the Exchange recognizes, global copper consumption in 2011 is estimated to be nearly 20 million metric tons, an increase of approximately 3.5% from 2010, and the combination of a Western economic recovery and ongoing robust demand in emerging markets is expected to result in growth of global copper demand of close to 3.7% in 2012. And while there may not always be agreement as to actual global supply and production, the consensus among the experts is that copper is in deficit, i.e., annual consumption exceeds annual production, it has been in deficit for the past three years, and it is expected to remain in deficit for at least the next couple of years. Consequently, merchants and fabricators are really dependent on warehouse stocks for supply.

However, there are only about 200,000 metric tons of copper available today in LME warehouses worldwide. As indicated above, this represents a substantial 57% drop in available inventory in the past year, and represents the lowest levels since 2009. Excluding copper that is stored in China and only available to Chinese fabricators, the only other copper available for immediate delivery is about 50,000 metric tons of copper stored in COMEX warehouses in the U.S.

More importantly, though, while there may be some private sources of copper available, this LME copper is the only visible copper available to satisfy the Trust's requirements for copper to back the proposed JPM ETF. According to the Exchange, if the initial offering of the Trust's shares is successful, the Trust will immediately acquire as much as 61,800 metric tons of copper. Because the only copper that can be deposited into the Trust's warehouse is copper meeting LME specifications, the only visible source of such copper is copper in LME warehouses. Thus, if the Trust is successful, it will almost certainly remove from LME warehouses as much as 30% of the global supply of copper available for immediate delivery. Nothing even remotely comparable occurred when the SEC approved rules allowing for the sale of ETFs backed by gold, silver, platinum and palladium.

However, the market impact – particularly in the United States – is likely to be much more severe. The United States is a net importer of copper. In other words, the U.S. consumes more copper annually than it produces. Much of the copper consumed in the U.S. comes from South America through the port in New Orleans, where an LME warehouse is located, and also through the port in Panama City, where it is delivered generally to fabricators. As demonstrated below, the launch of a copper backed ETF on the Exchange is likely to upset the delicate balance of copper supplied to the United States, with potentially devastating consequences economically across a wide spectrum of industries.

According to the Exchange, the Trust plans to acquire its copper from locations with the lowest premiums. The locations with the lowest premiums for copper are all in the United States. The biggest reason for these lower premiums is that demand for copper in the United States has remained relatively flat over the past several years, while demand in China has more than quadrupled over the past ten years and continues to grow. Indeed as the Exchange itself reports, Chinese consumption has increased from 1.8 million metric tons in 2000 to 7.8 million metric tons in 2011, and with the Chinese economy expected to grow at about 8% a year, Chinese consumption will only be increasing. At the same time, America's consumption over the same period has declined from about 3.2 million tons to 1.9 million tons. However, with the U.S. economy expected to start growing by as much as 3 per cent beginning this year, demand will be increasing. European consumption has meanwhile remained relatively steady at around 4 million metric tons.

Based on the present level of demand, though, location premiums for copper in the United States are at least ten times lower than they are in Europe and Asia. Thus, the copper likely to be acquired by the Trust – and taken off market -- will be copper in the United States. This will drive up the price of copper in the United States just as the U.S. will be competing globally for production that, as indicated above, has been increasingly going to China.

There are at three main LME warehouses in the United States that will be impacted: in New Orleans, Chicago and St. Louis. According to JPM's draft Registration Statement, if the Trust is successful, it will acquire as much as 61,800 metric tons of LME copper and because the cheapest location premiums are in the United States, much if not all of that copper will come from these three U.S. warehouses. In fact, if successful, the Trust may be in a position to acquire all or substantially all of the entire U.S. supply of copper available for immediately delivery.

All copper stored in LME warehouses is on "warrant," which means that it is immediately available for sale. The total amount of copper in New Orleans today is about 45,000 metric tons, most of which is stored by Henry Bath, an affiliate of the Trust and JP Morgan. The Trust could thus acquire all of the available supply of copper in New Orleans by simply acquiring what Henry Bath currently has in storage, and taking it "off-warrant" – all without incurring any transportation costs. The same is true in warehouses in Chicago and St. Louis. Chicago has around 25,000 metric tons and St. Louis has around 53,000 metric tons. Again, all that has to occur is for Henry Bath to transfer ownership of copper in its own warehouses without having to incur any transportation costs.

The situation will also have an impact on copper stored in Comex warehouses. Unlike the LME, which generally has its warehouses in ports, such as New Orleans, or in major transportation hubs, like St. Louis and Chicago, Comex warehouses are generally located near U.S. producers of copper in Arizona and California. Copper in Comex warehouses is generally available to short sellers on the Comex and to manufacturers and fabricators located in relatively close proximity to the producers. However, the removal of large quantities of copper from the LME warehouses in the U.S. will result in the emptying out of substantial quantities of copper from the Comex warehouses. Such copper will either be delivered to LME warehouses, where the demand would be greatest, or it will be shipped to fabricators in other parts of the United States that are no longer able to get copper for immediate delivery from the LME.

If the Trust is successful, and copper in such huge quantities is taken off-market, the impact on the U.S. economy will be swift and severe. There will almost certainly be an immediate spike in the cash price for copper, as well as an immediate spike in the cash to three-month spread price of copper, known as the backwardation, as near term prices for delivery accelerate compared to prices for delivery later in time. Manufacturers and fabricators will have to pass these increases in price on to their customers, and because it is the U.S. supplies that will be hit the hardest, it will be U.S. consumers that will be hit the hardest. Everything that requires copper, including copper pipes in new homes, to copper wiring for electricity, to the copper used in air conditioning units and also in automotive wiring, will all increase in price.

The other problem, besides higher prices, is increased volatility. Prices today are already volatile. The delicate balance of supply reflected in the diminished quantities available in LME warehouses for immediate delivery can be altered at any time a large supplier or trader decides, for whatever reason, to shift quantities elsewhere. The LME publishes its warehouse stocks on a daily basis and prices tend to move in tandem with the ebb and flow of such stocks. However, when supplies are moved elsewhere, prices and/or backwardation can go up dramatically, and when the market stabilizes, they can just as easily come down. If one adds to the mix the risk of an ETF removing indefinitely all or substantially all of the copper available for immediate delivery, the risk of price volatility becomes enormous. This is because the greater amount of copper artificially kept off-the-market, the greater the chance that investors will eventually no longer keep propping up the price with further purchases, and the greater the likelihood that the bubble will burst, thus flooding the market with surplus copper, and severely depressing the price.

In addition to the limited amount of supply currently on hand, there is also the problem of supply inelasticity generally. Normally, when prices for a commodity increase, there is a corresponding increase in supply as producers react to the higher price and produce more. Here, however, as the Exchange recognizes in its discussion of general supply inelasticity worldwide, it is difficult for copper producers to increase supply, sometimes taking 15 years or longer before a new mine is opened up, and even in areas where copper is considered plentiful, political instability can keep a mine from producing. Moreover, United States producers do not have surplus product to deliver. Therefore, once the copper they place in Comex warehouses disappears, it will not likely be replenished any time soon.

Against this backdrop, the Exchange tries to convey the impression that even though the Trust will be removing substantial quantities of copper from the market, the impact will be slight because investors in the ETF would always have the right to redeem their shares for the Trust's physical copper. However, most investors in a copper-backed ETF would not have any real economic incentive to redeem their shares for physical delivery. The principal reason for this is that an investor in a copper-backed ETF would benefit immediately from any increase in price for copper because the more copper removed from the market to satisfy the demand for the ETF, the higher the price not only of copper, but also of the ETF itself. And investors willing to take advantage of that increase could easily sell their shares of the ETF on the exchange – without having to assume any risk of delivery.

Of course, once taken off-warrant and held by the Trust, copper may re-enter the market when an ETF shareholder elects to redeem his shares for actual copper metal. Thus, fabricators

could protect themselves against the risk of not being able to obtain immediate delivery by purchasing shares of an ETF and then redeeming the shares whenever they may need supply. The problem, though, is that (1) this would still represent an added cost – and risk -- to fabricators who would otherwise simply purchase available stocks from LME warehouses; (2) if already tight supplies are made artificially tighter in a rising market by reason of the ETF, the exercise of any such redemption rights will not likely have any appreciable effect on price or supply in any event; and (3) there are potential lead time issues in getting delivery from the warehouses (which if Henry Bath, are owned by JPM).

And to make matters worse, if this rulemaking is approved, and the other major competing ETF follows suit, it is conceivable that all or nearly all copper available for immediate delivery on the LME might be taken off market. Thus, for example, while nowhere mentioned in the Exchange's proposed rulemaking, at the same time that JPM filed its proposed offering with the SEC, BlackRock filed its own proposed offering for a copper backed ETF that, if successful, would remove as much as 120,000 metric tons of copper from the market. And like JPM, BlackRock also intends to acquire LME-grade copper from the LME warehouses where the location premiums being charged are the lowest. Thus, approval of this rulemaking could lead to the removal of all or nearly all of the LME and Comex supply of copper available for immediate delivery.

The ramifications are not difficult to predict. The last time U.S. supplies of copper in LME warehouses was subject to a squeeze of this magnitude was in 1995-1996 when Sumitomo Corporation in Japan conspired with a U.S. trader to squeeze the price of copper on the LME in the United States by, among other things, removing 100% of the copper from the LME warehouse in Long Beach, California. In that case, the removal of copper from the LME warehouses caused an immediate sharp spike in the near term price of copper on LME worldwide, which not only squeezed holders of short positions on the LME in the United States and abroad who were forced to pay artificially high prices to close out their positions, but it also led to substantially higher near term prices for copper and created a substantial backwardation which, as indicated, is the phenomenon that occurs when near term prices for a commodity are greater than prices for delivery later in time. Copper prices are usually in contango, which means that near term prices for delivery are lower than prices for delivery in the future. Such pricing reflects the usual pattern that buying a commodity for delivery in the future usually factors in a cost of carry or storage, which is why it is ordinarily more expensive than the same commodity would be for short term delivery. Here, however, by creating an artificial shortage of copper in LME warehouses, traders will bid up prices for delivery in the near term and, consequently, a backwardation gets created.

The Exchange tries to minimize any such consequences by suggesting that "[t]he objective of the Trust is for the value of the Trust's Shares to reflect, at any given time, the value of copper owned by the Trust at that time, less the Trust's expenses and liabilities at that time." That, however, is not an accurate statement of the Trust's objective. The Trust's objective is to remove from the United States market – where the location premiums for physical copper are the cheapest -- all or substantially all of the physical copper available for immediate delivery in the expectation that by creating an artificial shortage of a commodity used exclusively for industrial purposes, the Trust's investors will drive up the near term price of the commodity, and increase

the cash to three month spreads (or backwardation) of the commodity, and thereby drive up the price of the Trust's shares.

As BlackRock candidly admitted in its own draft registration statement, dated September 2, 2011, "[a]n increase in the demand for copper, driven by the success of the trust or of similar investment vehicles, could result in increases in the price of copper that are otherwise unrelated to other factors affecting the global copper markets. (at 10). As BlackRock further states, "because there is no limit to the number of Shares that the Trust can issue, a very enthusiastic reception of the Shares by the market or the proliferation of similar investment vehicles that issue shares backed by physical copper [such as the offering by JPM] would result in purchases of copper for deposit into the Trust or such similar investment vehicles that could be large enough to result in an increase in the price of physical copper."

JPM's objective is no different. Thus, in its July 12, 2011 draft registration statement , JPM states "[t]he Trust Agreement places no limit on the amount of copper the Trust may hold," that "[m]oreover, the Trust may issue an unlimited number of shares, subject to registration requirements, and thereby may in theory acquire an unlimited amount of copper" and that "[i]f the amount of copper acquired by the Trust were large enough in relation to global copper supply and demand, in-kind creations and redemptions of shares could have an impact on the supply and demand for copper unrelated to factors affecting the global markets for copper." (at 21).

Again, the Exchange tries to minimize the consequences by suggesting that, like gold, silver, platinum and palladium, there is a also a robust appetite among the investment community to invest in copper. Here, the Exchange states, "[t]he investment sector includes professional and private investors and speculators who are involved in investment and trading activities related to copper. Participants range from large hedge funds and other investment vehicles to day-traders on futures exchanges."

In fact, there is very little evidence that anyone in the private sector actually holds physical copper for "investment." For one thing, unlike gold, silver, platinum and palladium, which are all traded in troy ounces, copper is traded on the LME in lots of 25 metric tons, and on the Comex is lots of 25,000 pounds. As the Exchange concedes, "copper is bulky relative to precious metals such as gold silver, platinum and palladium." However, the essential point, which the Exchange omits, is that the equivalent cost of storing copper, as opposed to storing these precious metals, is enormous. Consequently, copper is generally not stored for investment purposes. Indeed, because of the fixed costs of storage, it is generally much cheaper to invest by buying copper futures or forward positions on the Comex and LME, respectively, and then either taking delivery, or rolling those positions over. If the market is in backwardation, meaning that the price for delivery in the future is lower than the price for immediate delivery, one can simply purchase a long futures position, hold on to it, and then, as delivery comes due, either sell or roll it forward at a profit – without ever having to take any delivery. Conversely, if the market is in contango, one can purchase a short futures position, hold on to it, and then as delivery comes due, do the converse. In either case, the investor does not incur the risk and huge cost of having to store the metal. Consequently, unlike gold, silver, platinum and palladium, physical copper itself has never been a metal that anyone realistically holds "for investment purposes."

Indeed, the absence of any data showing anyone holding physical copper "for investment purposes" illustrates the huge difference between the holding of precious metals, which are stored privately for investment in vaults around the world, and the holding of physical copper which, if it meets LME specs, is either deposited in the LME warehouses or held as inventory by copper fabricators.

In short, the ramifications of a proposed rule allowing an ETF backed by physical copper to be marketed on the Exchange could be huge and widespread, and would in no way be comparable to the consequences that ensued when the SEC approved rules permitting the Exchange to offer ETFs backed by gold, silver, platinum and palladium. What is more, with this rule-change, the Exchange would be permitting the marketing of the first ever such product involving a non-investment, non-currency commodity. That could mean that in the future, all commodities could be used to back physical ETFs, including oil and agricultural products.

2. The Statutory Basis is Flawed

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5), 15 U.S. C. 78(f)(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. As demonstrated, none of these requirements is satisfied.

The Exchange states that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices "in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201." However, the Exchange has no rules In place to prevent fraudulent and manipulative acts and practices that can arise with the marketing and sale of an ETF that is predicated entirely on an investor-financed removal from the marketplace of a commodity used exclusively for industrial production – solely for the purpose of profiting from a rise in price created by such artificially induced shortage. Thus, investors in the ETF, whether acting individually or in concert with others, will be engaged in the collective removal from the market of all or nearly all of the physical copper available for immediate delivery in the United States. Normally, the removal of a commodity from the market, for the purpose of artificially inflating its price, is considered a squeeze or corner, which is a violation of the prohibitions against manipulation under the Commodity Exchange Act and, if done in concert with others, is a violation of Section 1 of the Sherman Act. If the proposed rule change is approved, the SEC would be putting its imprimatur on the trading of instruments which will accomplish legally under the guise of a copper-backed ETF what would otherwise be prosecuted as a violation of federal law. Regardless, the effect will be the same.

Thus, by removing from the market a limited supply of a commodity otherwise available for immediate delivery, the Exchange with this rule will be sanctioning the creation of an artificial shortage of a commodity used exclusively for industrial purposes, and forcing a rise in the near term price of cathode copper, both on the cash market and on the spread between the cash market and deliveries in the near term. The elimination of such copper from the market will squeeze net short sellers on the LME, forcing them to pay artificially higher and higher

prices. Manufacturers and fabricators who rely on the supply of copper available in LME warehouses will be forced in the short term to pay substantially higher prices as the more successful the ETF is among investors, the more copper will be taken off market. They in turn will pass the additional costs on to consumers. In addition, the drawing down of stocks in LME and Comex warehouses will make it much easier and cheaper for speculators to engage in temporary market squeezes and corners. Thus, there will be less product to acquire, store and/or ship elsewhere to engineer such market anomalies.

At the end of the day, though, because the ETF will itself create an artificially induced squeeze, there will come a time when the appetite for such risk ceases, the costs of physical storage become too excessive, and investors lose interest. As is always the case in markets that are squeezed, this will lead to the release of such copper on the market, causing an immediate drop in price. The resulting volatility in price and price spreads will wreak havoc on many companies through the United States, including major manufacturers whose shares are undoubtedly traded on the Exchange. The Exchange may believe the same rules it has in place to address transparency in the trading of ETFs backed by gold, silver, platinum and palladium will work just as well for copper, but because the ETF for copper is specifically designed to upset the delicate balance of supply and demand reflected in the limited quantities available for immediate delivery in LME (as well as Comex) warehouses, the Exchange has no rules in place to address the risks of fraud and manipulation that would result if an ETF in copper is successful.

The Exchange further states that the proposed rule change is designed to promote "just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regard the Trust and the Shares, thereby promoting market transparency." Here, too, the Exchange assumes that the just and equitable principles of trade that work to protect investors and the public interest with respect to the sale of ETFs backed by gold, silver, platinum and palladium will work just as well with ETFs backed by physical copper. For all the reasons explained herein, the Exchange is wrong. As we have shown, the supply of copper available for immediate delivery to satisfy the ETF's requirements is quite limited. Unlike, gold, silver, platinum and palladium, which traditionally have been held in storage for long term investment, copper is used exclusively for industrial purposes, is not generally held in storage for long term investment purposes, and the quantities of copper that this ETF alone is calling for removal from the market would account for as much as 30% of the available stocks in LME warehouses worldwide, and because the ETF will give priority to those warehouse stocks which bear the cheapest locational premiums, could result in the removal of all or substantially all of the stocks in all of the LME warehouses in the United States, i.e., in New Orleans, St. Louis and Chicago. Nothing remotely comparable to that occurred when the SEC approved the sale of ETFs for gold, silver, platinum and palladium, respectively.

The Exchange suggests that any impacts may be avoided by the publication of data showing the amount of copper stored each day in ETF warehouses. However, merely showing the amount of copper being taken off market and tied up in ETF warehouses will not remove the impediments to supply – and resulting economic dislocations -- created by the removal of supply in the first place. Indeed, transparency in this regard can actually make things worse. Thus, investors in ETFs backed by copper will be able to measure how much impact each day their collective removal of copper from the supply available for immediate delivery will actually have on copper prices, and can adjust their purchasing strategies accordingly. Consequently, even

though copper stocks in LME warehouses today generally move up or down by around 3 or 4 percent daily, with only modest effects on price, the successful launch of JPM's ETF alone could see the immediate withdrawal of as much as 30% of copper stocks worldwide, and most of that withdrawal is likely to take place in the United States which could see all or most of its copper stocks depleted entirely. Purchasers of ETF shares will thus be able to see a direct correlation between the success of the ETF, the removal of available copper from the market, and the resulting rise in copper prices and the ETF itself. Investors will thus be able to see that the more ETF shares that are purchased, the more copper that will be withdrawn, and the higher the ETF price will rise. And once the rule allowing JPM's ETF is approved, the Exchange would likely have to list BlackRock's copper-backed ETF that is initially projected to be at least twice the size of the JPM ETF. Thus, unlike with the sale of ETFs backed by the precious metals gold, silver, platinum and palladium, the effects will be far-reaching and potentially devastating to the U.S. and world economies.

It is therefore difficult to imagine how, even if there is "market transparency," this process will be in the "public interest." Causing enormous artificially created spikes in price for copper available for immediate delivery will inevitably lead to shortages of copper, higher prices to consumers, and increased volatility when, as if the case with all bubbles, the copper taken off market is placed back on market.

Finally, the Exchange states that the proposed rule change is "designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of Commodity-Based Trust Shares that will enhance competition among market participants, to the benefit of investors and the marketplace." In this regard, the Exchange points "surveillance procedures related to trading in the Shares" and the possibility of obtaining information from other exchanges with which it has entered into a "comprehensive surveillance sharing agreement." However, these measures are the kind of garden-variety measures that are always in place to prevent collusion and other forms of manipulation by traders. They will not address the myriad problems created by the intentional disruption of the delicate balance of supply and demand for a commodity used exclusively for industrial purposes. By using investors to underwrite collectively the costs of holding physical copper off-market and in storage for the purpose of driving up prices, the Exchange is facilitating the fixing of prices which, if engaged in by competitors, as was the case of Sumitomo Corp. and its U.S. conspirator in the 1990s, would be a clear violation of Section 1 of the Sherman Act. Needless to say, the effects of such conduct would be anticompetitive in both cases. Net short sellers on the LME who need the physical commodity to close out their short positions will be forced to pay higher prices. If such trading is for the purpose of hedging, these higher prices will be passed on to consumers in the form of higher prices for copper priced products. Similarly, manufacturers and fabricators who rely on copper in LME warehouses to supplement their normal supply of copper will likewise be forced to pay higher prices – even if they have no choice but to purchase and redeem ETF shares to get their copper -- and they too, will pass on their higher costs to consumers.

In sum, none of these anticompetitive activities would arise if copper were like gold, silver, platinum and palladium which, while used industrially, are also widely held for investment purposes such that the creation of an ETF backed by these metals had only a negligible effect on supply. But copper, as we have indicated, is very different from these

precious metals and the successful launch of an ETF backed by copper would, by design, reduce the available supply, increase price and volatility, and ultimately, hurt competition, particularly in the United States.