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

Re: Proposed Rule Changes by NYSE Arca, Inc. to List and Trade Shares of the JPM XF Physical Copper Trust (SR-NYSEArca-2012-28) and the iShares Copper Trust (SR-NYSEArca-2012-66)

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 order to bring formally to the Commission's attention a troubling new development affecting the market for copper available for immediate delivery which, if the proposed rule changes are approved, may further jeopardize the ability of United States copper consumers to obtain the physical copper they need in a timely manner, and thus make the proposed rule changes further contrary to the public interest. That development is the spreading of metal backlogs at LME warehouses, spurred on by lucrative incentives for copper to be put into storage in their sheds.

In short, owners of LME warehouses, including J.P. Morgan Chase, which owns the Henry Bath warehouses, are offering incentives of more than $100 per ton to get copper stored in warehouses in New Orleans where end users who want it must now wait about six months to obtain their metal. See "New Orleans warehouses offer incentives for copper as queues grow," Metal Bulletin, October 8, 2012 (a copy of which is enclosed). When copper is moved into warehouse, before it can be moved out, it has to get at the end of the line of other metal products waiting to be moved out.

The creation of lengthy queues allows warehouse owners to earn substantial guaranteed additional storage costs, just as the proposed ETFs, in tying up every month more and more copper inventory (which in some cases may never have to leave LME warehouses at all) will likewise allow for increased storage income to accrue. Producers are willing to participate in the creation of such queues because the financial incentives make delivery to warehouses more profitable than selling to industrial end users and the scarcity of metal that is created by the forced wait for delivery likewise drives up premiums that producers can charge above prevailing

LME prices – providing that surplus units of metal can be obtained, which in the case of copper is looking more and more unlikely.

As you know, we have opposed the proposed rule changes because, contrary to the requirement of Section 6(b)(5) of the Securities Exchange Act of 1934, 15 U.S.C. 78f(b)(5) that rule changes be in the public interest, the successful launch of physically-backed copper ETFs in this country could lead to the removal of all or most of the copper available for immediate delivery to end users in the United States by removing from such market all or most of such copper under warrant in the U.S. LME warehouses. Unlike what we have seen with ETFs for precious metals, where there have always been ample supplies of metal available for industrial users should supplies be squeezed, such launch here would jeopardize the ability of copper end users to obtain product for their manufacturing operations, which would not only be contrary to the public interest, but it would hurt investors in publicly traded companies that rely, directly and indirectly, on copper for feedstock.

Thus, as we have shown, the proposed rule changes would, at least initially, permit the sale of shares in funds that would potentially acquire as much a 180,000 metric tons of copper from LME warehouses which today only have about 250,000 metric tons in total stored worldwide. And the sponsors of these funds have made clear repeatedly in their draft registration statements that it is their intent to promote the sale of such shares by suggesting that the more copper that is removed from the market and placed under their control, the greater the likelihood that copper and ETF share prices would be forced upward and thus be able to cover the high monthly cost of physical storage.

The key to this strategy is reducing, if not eliminating, the supply of copper available to end users for immediate delivery.

Consistent with that strategy, in addition to promoting a physical copper backed ETF which will create forced scarcity, owners of LME warehouses, including ETF sponsor J. P. Morgan, now appear to be competing with end users for available supply by paying producers with surplus metal huge financial incentives to deposit their metal in LME warehouses, at which point such product may be sold, reportedly in some cases to owners of other LME warehouses, which is what is reportedly creating and perpetuating the ever-growing queue.

The queue creates a scarcity of free units of metal that not only forces up premiums above LME cash prices in local geographical markets, but it ultimately may prevent industrial end users like Southwire, Encore, Luvata and AmRod from obtaining access to the metal they need in a timely fashion. We are unaware of any comparable development in the precious metals markets. The development of these warehouse queues, combined with the launch of physical backed copper ETFs, could thus have a devastating impact on the copper supply chain in the United States, which would obviously be contrary to the public interest.

The situation became most alarming in the past few months in New Orleans. Warehouse queues had previously been reported in Detroit and in Vlissingen in the Netherlands, and involved supplies of aluminum, which was in surplus, and not copper, which was in deficit. However, as was reported in September 2012, the metal backlog at warehouses in New Orleans, where most of the LME copper is stored, moved closer to that in Detroit and Vlissingen as orders to withdraw aluminum and zinc lengthened the wait to get metal by 27 weeks in three days.

The critical difference between the aluminum and zinc markets, on the one hand, and the copper market, on the other, is that aluminum and zinc are in plentiful supply and can be obtained, albeit at a higher price. Copper, however, is in relatively short supply and its movement into LME warehouses, coupled with immediate sales of large quantities of aluminum and zinc to owners of other warehouses, or their subsidiaries and affiliates, who want the material stored there, makes it extremely difficult to get copper removed from the warehouse, and industrial users, like Southwire and Encore, in particular, the two largest copper fabricating companies in the United States, believe they will now be faced with the prospect of not being able to supply enough copper products to their principal customers, including Home Depot and Lowes, and they are especially concerned that such shortage of supply will worsen if the proposed rule changes are approved and the U.S. construction industry begins to recover. Indeed, the possibility exists that, for these very reasons, such supply shortages will create a new impediment to the overall U.S. economic recovery, and thus be contrary to the public interest for that additional reason.

The LME has responded by proposing a rule change which, if implemented next April, would require warehouses with certain tonnages of other metals, to remove a minimum quantity daily of less dominant metals in its warehouse. But it is not clear that such a rule, even if implemented, would be effective and, in the meantime, as warehouse owners continue to pay higher and higher incentives to get metals deposited into their warehouses, the queues are getting longer.

We respectfully submit that before the SEC allows a rule change that would permit the listing and trading of shares of a copper ETF that would almost certainly make it even harder for industrial users of copper to obtain the metal, the Commission should examine what is happening with these warehouses and determine for itself whether and to what extent approval of these proposed rule changes at this time, and in its current form, would be contrary to the public interest.

To aid in the agency's initial look, we are also enclosing the following additional published reports: "What's a cancelled warrant these days," Metal Bulletin, November `16, 2012; and "New Orleans Wait for Metal Lengths as Zinc Bookings Clumb," Business Week, September 20, 2012.

Respectfully submitted,

Robert B. Bernstein

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Troszkiewicz, Agnicszka. "New Orleans Wait for Metal Lengthens as Zinc Bookings Climb." *Businessweek.com*. Bloomberg Business Week, 20 Sept. 2012. Web. 10 Dec. 2012. <http://www.businessweek.com/news/2012-09-20/new-orleans-wait-for-metal-lengthens-as-zinc-bookings-climb>.

"LME WEEK: Warehousing Needs Transparency." *Metalbulletin.com*. Metal Bulletin, 15 Oct. 2012. Web. 10 Dec. 2012. <http://www.metalbulletin.com/Article/3102940/LME-WEEK-Warehousing-needs-transparencyDoe-Run.html>.