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VIA FIRST CLASS MAIL

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

Re: File Number SR-NYSEArca-2012-66

Dear Ms. Murphy:

This firm represents RK Capital LLC, an international copper merchant, and four U.S. end-users of copper: Southwire Company, Encore Wire Corporation, Luvata, and AmRod. We write in further opposition to the proposed rule change allowing the listing and trading of BlackRock's proposed copper backed ETF and, in particular, we respond to the specific questions posed by the SEC's August 8, 2012 Order in the above-referenced proceeding. We also 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)), an opportunity to make an oral presentation.

First, we wish to incorporate by reference as if fully set forth herein all of the answers set forth in our response to the questions raised by the Commission in its July 19, 2012 Order with respect to the proposed rule change allowing the listing and trading of J.P. Morgan's proposed copper backed ETF (see SEC File Number SR-NYSEArca-2012-28, letter dated August 24, 2012, from Vandenberg & Feliu). We respond in particular to the following specific additional questions which were raised for the first time in the BlackRock order. Enclosed herewith are our responses to those specific questions:

SEC Question 3

V&F states that the Trust and the proposed JPM Copper Trust, collectively, will remove from the market a substantial percentage of the copper available for immediate delivery. According to V&F, the Copper Trusts would remove 63% of the copper currently held in LME and COMEX warehouses. V&F states that the collective effect of the Copper Trusts would be "far-reaching and potentially devastating to the U.S. and world economies," including "shortages of copper, higher prices to consumers, and increased volatility." Do commenters agree or disagree with these statements? If so, why or why not? For example:

- Do commenters believe creation of the Trust will have an impact on the supply of copper? If so, what will that impact be? If not, why not?
- How does a change in the supply of copper impact the price of copper? To what extent do copper stocks need to be reduced or increased to impact the price of copper?
- To what extent is the LME Bid Price affected by the amount of copper on LME warrant? To what extent must copper on LME warrant be reduced to impact the LME Bid Price? To what extent, if at all, is the LME Bid Price affected by the supply of copper ineligible to be placed on LME warrant? How does a change in the supply of copper impact volatility in the physical copper and copper derivatives markets?
- Is there empirical evidence that creation of the Trust will impact copper prices and volatility? What impact, if any, will creation of the Trust have on the US economy?

RESPONSE TO QUESTION NO. 3

The supply of copper is defined as refined production plus observable market inventory. In the short term, any resulting price appreciation from copper-backed ETF share owners will not affect mine production and may minutely benefit refined production, to the extent that higher copper prices encourage additional scrap recovery and processing. The copper ETF is unlikely to affect the supply of copper from copper refineries in a 0 – 12 month timeframe.

Copper backed ETFs will also not affect the aggregate inventory of copper. But the ETF will move the inventory that resides within the LME outside of the LME. While it has been suggested that metal supplied to the ETF will not come from the LME, we believe there is insufficient material outside of the LME that is readily available for ETF feedstock and that "Authorized Participants" will only be able to source such metal from within the LME.

For example, SHFE stock or Chinese internal non-SHFE inventory will almost certainly not be used for ETF unit creation as the removal of such cathode into ETF-approved warehouses (which are in the Chinese bonded zones) would attract a Chinese export tax. Bonded inventory in China is a potential feedstock but the ownership and financing dynamics of this large pile of copper stock is unclear. Recent history of profitable copper cathode export margins out of China bonded warehouses not leading to any material change in trade flow suggests that it should not be assumed that the unit creators will be able to source this material. Simply stated, while it may on paper have made sense to export copper based on weaker Chinese prices compared to LME prices, it hasn't happened. Thus, despite favorable market conditions from time to time over the past year, there is no evidence to suggest that this supply would in fact be available.

Comex inventory may also not be eligible given the high probability that 2/3rds of the current stock could not, under current LME rules, be delivered back to the LME upon unit unwinding (RAY brand cathode is only eligible to be removed from the LME, not delivered to the LME).

In short, metal will likely be de-warranted from LME to meet incremental ETF unit creation. The de-warranting of metal within the LME is simple, and contrary to claims, de-warranted metal also does not have to leave the warehouse. It can merely be de-warranted and physically separated from the on-warrant stock (so called 'white-lining') and it is likely that 'white-lined' copper will meet incremental ETF investors' capital allocations.

Further industry and pipeline stock held outside of China is likely miniscule as fabricators and merchants have not had the capacity to hold stock in light of cash-preservation efforts. Reducing LME inventory to meet investor demand for copper will only highlight the paucity of feedstock cover by fabricators and may leave them even more unduly exposed to price and supply variance.

The only other theoretical source of ETF feedstock copper is current off-warrant stock held by investors, assuming such stock even exists. It is possible that hoarding of copper outside of China has been taking place to the possible benefit of such holders upon commencement of physically backed copper ETF unit creation. We are however unaware of any such inventory. The ETF creators may also be holding physical copper feedstock off-warrant but they have not said they are doing this and disclosed how much, if any, they have been able to acquire.

Importantly, the movement of LME inventory off-warrant into ETF units, whilst not affecting overall inventory levels, will materially impact the market. The interests of the ETF investor and the interests of the metal consumer are misaligned. By way of example, should the respective copper ETFs reach their maximum projected size, holding around 180,000 metric tons, equivalent to the entire LME on-warrant stock currently, the resulting reduction in LME on-warrant stock will likely cause extreme backwardation (inversion) to LME futures prices (reflecting a scarcity premium) and likely much higher copper prices. A fabricator normally holding inventory would thus be incentivized to sell any excess fabrication feedstock to the market and earn the backwardation. An ETF investor does not have the potential to earn this backwardation as the vast majority of investors are likely to be unable to trade futures and/or physical metal. As such the more a backwardation arises in the market the more likely that ETF investment will see inflows as higher prices feed through into higher physically based unit values. Ultimately it is conceivable that investment activity could crowd out the fabrication industry, should the ETFs dominate enough LME deliverable material such that backwardation and price escalation results.

The precious metals ETFs also have this potential impact on their respective markets, with metal inventory going into an ETF causing physical metal tightness and resulting backwardation and rapid price appreciation. Gold in particular has been held as store of value since the time of the Pharaohs and a large stock, the majority of all that has ever been mined, was available for the ETF to draw upon. Copper has no such available stock; more has been lost due to its lower value and the balance is in use in the industrial infrastructure and in the electrical goods of our global economy.

Thus, the difference between precious metals and industrial metals like copper is that hoarding of the physical precious metal has historically been the norm (jewelry, coins, bars, medals etc.) so the market has been better able to recycle old precious metal to meet the demand

of new precious metal bullion-backed investment products. There is of course near nil historically hoarded copper outside of China and even if there was, there is also a lack of capacity to promptly recycle the copper that has historically been fitted in industrial, transportation and other non-investment applications. There may well be near to 1 year's worth of copper in the global automotive fleet but importantly it is currently utilized in the global automotive fleet and the ability of the industry to recover this copper without scrapping the entire fleet is nil. Copper wire harnesses require immense physical manual dexterity to produce and can only be scrapped along with the entire vehicle.

In short, the LME on-warrant stock is the buffer stock that helps to regulate prices and satiate market concerns over near term physical market availability. If, as the proposed ETFs have the capacity to do, they absorb the entire LME stock as feedstock for their respective ETFs, the resulting price impact would be massive. It is not quantitatively easy to estimate the actual impact from a move towards bin-bottom levels of copper but it is worth noting that when copper stocks were at their all-time (modern-day) lows in 2005 the copper price appreciated rapidly, ending 2004 at $3150/mt and 2005 at $4395/mt, a 40% increase through the year. Should such a scenario be repeated the knock on effects for fabricators and their clients would be significant, copper prices moving comfortably into record territory. Fabricator margins would not for example cover holding costs while the metal was in fabrication. This would severely retard output leaving US copper product buyers reliant on imports of copper wire, rod, tube and other products from suppliers in China where prices would be materially less impacted on account of policy which encourages onshore fabrication and discourages exports of copper cathode.

Another consideration for regulators is the possibility that the ETFs' size grow to such a point that resulting liquidity in the underlying physical copper derivatives market is retarded. Once again, highlighting the fact that investors have no inducement to unwind their holdings in a period of price appreciation or futures curve inversion, it is possible that market makers simply cannot induce share owners to exchange their shares for copper to subsequently liquidate into a tight, inverted, copper futures market. If the vast majority of share owners are only long term investors, the entire share redemption process will be retarded until the copper market generates enough ancillary new production and inventory to recreate an LME buffer stock (on-warrant inventory pile). Such a scenario implies significant price volatility, both on the way up as a long only stable block of shares keep copper from the market and then down as eventually the industry responds to the subsequent pricing signals. Over such time the U.S. fabrication industry will have been materially and potentially fatally impaired. Further to this risk, it is worth noting that inflows into precious metals ETFs have been historically extremely ''sticky'' in that the volatility of ETF share units is low.

The chart below shows the number of shares out in the GLD gold ETF and SLV silver ETF. In spite of price volatility in the market there has been very little volatility in the aggregate number of shares listed. This stickiness of ownership, if replicated in the copper-backed ETF, poses a substantial risk to the unit redemption process. Liquidity is the lifeblood of all traded markets and if the share owners don't trade their investment then the flow on to the LME market may be significant.

SEC Question 4

V&F states that Shares would be created by removing copper from LME and COMEX warehouses in the United States, thus driving up the cost of copper particularly in the United States. According to V&F, correspondingly: The principal victims will . . . be United States consumers who typically rely on supplies of copper for immediate delivery to augment their long-term supply. These fabricators will not only be forced to pay higher prices, and incur the risk of price volatility once prices collapse, but there may be periods of time when those who can least afford it will be unable to get supply.

- Do commenters agree or disagree with these concerns? Why or why not? Additionally, what mechanisms (if any) exist to allow market participants in need of copper in a specific location to trade an LME warrant or warehouse receipt for copper at another location?

RESPONSE TO QUESTION NO. 4

LME copper warrants entitle the holder to a specific bundle of metal in a specific location. A potential consumer or investor or their agent can swap this warrant for another under commercial terms. In-warehouse premia effectively capture such transactions. They represent the cost of swapping a zero premium location warrant for a warrant in another location. Metal in the ETF will be valued basis these published premia.

The concern of industry participants is that because 50% of the current LME on-warrant stock is located in the U.S., the impact on US warrant premia will be greatest. As metal is de-warranted in the US to be placed into a sticky long term investment vehicle, the resulting buffer stock accessible by industry will collapse and likely force U.S. physical premia sharply higher. Copper prices would also likely move higher in reflection of the reduction in LME on-warrant inventories. The net price move, of higher premia and higher copper prices, represents a tax on U.S. industry broadly and on U.S. copper fabricators specifically. While fabricators may be able to widen their processing margins to absorb higher physical premia and price, the risk is

that this doesn't take place in a contemporaneous manner, leaving the U.S. market wide open for imports from Chinese-based fabricators whose own copper cathode costs are far less volatile.

SEC Question 6

The Custodian will store the Trust's copper in Approved Warehouses around the world.

- What is the locational premium at each of the Approved Warehouses? What impact would changes in locational premia have on supply and demand for copper at each of the Approved Warehouses? How much copper is held at each of the Approved Warehouses? How much of the copper held at each of the Approved Warehouses is on LME warrant? How much is eligible to be placed on LME warrant? How much copper eligible for LME warrant is available for investment purposes? How much is not eligible to be placed on LME warrant?

RESPONSE TO QUESTION NO. 6

Locational premia reflect local supply and demand dynamics and change constantly.

It is impossible to know how much copper is held at each approved warehouse as some of the metal maybe off-warrant. Some metal may also be non-LME deliverable, such as the RAY brand which is only approved for withdrawal out of LME warehouses. It is virtually impossible to know how much of copper cathode in LME and Comex warehouses is actually LME deliverable but in light of the fact that copper prices have been high for the past 4-5 years, save for intermittent moments of significant global economic recession, it is likely that most metal residing in LME warehouses that could have been delivered to the LME by market participants would have been delivered. Keeping metal off-warrant is more expensive than having metal on-warrant in terms of balance sheet use.

Currently there is 34kmt of LME copper on-warrant in New Orleans, zero in Baltimore, 11kmt in Chicago and 49.5kmt in St Louis. In Europe, there is 3500mt in Rotterdam and 10,150mt in Vlissengen. In Asia there is 50kmt in South Korea, 12kmt in Singapore and 12kmt in Malaysia, for a total of 74kmt in Asia and 184kmt globally.

SEC Question 7

The Trustee generally will value the Trust's copper at that day's announced LME Bid Price, which represents the price that a buyer is willing to pay to receive a warrant in any warehouse within the LME system. Given the Trust's copper will be held off LME warrant, will the LME Bid Price accurately reflect the value of the Trust's copper?

- Why or why not?

RESPONSE TO QUESTION NO. 7:

It is important to recognize that the value of copper in the ETFs is inclusive of physical premia, which is volatile. As such the higher the physical premia of metal in each Approved Location, the less representative the LME bid price is of the value of the copper in the trusts. Perhaps an issue going forward will be if/when the ETF has absorbed so much of the metal in a specific location that the physical location is more difficult to value. Conceivably the body tasked with valuing the physical locations would not be able to adequately value metal in a location if the ETF is the main or sole holder of metal in that location.

Such a scenario is not as fanciful as it seems. Precious metal warehousing for physically based precious metals ETFs takes place, generally, in a single location. For instance all of the GLD gold is held at HSBC vaulting (and sub-custodial vaulting) in London. All of the silver in SLV is vaulted at JPMorgan and sub-custodial facilities, also in London. If the London Bullion Market free-float/unallocated gold balance (the gold equivalent of on-warrant stock) was to shrink due to ETF crowding out and other allocated gold investments, then the price of gold in London would move sharply higher to suck other LBMA approved deliverable gold into the location. Central banks ultimately would be called upon to calm the gold market down. Unfortunately, in copper there appears to be no private stock of metal that can be used to alleviate market tightness.

SEC Question 8

When valuing the Trust's copper, the Trustee will not take into account the location(s) of the copper. In contrast, to support the JPM Copper Proposal, NYSE Arca states that the value of copper depends in part on its location, i.e., copper stored in a location that is low in supply and high in demand carries a higher premium than copper that is stored in a location where supply is high and demand is low.

- Does the value of the Trust's copper depend on its location? If so, how? If so, does the LME Bid Price account for the locational premia/discounts of the Trust's copper held in various locations? Why or why not?

RESPONSE TO QUESTION NO. 8

Please see above. All LME traded industrial metals have different values dependent upon where they are warehoused and under what warehousing conditions the metal is kept. It is important to acknowledge that the LME bid price is the "cheapest to deliver" metal price. As such it is not the value of copper globally, but of copper in a specific nil premium location. That location can move depending upon local supply and demand dynamics. Copper-backed ETFs are a new form of demand, albeit not consumption. They stand to possibly affect, and maybe drive, the LME bid price zero premium location. It's possible that the trust builds up metal in a single location and absorbs all the metal in that location; when that occurs, and there is no longer any metal in the LME warehouse at that location, that location is no longer the cheapest to deliver location. That could lead to significant divergence between the LME price

and the value of the metal in the ETF because of the artificially created shortage in that market. Consequently, the NAV may not be the actual value of the inventory they are holding.

SEC Question 13

V&F argues that, by decreasing the amount of copper available for immediate delivery, the Trust will make the copper market more susceptible to manipulation. Specifically, V&F states that "the drawing down of stocks in LME and Comex warehouses" resulting from the listing and trading of the Shares "will make it much easier and cheaper for [copper market] speculators to engage in temporary market squeezes and corners." The Commission requests comment on these concerns, as well as whether commenters agree or disagree with the comments and why or why not. For example:

- Will creation of the Trust impact the ability to manipulate the physical copper or copper derivatives markets? If so, how? If not, why not?
- Has there been any increased manipulative behavior due to the reduction of copper available for immediate delivery that resulted from the prior years' deficits in copper production versus copper consumption?
- Are there any structural aspects of the copper market that render it more or less susceptible to manipulation?
- Is there empirical evidence that the creation of CB-ETPs backed by gold, silver, platinum, and palladium has led to manipulation of the physical markets for those precious metals? If so, please describe.

RESPONSE TO QUESTION NO. 13:

The precious metals markets are significantly less prone to manipulation than industrial metals markets, although it is well known that traders and investors have sought to manipulate silver on at least two occasions (Bunker Hunt for example). The reason that precious metals are less susceptible to manipulation is due to their historical use as a store of value, and means of private sector investment and wealth accumulation. Central banks for instance hold 1/5th of all gold that has ever been mined, a hoard likely larger than a manipulator's appetite. If the gold market was to become disorderly due to ETF buying or other forms of allocated investment, central banks can lend their balances to the market. ETFs cannot lend as a general rule, reinforcing the argument that ETFs are a form of sticky longer term metal hoarding.

Fundamentally the copper market is much easier to manipulate. The vast majority of copper that has been mined, like gold, is still in existence but not in a readily accessible form. Moreover it is likely already being used in an application for which the utility value to society exceeds the investment value (power cables, automotive, roofing, plumbing etc). This speaks to the importance of the LME as a buffer stock to mitigate market volatility. The larger the LME stock of on-warrant metal, the less likely the market is to be volatile and in general the larger the likelihood that LME prices will be lower (the downside in prices limited to longer term replacement/production cost dynamics). Right now physically backed copper ETFs have the potential, if fully invested, to take up the entire stock of LME on-warrant metal.

Could a manipulator use the copper ETF to squeeze or corner the copper market? Of course. The current market value of LME on-warrant stock is just $1.4 billion. This is just 15% of the entire assets in the SLV physically-backed silver ETF. It is just 2% of the value of the physically-backed GLD assets under management. A very modest uptake in shares in the copper ETFs is required to generate significant upwards movement in copper prices, time spreads and physical premia. The mere launch of an ETF could lead to a corner and squeeze. Brokers acting as "authorized participants" creating the shares will create the metal demand. Given the relatively small amount of copper on warrant in the LME warehouses today, it is not a big sum to buy all the copper. What is more, anyone who knows such buying is occurring could front run on the exchange and could profit. This would be so even if the ETF investment were entirely legitimate. The market is sufficiently transparent that other people will perceive how well the ETF is doing and position themselves accordingly. All the heavy lifting in terms of financing the acquisition of the inventory for the squeeze is done by the investor. How will the LME share with the SEC on who has long positions? What is more, it becomes cheaper to manipulate with so little inventory left. An oversupplied or undersupplied copper market is mainly 1 to 2 percent either way; it doesn't take much of an impact in terms of price and supply to affect the copper market, when compared to precious metals, which has a vast stockpile. In general, things are made to be consumed. The unusual thing here is that precious metals have historically been used as a store of value, which is why these metals are the functional equivalent of currency. Applying those same principles to an industrial commodity which is made to be used, does not work.

SEC Question 14

V&F states the listing and trading of shares of copper CB-ETPs like those "being proposed by BlackRock and JPM – and the consequent drawdown and removal from the market of most of the copper in LME and Comex warehouses – risk endangering the price discovery functions of the LME and Comex." V&F also states that such potential impacts of a copper CB-ETP on the copper market in turn could affect the Shares, stating: 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. V&F further states that investors in a copper CB-ETP would benefit immediately from any increase in the price of copper because the more copper removed from the market to satisfy the demand for the copper CB-ETP, the higher the price not only of copper, but of the copper CB-ETP itself. According to V&F, like all bubbles, as investor demand for this product wanes, the bubble will burst, leaving in its wake a glut of physical copper that the 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.

- Do commenters agree or disagree with these comments? If so, why or why not?

RESPONSE TO QUESTION NO. 14:

This has been addressed in earlier questions.

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Finally, our client RK Capital is willing to disclose its physical stocks of copper to the SEC. However, we respectfully suggest that the SEC request that BlackRock and JPM to disclose their own non-LME physical stocks of copper. This might help clarify the entirely unsubstantiated assertion that there is plentiful additional supply. We also respectfully request that the SEC request disclosure of how much of the physical metal from the precious metal ETFs has been delivered to fabricating industry through the analogous delivery procedures.

Accordingly, for the foregoing reasons, and for the reasons expressed in our prior submissions and those expressed by Senator Levin in his, we respectfully request that the Commission disapprove the proposed rule to allow the Exchange to list and trade shares of BlackRock's proposed copper backed ETF. And, as indicated earlier, we also respectfully request an opportunity to present our position orally on this matter to the Commission, and answer any questions Commission members may have.

Respectfully,

Robert B. Bernstein

Robert B. Bernstein

RBB:np