SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68973; File No. SR-NYSEArca-2012-66)

February 22, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendments No. 1 and No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendments No. 1 and No. 2 to List and Trade Shares of the iShares Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

I. Introduction

On June 19, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the iShares Copper Trust ("Trust" or "iShares Trust") pursuant to NYSE Arca Equities Rule 8.201. BlackRock Asset Management International Inc. is the sponsor of the Trust ("Sponsor"). The proposed rule change was published for comment in the Federal Register on June 27, 2012.[3]

The Commission initially received one comment letter, which opposed the proposed rule change.[4] On August 8, 2012, the Commission instituted proceedings to determine whether to

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Securities Exchange Act Release No. 67237 (June 22, 2012), 77 FR 38351 ("Notice").

4 See letter from Robert B. Bernstein, Vandenberg & Feliu, LLP ("V&F"), to Elizabeth M. Murphy, Secretary, Commission, dated July 18, 2012 ("V&F July 18 Letter"). Comment letters are available at http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266.shtml. This commenter states that he represents RK Capital LLC, an international copper merchant, and four end-users of copper: Southwire Company, Encore Wire Corporation, Luvata, and AmRod Corp (collectively, the "Copper Fabricators"). The commenter states that these companies collectively comprise about 50% of the copper fabricating capacity in the United States. See V&F July 18 Letter, supra, at 1.

approve or disapprove the proposed rule change.[5] Subsequently, the Commission received additional comments on the proposed rule change.[6]

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5 See Securities Exchange Act Release No. 67616, 77 FR 48181 (August 13, 2012) ("Order Instituting Proceedings").

6 See letters from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012 ("V&F September 12 Letter"); Ira P. Shapiro, Managing Director, and Deepa A. Damre, Director, Legal and Compliance, BlackRock, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012 ("BlackRock Letter"); Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated September 14, 2012 ("Arca September 14 Letter"); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 27, 2012 ("V&F September 27 Letter"); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated November 16, 2012 ("V&F November 16 Letter"); Robert B. Bernstein, Partner, Eaton & Van Winkle LLP ("EVW"), to Elizabeth M. Murphy, Secretary, Commission, dated December 7, 2012 ("EVW December 7 Letter"); and e-mail from Janet Klein dated January 7, 2013 ("Klein E-mail").

In the V&F September 27 Letter, the commenter incorporated by reference all of his prior comments in opposition to NYSE Arca's proposal to list and trade shares of the JPM XF Physical Copper Trust ("JPM Copper Trust") (File No. SR-NYSEArca-2012-28). See V&F September 27 Letter, supra, at 6. Responding to that proposed rule change, the commenter submitted the following: letters from V&F, received May 9, 2012 ("V&F May 9 Letter"); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated July 13, 2012 ("V&F July 13 Letter"); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated August 24, 2012 ("V&F August 24 Letter"); and Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 10, 2012 ("V&F September 10 Letter"). The comment letters the commenter incorporated by reference are available at http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266.shtml. Additionally, the commenter stated that he agrees with the arguments against that proposal set forth in a letter from U.S. Senator Carl Levin, to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2012 ("Levin Letter"), and attached the Levin Letter to the V&F July 18 Letter. See V&F July 18 Letter, supra, at 5. The Commission approved NYSE Arca's proposal to list and trade shares of the JPM Copper Trust on December 14, 2012, in an order that addressed these and other comments. See Securities Exchange Act Release No. 68440 (December 14, 2012), 77 FR 75468, 75473–86 (December 20, 2012) (SR-NYSEArca-2012-28) ("JPM Order").

In the V&F September 12 Letter, the commenter requested to make an oral presentation in the proceeding. The Commission denied the commenter's request. See letter from Kevin M. O'Neill, Deputy Secretary, Commission, to Robert B. Bernstein, EVW, dated December 5, 2012, available at http://www.sec.gov/comments/sr-nysearca-2012-

On December 12, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.[7] On December 21, 2012, the Commission designated February 22, 2013, as the date by which the Commission should either approve or disapprove the proposed rule change.[8] On December 27, 2012, the Exchange filed Amendment No. 2 to the proposed rule change.[9]

66/nysearca201266.shtml. By letter dated November 29, 2012, Mr. Bernstein informed the Commission that he had left V&F and would continue to represent the Copper Fabricators and RK Capital LLC in this proceeding.

7 In Amendment No. 1, the Exchange represented that it: (1) has obtained representations from the Sponsor that the Sponsor is affiliated with one or more broker-dealers and other entities, that the Sponsor will implement a fire wall with respect to such affiliate(s) prohibiting access to material non-public information of the Trust concerning the Trust and the Shares, and that the Sponsor and such affiliate(s) will be subject to procedures designed to prevent the use and dissemination of material non-public information of the Trust regarding the Trust and the Shares; and (2) can obtain information regarding the activities of the Sponsor and its affiliates under the Exchange's listing rules. Additionally, the Exchange supplemented its description of surveillance applicable to the Shares contained in the proposed rule change as originally filed. Specifically, the Exchange represented that trading in the Shares would be subject to the existing trading surveillances, administered by Financial Industry Regulatory Authority, Inc. ("FINRA") on behalf of the Exchange, and that, in addition, FINRA would augment those existing surveillances with a review specific to the Shares that is designed to identify potential manipulative trading activity through use of the creation and redemption process. The Exchange represented that all those procedures would be operational at the commencement of trading in the Shares on the Exchange and that, on an ongoing basis, NYSE Regulation, Inc. (on behalf of the Exchange) and FINRA would regularly monitor the continued operation of those procedures. In addition, the Exchange has represented that it will communicate as needed regarding trading in the Shares with other markets that are members of Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. On December 13, 2012, the Exchange submitted a comment letter attaching Amendment No. 1. See letter from Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated December 13, 2012.

8 See Securities Exchange Act Release No. 68511, 77 FR 77151 (December 31, 2012).

9 In Amendment No. 2, the Exchange supplemented the representations in the proposed rule change regarding website disclosure and made clear that the Trust's website will provide detailed information, updated on a daily basis, regarding the copper lot holdings of the Trust, including warehouse locations, warehouse identification numbers, lot numbers, weights, and brands. Additionally, in Amendment No. 2, the Exchange represented that the Trust's website will list the copper lots in the order in which they will

The Commission is publishing this notice to solicit comments from interested persons, including whether Amendments No. 1 and No. 2 to the proposed rule change are consistent with the Act, and is approving the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares.[10] The Trust's investment objective is for the value of the Shares to reflect, at any given time, the value of the copper owned by the Trust at that time, less the Trust's expenses and liabilities at that time. The Trust will create Shares only in exchange for copper that: (1) meets the requirements to be delivered in settlement of copper futures contracts traded on the LME; and (2) is eligible to be placed on London Metal Exchange ("LME") warrant at the time it is delivered to the Trust.[11] The Trust will not be actively managed and will not engage in any activities designed to obtain a profit from, or to prevent losses caused by, changes in the price of copper.[12]

A. Description of the Copper Market[13]

The following is a summary of the description of the copper market that the Exchange included in its filing. Copper is traded in the over-the-counter ("OTC") market and on commodities exchanges. There are spot sales in the physical market, as well as forward

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be delivered in a redemption pursuant to the applicable algorithm. See infra text accompanying note 27.

10 Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided interest in and ownership of the net assets of the trust.

11 See Notice, supra note 3, 77 FR at 38356.

12 See id. at 38352.

13 See Notice, supra note 3, for a more detailed description of the copper market.

contracts, options contracts, and other derivative transactions. A major portion of annual copper production and use is covered through physical transactions, often through renewable annual supply contracts.

Participants in the copper market include primary and secondary producers; fabricators; manufacturers and end-use consumers; physical traders and merchants; the banking sector; and the investment community. Physical traders and merchants generally facilitate the domestic and international trade of copper supplies along the value chain and support the distribution of supplies to consumers. Banking institutions may provide market participants an assortment of services to assist copper market transactions. This investment community is composed of non-commercial market participants engaged in investment in copper or speculation about copper prices. This may range from large-scale institutional investors to hedge funds to small-scale retail investors. In addition, the investment community includes sovereign wealth funds as well as other governmental bodies that stockpile metal for strategic purposes.

1. OTC Copper Market

Physical traders, merchants, and banks participate in OTC spot, forward, option, and other derivative transactions for copper. OTC contracts are principal-to-principal agreements traded and negotiated privately between two principal parties, without going through an exchange or other intermediary. As such, both participants in OTC transactions are subject to counter-party risk, including credit and contractual obligations to perform. The OTC derivative market remains largely unregulated with respect to public disclosure of information by the parties, thus providing confidentiality among principals.

The terms of OTC contracts are not standardized and market participants have the flexibility to negotiate all terms of the transaction, including delivery specifications and settlement terms. The OTC market facilitates long-term transactions, such as life-of-mine off-take agreements,[14] which otherwise could be constrained by contract terms on a futures exchange.

2. Copper Exchanges

According to the registration statement for the Trust ("Registration Statement"),[15] the LME is the longest standing exchange trading copper futures, with the greatest number of open copper futures and options contracts (open interest). The Commodity Exchange, Inc. ("COMEX") (a division of CME Group, Inc.), the Shanghai Futures Exchange ("SHFE"), and the recently launched Multi Commodity Exchange of India ("MCX") also trade copper futures. At the end of March 2012, the LME held roughly 64% of copper open interest across the four futures exchanges with copper contracts (adjusted for lot size).

The LME falls under the jurisdiction of the United Kingdom Financial Services Authority ("FSA"). The FSA is responsible for ensuring the financial stability of the exchange member businesses, whereas the LME is largely responsible for the oversight of day-to-day exchange activities, including conducting arbitration proceedings under the LME arbitration regulations.

The SHFE is a self-regulatory body under the supervision and governance of the China Securities Regulatory Commission ("CSRC"). The SHFE is the day-to-day overseer of exchange activities, and is expected to carry out regulation as per the laws established by the CSRC. The CSRC serves as the final authority on exchange regulation and policy development

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14 A life-of-mine off-take agreement is an agreement between a producer and a buyer to purchase/sell portions of the producer's future production over the life of the operation. Off-take agreements are commonly negotiated prior to the construction of a project as they can assist in obtaining financing by showing future revenue streams.

15 The Registration Statement was most recently amended on September 2, 2011 (No. 333-170131).

and ultimately determines the effectiveness of the SHFE as a regulatory entity. It has the right to overturn or revoke the SHFE's regulatory privileges at any time.

Commodity futures and options traded on the COMEX are subject to regulation by CME Group's Market Regulation Oversight Committee ("MROCC"), under rules of the Commodity Futures Trading Commission ("CFTC").[16] The MROCC is a self-regulatory body created in 2004 to actively ensure competitive and financially sound trading activity on the CME and its subsidiary exchanges.

Regulation of the MCX falls under the responsibility of the Governing Board of the MCX and the Forward Markets Commission of India pursuant to the Forward Contracts (Regulation) Act of 1952 and amendments made thereafter.

B. Description of the Proposed Rule Change and the Trust[17]

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares. The Bank of New York Mellon is the trustee of the Trust ("Trustee"). Metro International Trade Services LLC is the custodian of the Trust ("Custodian").

As mentioned above,[18] the Trust will hold only copper that, at the time it was delivered to the trust, (1) met the requirements to be delivered in settlement of copper futures contracts traded on the LME; and (2) was eligible to be placed on LME warrant. The Trust will not be actively

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16 Copper is traded over two CME platforms: CME Globex and Open Outcry. CME Globex, which offers electronic trading, operates Sunday through Friday, 6:00 p.m., Eastern Time ("E.T.") through 5:15 p.m. E.T. with a 45-minute break each day beginning at 5:15 p.m. E.T. The Open Outcry operates Monday through Friday 8:10 a.m. E.T. through 1:00 p.m. E.T.

17 See Notice, supra note 3, for a more detailed description. Additional details regarding the Trust also are set forth in the Registration Statement, supra note 15.

18 See supra text accompanying note 11.

managed and will not engage in any activities designed to obtain a profit from, or to prevent losses caused by, changes in the price of copper.[19]

The Custodian may keep the Trust's copper at locations within or outside the United States that are agreed from time to time by the Custodian and the Trustee. As of the date of the Registration Statement, the Custodian is authorized to hold copper owned by the Trust at warehouses located in: East Chicago, Indiana; Mobile, Alabama; New Orleans, Louisiana; Saint Louis, Missouri; Hull, England; Liverpool, England; Rotterdam, Netherlands; and Antwerp, Belgium (collectively, "Approved Warehouses"). Unless otherwise agreed in writing by the Trustee, each of the warehouses where the Trust's copper will be stored must be LME-approved at the time copper is delivered to the Custodian for storage in such warehouse. Unless otherwise instructed by the Trustee, no copper held by the Custodian on behalf of the Trust may be on LME warrant.[20]

The Trustee will calculate the net asset value ("NAV") of the Trust as promptly as practicable after 4:00 p.m. EST on each business day. The Trustee will value the Trust's copper at that day's announced LME Bid Price.[21] If there is no announced LME Bid Price on a business day, the Trustee will be authorized to use the most recently announced LME Bid Price unless the

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19 See supra text accompanying note 12.

20 See Notice, supra note 3, 77 FR at 38356 n.23.

21 The "LME Bid Price" is announced by the LME at 1:20 p.m. London Time and represents the price that a buyer is willing to pay to receive a warrant in any warehouse within the LME system. See id. at 38356 n.25. LME warrants, which are documents representing possession, are used as the means of delivering metal or plastics under LME contracts. See id. at 38355. The ownership of copper represented by warrants is transferred through LMEsword, an electronic transfer system for the purchase and sale of exchange issued warrants that facilitates the reporting of inventories. See id. Each warrant is invoiced at the contract weight, which is permitted to vary +/-2% from the specified 25 tonne lot of copper. Only registered LME copper brands are approved for delivery. See id.

Sponsor determines that such price is inappropriate as a basis for valuation.[22] The Exchange will obtain a representation from the Trust prior to the commencement of trading in the Shares that the NAV per Share will be calculated daily and made available to all market participants at the same time.[23]

The Trust expects to create and redeem Shares on a continuous basis but only with authorized participants in blocks of five or more baskets of 2,500 Shares each (each basket of 2,500 Shares, a "Basket").[24] In connection with the creation of Baskets, only copper that meets the requirements to be delivered in settlement of copper futures contracts traded on the LME and that is eligible to be placed on LME warrant at the time of delivery to the Trust may be delivered to the Trust in exchange for Shares.[25] Upon deposit of the corresponding amount of copper with the Custodian and the payment of applicable fees by an authorized participant, the Trustee will deliver the appropriate number of Baskets to the Depository Trust Company ("DTC") account of the authorized participant.[26] Conversely, authorized participants may redeem Shares by surrendering five or more Baskets, each in exchange for the Basket Copper Amount announced by the Trustee on the first business day on which the LME Bid Price is announced following the date of receipt of the redemption order. Upon surrender of the Baskets and payment of

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22 See id. at 38358.

23 See id. at 38359.

24 See id. at 38356.

25 See id.

26 In exchange for each Basket purchased, an authorized participant must deposit the Basket Copper Amount announced by the Trustee on the first business day on which the LME Bid Price is announced following the date of receipt of the purchase order. See id. at 38356. The "Basket Copper Amount" is the amount of copper (measured in tonnes and fractions thereof), determined on each business day by the Trustee, which authorized participants must transfer to the Trust in exchange for a Basket, or are entitled to receive in exchange for each Basket surrendered for redemption. See id. at 38356 n.24.

applicable fees, expenses, taxes, and charges, the Custodian will transfer from the Trust's account to the authorized participant's account the aggregate Basket Copper Amount corresponding to the Baskets surrendered for redemption and will send written confirmation thereof to the Trustee, which will then cancel all Shares so redeemed. The specific copper to be transferred to the redeeming authorized participant's account will be selected by the Custodian pursuant to an algorithm that gives priority to the delivery of copper that no longer meets LME requirements (e.g., is of a brand, or held at a location, that is no longer LME approved) or is on LME warrant (in the rare instances where some of the Trust's copper may be on LME warrant).[27] Within each category, copper will be selected for transfer to redeeming authorized participants on a last-in-first-out basis. If the copper transferred to the redeeming authorized participant's account meets the requirements of the LME to be placed on warrant, and the Custodian is able to issue LME warrants at such time, promptly after a redemption, the Custodian will issue to the redeeming authorized participant one or more LME warrants representing as much copper transferred to the authorized participant's account as may be placed on LME warrant in compliance with the LME rules and without the Custodian having to break apart any specific parcel of copper so transferred pursuant to the algorithm referred to above.[28]

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[27] Generally, authorized participants desiring to create with copper on warrant will be required to take such copper off warrant prior to delivery to the Custodian. See id. at 38357 n.29. See also id. at 38356 n.23 ("Unless otherwise instructed by the Trustee, no copper held by the Custodian on behalf of the Trust may be on Warrant.").

[28] In the normal course of the Trust's operations, it is anticipated that authorized participants will receive LME warrants (not warehouse receipts) following a redemption transaction. See id. at 38358. If it is not possible for the Custodian to issue LME warrants in connection with a redemption of Shares, the Custodian will deliver to the redeeming authorized participant one or more negotiable warehouse receipts representing the copper transferred to the authorized participant's account in connection with such redemption. See id. at 38357–58.

To facilitate the issuance of Baskets,[29] the Sponsor has arranged for J. Aron & Company ("J. Aron"), an international commodities dealer and subsidiary of The Goldman Sachs Group, Inc. (which owns the Custodian), to stand ready to: (i) make available for sale to eligible authorized participants any fractional amounts of copper needed to meet the obligation to transfer to the Trust the exact Basket Copper Amount in exchange for each Basket purchased from the Trust; and (ii) to the extent the lots of copper an eligible authorized participant intends to use in connection with an issuance of a Basket exceed the corresponding Basket Copper Amount, purchase any amount of such copper from such authorized participant.[30]

Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association.[31] The Exchange also will make available via the Consolidated Tape trading volume, closing prices, and the NAV for the Shares from the previous day.[32] The intraday indicative value ("IIV") per Share,[33] updated at least every 15 seconds, as calculated by the

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29 The Exchange states that because copper usually trades in lots of 25 tonnes, with plus or minus 2% deviations being accepted in the industry, an authorized participant may not find readily available in the market the exact Basket Copper Amount needed in connection with the issuance of a new Basket. See id. at 38356.

30 The Goldman Sachs Group, Inc. and its affiliates ("GS Entities") have represented to the Sponsor that they maintain policies that are reasonably designed to prevent misuse or improper dissemination of nonpublic information, including a "need-to-know" standard that states that confidential information may be shared only with persons who have a need to know the information to perform their duties and to carry out the purpose(s) for which the information was provided. See id. at 38357 n.26. In addition, GS Entities have represented to the Sponsor that they maintain specific policies and procedures that are reasonably designed to protect confidential and commercially sensitive information associated with the Custodian's business from being shared with GS Entity individuals engaged in commodity sales and trading activities. See id.

31 See id. at 38358.

32 See id. at 38359.

33 The IIV will be calculated by multiplying the indicative spot price of copper (the three-month LME copper contract) by the quantity of copper backing each Share as of the last calculation date. See id.

Exchange or a third-party financial data provider, will be widely disseminated by one or more major market data vendors during the Core Trading Session on the Exchange (9:30 a.m. to 4:00 p.m. E.T.).[34]

The Trust's website will contain the following information, on a per-Share basis, for the Trust: (a) the NAV as of the close of the prior business day and the mid-point of the bid-ask price at the close of trading in relation to such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[35] The Trust's website also will disclose the list of copper held by the Trust, updated on a daily basis, and display the following information: the Basket Copper Amount; the Trust's prospectus; the two most recent reports to stockholders; and the last sale price of the Shares as traded in the U.S. market.[36]

The Exchange states that investors may obtain, almost on a 24-hour basis, copper pricing information based on the spot price of copper from various financial information service providers, such as Reuters and Bloomberg.[37] Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of copper and last-sale prices of copper futures, as well as information and news about developments in the copper market.[38] Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides

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34 See id.

35 See id.

36 See id. See also Amendment No. 2, supra note 9 (providing more details regarding the information about the Trust's copper holdings that will be available on the Trust's website).

37 See Notice, supra note 3, 77 FR at 38359.

38 See id.

information on copper prices directly from market participants.[39] Moreover, there are a variety of public websites providing information on copper, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal.[40] The Exchange will provide on its website (www.nyx.com) a link to the Trust's website.[41]

NYSE Arca will require that a minimum of 100,000 Shares be outstanding at the start of trading,[42] which represents 1,000 metric tons of copper. The Trust seeks to register 12,120,000 Shares.[43]

Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the Exchange until such time as the NAV is available to all market participants at the same time. If the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[44] Further, the Exchange will consider suspension of trading pursuant to NYSE Arca Rule 8.201(e)(2) if, after the initial 12-month period following commencement of trading:

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39 See id.

40 See id. For example, the LME publishes LME official price information on its website with a one-day delay; LME official price information also is published on Basemetals.com and Metal-Page.com with a one day delay; COMEX publishes on its website delayed futures and options information on current and past trading sessions and market news free of charge. See id. The Exchange also states that the current day's LME official prices (such as the LME Bid Price used to calculate the NAV of the Shares) are available from major market data vendors for a fee. See id.

41 See id.

42 See id.

43 See Registration Statement, supra note 15.

44 See Notice, supra note 3, 77 FR at 38359.

(1) the value of copper is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, or Custodian, or the Exchange stops providing a hyperlink on its website to any such unaffiliated source providing that value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis. More generally, with respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.[45] Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[46] These may include: (1) the extent to which conditions in the underlying copper market have caused disruptions and/or lack of trading; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[47] Additionally, trading in the Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rule, NYSE Arca Equities Rule 7.12.[48]

NYSE Arca represents that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of NYSE Arca rules and applicable federal securities laws.[49] The Exchange states that its existing trading surveillances, which are administered by FINRA, generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative

45 See id.

46 See id.

47 See id.

48 See id.

49 See id.

activity.[50] NYSE Arca states that, in addition to those surveillances, FINRA will implement a product-specific review designed to identify potential manipulative trading activity through the use of the creation and redemption process, and that NYSE Regulation, Inc., on behalf of the Exchange, will monitor to ensure that these procedures continue to be operational.[51]

The Exchange also states that, pursuant to NYSE Arca Equities Rule 8.201(g), it is able to obtain information regarding trading in the Shares, physical copper, copper futures contracts, options on copper futures, or any other copper derivative from Equity Trading Permit holders ("ETP Holders") acting as registered market makers, in connection with their proprietary or customer trades.[52] More generally, NYSE Arca states that it has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business.[53] With respect to a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange states that it can obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.[54] Further, NYSE Arca states that it may obtain trading information via the ISG from other exchanges that are members of the ISG, including CME Group, Inc., which includes COMEX, and that it has entered into a

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50 See Amendment No. 1, supra note 7.

51 See id.

52 See Notice, supra note 3, 77 FR at 38359.

53 See Amendment No. 1, supra note 7.

54 See id.

comprehensive surveillance sharing agreement with the LME that applies with respect to trading in copper and copper derivatives.[55]

Prior to the commencement of trading, the Exchange represents that it will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Baskets (including noting that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) how information regarding the IIV is disseminated; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (e) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of physical copper trading during the Core and Late Trading Sessions after the close of the major world copper markets;[56] and (f) trading information.[57]

The Notice and the Registration Statement include additional information regarding: the Trust; the Shares; the Trust's investment objectives, strategies, policies, and restrictions; fees and

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55 See Notice, supra note 3, 77 FR at 38360. The Exchange will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. See Amendment No. 1, supra note 7.

56 The Exchange's Core Trading Session is between 9:30 a.m. to 4:00 p.m. E.T. See Notice, supra note 3, 77 FR at 38359. The Exchange's Late Trading Session begins after the end of the Core Trading Session and concludes at 8:00 p.m. E.T. See NYSE Arca Equities Rule 7.34(a)(3).

57 See Notice, supra note 3, 77 FR at 38360.

expenses; creation and redemption of Shares; the physical copper market; availability of information; trading rules and halts; and surveillance procedures.[58]

III. Discussion and Commission Findings

After careful review and for the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act, including Section 6 of the Act,[59] and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[60] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[61] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission also finds that the proposed rule change is consistent with Section 11A(a)(1)(C)(iii) of the Act,[62] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

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58 See Notice and Registration Statement, supra notes 3 and 15, respectively.

59 15 U.S.C. 78f.

60 15 U.S.C. 78f(b)(5).

61 15 U.S.C. 78f(b)(8).

62 15 U.S.C. 78k-1(a)(1)(C)(iii).

Further, pursuant to Section 3(f) of the Act,[63] the Commission has considered whether the proposed rule change will promote efficiency, competition, and capital formation.

One commenter submitted five comment letters to explain its opposition to the proposed rule change.[64] Generally, the opposing commenter asserts that the proposed rule change is inconsistent with Section 6(b)(5) of the Act.[65] The commenter asserts that the issuance by the Trust of all of the Shares covered by the Registration Statement within a short period of time would result in a substantial reduction in the supply of global copper available for immediate delivery, and that this reduction in short-term supply would increase both the price of copper and volatility in the copper market, which would in turn significantly harm the U.S. economy.[66] The commenter further states that the predicted decrease in copper available for immediate delivery would make the physical copper market more susceptible to manipulation.[67]

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63 15 U.S.C. 78c(f).

64 See V&F July 18 Letter, supra note 4; V&F September 12 Letter, supra note 6; V&F September 27 Letter, supra note 6; V&F November 16 Letter, supra note 6; and EVW December 7 Letter, supra note 6. As discussed above, the commenter also attached to his letters other comment letters, or incorporated other comment letters by reference. See supra note 6 (citing V&F September 27 Letter). This commenter is referred to as "the commenter," although the Commission also received an e-mail from another commenter who opposes the proposed rule change. Ms. Janet Klein asserted that approval of the proposed rule change: (1) would be "contrary to rational oversight of wise practice," without explaining the basis for her judgment; (2) would not contribute to the economy; and (3) would promote "speculative swings of a commodity price not related to supply/demand," again without explaining the basis for her conclusion. See Klein E-mail, supra note 6. The impact of the proposed rule change on the price of copper is discussed below in Section III.B.

65 15 U.S.C. 78f(b)(5).

66 See V&F May 9 Letter, supra note 6, at 5–7.

67 See id. at 1, 10.

In response, the Sponsor generally states the Trust will provide a more liquid and cost-effective vehicle for investment in the physical copper market.[68] The Sponsor expects that much of the initial demand for the Shares will represent a reallocation of current investments in physical copper by professional copper market participants rather than new incremental demand.[69] The Sponsor does not anticipate that creation of the Trust will impact copper prices,[70] and disagrees with the notion that the Trust will render the copper market more susceptible to manipulation.[71]

Given the concerns expressed by the commenter that the Trust would remove a substantial amount of the supply of copper available for immediate delivery over a short period of time, which would render the physical copper market more susceptible to manipulation, and that the Trust therefore would provide market participants an effective means to manipulate the price of copper and thereby the price of the Shares,[72] the Commission analyzes the comments to examine, among other things, the extent to which the listing and trading of the Shares may (1) impact the supply of copper available for immediate delivery and the ability of market participants to manipulate the price of copper, and (2) be susceptible to manipulation. The sections below summarize and respond to the comments received.

A. The Trust's Impact on the Supply of Copper Available for Immediate Delivery

The commenter believes that the issuance by the Trust of all of the Shares covered by the Registration Statement within a short period of time would result in the withdrawal of substantial

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68 See BlackRock Letter, supra note 6, at 1.

69 See id. at 4.

70 See id. at 5.

71 See id. at 6.

72 See V&F May 9 Letter, supra note 6, at 1, 10.

quantities of copper from LME and COMEX warehouses, thus negatively impacting the supply of copper available for immediate delivery.[73] As discussed below, this belief assumes that: (1) copper held by the Trust would not be available for immediate delivery; (2) the global supply of copper available for immediate delivery that could be used to create Shares consists almost exclusively of copper already under LME or COMEX warrant, and therefore the Shares would be created primarily using copper already under LME or COMEX warrant; and (3) the Trust would acquire a substantial amount of copper within a short period of time, such that copper suppliers would not be able to adjust production to replace the copper removed from the market by the Trust. The Commission believes the record does not support the commenter's conclusions, which are based on his contentions, and thus, for the reasons discussed below, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery.

1. Availability of the Trust's Copper

The commenter asserts that copper held by the Trust would not be available for immediate delivery, and therefore copper deposited into the Trust would be removed from the market and would be unavailable to end-users.[74] In response, the Sponsor asserts that the Trust would not remove immediately available copper inventory from the market.[75] The Sponsor predicts that demand for the Shares is most likely to come from current metals dealers and others who already hold physical copper inventory or investments, and that the creation of Shares by

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73 See V&F July 18 Letter, supra note 4, at 1–2.

74 See id. at 5.

75 See BlackRock Letter, supra note 6, at 3–4. See also V&F September 12 Letter, supra note 6, at 2 ("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.").

these entities will not affect available supply.[76] The Sponsor also notes that Shares can be redeemed as well as created, thus allowing the Trust's copper to be withdrawn by authorized participants.[77]

The Commission agrees with the Sponsor that copper held by the Trust will remain available to consumers and other participants in the physical copper market because: (1) the Trust will not consume copper; (2) Shares are redeemable (in size) for copper on every business day; and (3) provided certain conditions are met, on the third business day after the day on which the LME Bid Price is announced following the placement of a redemption order, the Custodian will transfer from the Trust's account to the redeeming authorized participant's account the parcels of copper identified pursuant to the Trustee's algorithm and corresponding to the number of Baskets surrendered, and promptly thereafter, the Custodian will issue either (a) one or more LME warrants, if the copper transferred can then be placed on LME warrant and the Custodian is able to issue LME warrants, or (b) negotiable warehouse receipts, if the copper transferred cannot be placed on LME warrant or if the Custodian cannot issue LME warrants.[78] Accordingly, in the normal course of the Trust's operations, redeeming authorized participants will receive copper that the commenter acknowledges is available for immediate delivery (i.e., copper on LME warrant).[79] Given the structure of the Trust, the Commission believes that the

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76 See BlackRock Letter, supra note 6, at 4.

77 See id. at 3.

78 See Registration Statement, supra note 15. The Exchange states that, in the normal course of the Trust's operations, it is anticipated that authorized participants will receive LME warrants following a redemption transaction and that, in the event that its copper is no longer warrantable, the Trust will have operational procedures in place to put such metal on LME warrant when possible. See Notice, supra note 3, 77 FR at 38357–58.

79 See, e.g., V&F July 18 Letter, supra note 4, at 1 ("[T]he copper in the LME and [COMEX] warehouses is the only refined copper generally available for immediate

amount of copper accessible to industrial users will not meaningfully change as a result of the listing and trading of the Shares. Accordingly, the Commission believes that the proposed rule change will not burden capital formation for users who acquire copper for industrial and other purposes.

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delivery."). The Commission believes that the wait time discussed above to receive a LME warrant – or in some cases a negotiable warehouse receipt – is not a significant enough delay to consider the copper held by the Trust unavailable for immediate delivery because, as mentioned above, on the third business day after the day on which the LME Bid Price is announced following the placement of a redemption order, the Custodian will transfer from the Trust's account to the redeeming authorized participant's account the parcels of copper identified pursuant to the Trustee's algorithm and corresponding to the number of Baskets surrendered, and promptly thereafter, the Custodian will issue to the authorized participant either one or more LME warrants, which will be delivered whenever possible, or negotiable warehouse receipts.

The commenter expresses further concern in the EVW December 7 Letter about an increasing length of time that it takes to withdraw metal, including copper, from LME warehouses. The commenter argues that this "troubling new development" may, together with the proposed listing and trading of the Shares, jeopardize the ability of United States copper consumers to obtain the physical copper they need in a timely manner. See generally EVW December 7 Letter, supra note 6. The commenter previously acknowledged, however, that taking copper off LME warrant takes time; according to the commenter: (1) the amount of time it takes to take copper off LME warrant depends "on the length of the loading out queue" at the LME warehouse; and (2) queues "are currently ranging from 275 working days (more than one year) in Vlissingen, Netherlands, 91 working days (4.5 months) in New Orleans, 51 working days (2.5 months) in Johor, Malaysia to under one month in Korea and Rotterdam, Netherlands." V&F August 24 Letter, supra note 6, at 14. By his December 7 letter, the commenter appears to be updating information previously provided about the length of queues, but does not assert any new reason for disapproving the listing and trading of the Shares that is distinct from his original assertion, responded to in the text above, that listing and trading of the Shares will reduce the supply of copper available for immediate delivery. The Commission notes that the LME appears to be attempting to address the unloading queue issue, see London Metal Exchange, Consultation on Changes to LME Policy for Approval of Warehouses in Relation to Delivery Out Rates, Notice 12/296 : A295 : W152 (November 15, 2012), available at http://www.lme.com/downloads/notices/12_296_A295_W152_Consultation_on_Changes_to_LME_Policy_for_Approval_of_Warehouses_in_Relation_to_Delivery_Out_Rates.pdf, which applies to LME warehoused aluminum and zinc, not just copper. See also EVW December 7 Letter, supra note 6, at 3.

The commenter states that end users would not acquire Shares for the purpose of redeeming them to acquire copper because the copper they would receive in exchange for Shares might be in a location far from their plants or might be of brands that are not acceptable to their plants.[80] Regardless of the preferences of these consumers, authorized participants may redeem Shares for copper and the record does not contain any evidence that these or any other consumers of copper could not use the Shares to obtain copper through an authorized participant. Further, the record supports that the same logistical issues currently exist and are addressed by market participants holding LME warrants. For example, it is the Commission's understanding that when a market participant buys a long-dated copper futures contract on the LME and settles for a warrant, or when an LME member buys a cash futures contract in ring trading,[81] these market participants do not know the location or brand of the underlying copper. Accordingly, LME warrant holders sometimes swap warrants to acquire copper of a preferred brand in a convenient location,[82] and nothing in the record indicates that redeeming authorized participants would not be able to swap LME warrants received in connection with Share redemptions for other LME warrants for more suitable copper.

The commenter also expresses concern that investors who hold the Shares would not sell them, and therefore Shares would not be readily available for redemption.[83] This claim is unsupported. There is no evidence in the record to suggest that investors holding the Shares will

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80 See V&F September 10 Letter, supra note 6, at 4; V&F July 13 Letter, supra note 6, at 7.

81 Open outcry trading includes, for each metal traded on the exchange, four five-minute sessions taking place around the ring of the exchange (each such session, a "ring"). See Notice, supra note 3, 77 FR at 38355.

82 See V&F September 12 Letter, supra note 6, at 5.

83 See V&F September 10 Letter, supra note 6, at 3. See also V&F September 12 Letter, supra note 6, at 4.

be unwilling to sell them, particularly in response to market movements or changes in investor needs.[84]

The Commission believes that the listing and trading of the Shares, as proposed, could provide another way for market participants and investors to trade copper, and could enhance competition among trading venues. Further, the Commission believes that the listing and trading of the Shares will provide investors another investment alternative, which could enhance a well-diversified portfolio. By broadening the securities investment alternatives available to investors, the Commission believes that trading in the Shares could increase competition among financial products and the efficiency of financial investment.

2. Source of Copper Used to Create Shares

The commenter asserts that the global supply of copper available for immediate delivery, and eligible to be used to create Shares, consists almost exclusively of copper already under LME or COMEX warrant, and therefore the commenter believes that Shares would be created primarily using copper already under LME or COMEX warrant.[85] The commenter states that the size of the market for copper available for immediate delivery is small relative to the size the commenter expects the Trust to attain, asserting that there are only 240,000 metric tons available

84 The commenter provides a chart that it says shows the number of shares outstanding for the SPDR Gold Trust and the iShares Silver Trust, and states that "[i]n spite of price volatility in the market there has been very little volatility in the aggregate number of shares listed." See V&F September 12 Letter, supra note 6, at 4. The commenter asserts that if the same occurs in relation to the Shares, it would pose "a substantial risk to the unit redemption process." See id. The Commission does not believe this chart supports the commenter's claim that Shares would be unavailable for redemption. Rather, the Commission believes the chart reveals that redemptions of shares of those other trusts did occur, as evidenced by the data showing that the number of shares outstanding in those trusts has increased and decreased over time. Accordingly, the Commission believes that this data does not show investors will not redeem their Shares, as the commenter claims.

85 See V&F July 18 Letter, supra note 4, at 2; and V&F September 27 Letter, supra note 6, at 2.

on the LME, with an additional 60,000 metric tons available on the COMEX, and projects that the Trust would remove as much as 121,200 metric tons from the market of copper available for immediate delivery.[86] The commenter also asserts that the Trust would be funded with copper on warrant in the United States, which would result in a shortage of copper in the United States.[87] The commenter further urges that the Commission consider collectively the supply impacts of the iShares Trust and the JPM Copper Trust.[88]

In contrast, the Sponsor believes that there are very substantial copper inventories available outside of the LME and COMEX that are deliverable on a short-term basis and that could be used to fund the Trust.[89] The Sponsor states that the Trust will accept creations using

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86 See V&F July 18 Letter, supra note 4, at 1. How the commenter measures the projected size of the Trust is discussed infra in Section III.A.3.

87 See V&F July 18 Letter, supra note 4, at 4.

88 The commenter asserts that the collective impact of the iShares Trust and the JPM Copper Trust could result in the removal of 183,000 metric tons of copper from the market, or 63% of the copper available in LME and COMEX warehouses. See id. at 1. For the reasons discussed in Section III.A, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery. The Commission also notes that, in approving the listing and trading of shares of the JPM Copper Trust, the Commission explained why it does not believe that the listing and trading of those shares is likely to disrupt the supply of copper available for immediate delivery. See JPM Order, supra note 6, 77 FR 75468, 75473–77. Similarly, the Commission does not believe that the trusts, considered collectively, are likely to disrupt the supply of copper available for immediate delivery.

89 See BlackRock Letter, supra note 6, at 2. The Sponsor asserts that "[d]uring years when the refined copper market is in a deficit copper fabricators and other end users can consume supplies from warehouses [sic] stocks held by producers, consumers, merchants and traders, governments, and exchange warehouses." See BlackRock Letter, supra note 6, at Exhibit B. But see V&F September 12 Letter, supra note 6, at 3 ("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.")

both copper already held in, as well as warrantable copper newly delivered to, LME-approved warehouses of the Custodian.[90]

The Commission believes that there is significant uncertainty about the locations from which copper will be purchased to create Shares.[91] Based on the description of the Trust in the proposed rule change, authorized participants and their customers will choose what eligible copper to deposit with the Trust. As discussed further below,[92] the Commission also believes that the amount of copper that the Trust will hold is uncertain.[93]

However, even assuming that authorized participants will need to remove copper from LME warrant to deposit the copper into the Trust, as discussed above, the Commission believes

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90 See BlackRock Letter, supra note 6, at 2. Not all of the approved warehouses are in the United States. See Notice, supra note 3, 77 FR at 38356 n.23.

91 The Sponsor provided data estimating that total worldwide warrantable copper supply was 2.926 million tons as of July 2012, of which 1.358 million tons were considered to be "liquid"; and of the 1.358 million tons of "liquid" stock, 434,105 tons are held in LME, COMEX, and SHFE warehouses. See BlackRock Letter, supra note 6, at 2 (citing Metal Bulletin Research, "Independent Assessment of Global Copper Stocks," August 22, 2012). This leaves 923,895 tons of liquid stock that is not held in LME, COMEX, or SHFE warehouses. The data provided by the Sponsor is substantially similar to data referenced in the JPM Order. See JPM Order, supra note 6, 77 FR at 75475. The differences between the sets of data appear to be a function of rounding and the inclusion of copper held in SHFE warehouses as part of the liquid stock held in exchanges in the data provided by the Sponsor of the iShares Trust.

The Sponsor asserts that "[t]he large size of the total copper market as compared to exchange inventories belies the assertion that only exchange inventories will be available for creations into the Trust." See id. In contrast, the commenter states that "[e]xcept for copper that may be stored in bonded warehouses in China, all such copper is, as far as we know, subject to long-term supply contracts and is 'liquid,' only in the sense that it is en route to fabricators around the world." V&F September 27 Letter, supra note 6, at 2. The Commission believes that it is plausible that some portion of the estimated 923,895 metric tons of liquid copper inventory identified by the Sponsor currently would be available for authorized participants to use to create Shares.

92 See infra Section III.A.3.

93 The Commission drew the same conclusion regarding the size of the JPM Copper Trust. See JPM Order, supra note 6, 77 FR 75468, 75476–77.

that the Trust's copper will remain available for immediate delivery to consumers and participants in the physical markets.[94] Accordingly, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery.

3. Growth of the Trust

The commenter states it is reasonable to expect that the Trust would sell all of the Shares covered by the Registration Statement in the three months after the registration becomes effective because of: (1) what the commenter characterizes as the Sponsor's stated desire to remove enough copper from the market for copper available for immediate delivery to cause an artificial rise in price and cover the monthly costs of storage; (2) the commenter's view that there is a very limited quantity of copper available for immediate delivery to accomplish the Trust's objective; and (3) the increase in copper prices in the three months following October 2010, when the iShares Trust, JPM Copper Trust, and ETFS Physical Copper were announced.[95] The commenter also asserts that the copper supply is inelastic and that supply, therefore, is unlikely to increase fast enough to account for the increased demand that the commenter believes would be unleashed by the creation and growth of the Trust.[96] The commenter asserts that the Trust

94 See supra Section III.A.1.

95 See V&F August 24 Letter, supra note 6, at 20. ETFS Physical Copper is a trust that holds copper under LME warrant; its shares are traded on the London Stock Exchange and Deutsche Börse. See http://www.etfsecurities.com/en/updates/document_pdfs/ETFS_Physical_Industrial_Copper_Fact_Sheet.pdf. A discussion of the effect of ETFS Physical Copper on the price of copper is included below. See infra Section III.B.

96 See V&F May 9 Letter, supra note 6, at 5. See also V&F September 12 Letter, supra note 6, at 2 ("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 –

would hold as much as 121,200 metric tons of copper if the Sponsor sells all of the Shares it seeks to register pursuant to the Registration Statement.[97]

The Sponsor argues that it is not possible to extrapolate the ultimate size of the Trust from the number of Shares initially registered because the Trust may not issue any Shares if it is unsuccessful, or the Trust may need to file additional registration statements if it is very successful.[98] The Sponsor also argues that prior experience of other existing commodity-based trusts contradicts the commenter's assertions;[99] specifically, the Sponsor states that it took over two years to sell the shares initially registered for the SPDR Gold Trust and ETFS Physical Platinum and one year to sell the shares initially registered for the iShares Silver Trust.[100]

As a preliminary matter, as the Sponsor pointed out, the commenter appears to conflate the amount of copper held by the Trust with the number of Shares issued. When commodity-based trusts redeem shares, those redeemed shares do not get put "back on the shelf"; once securities are redeemed, the issuer cannot resell securities of the same amount unless there is either sufficient capacity left on the registration statement (i.e., enough registered securities to cover the new issuance of shares by the issuer) or unless a new registration statement is filed to register the offer and sale of the securities.[101] Accordingly, 12,120,000 issued Shares will correspond to 121,200 metric tons of copper held by the Trust only if authorized participants do

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12 month timeframe."). The commenter states that, in the longer term, copper miners are likely to respond to price signals and increase production. See V&F August 24 Letter, supra note 6, at 28.

97 See V&F July 18 Letter, supra note 4, at 1.

98 See BlackRock Letter, supra note 6, at 3.

99 See id.

100 See id. The Sponsor also notes that ETFS Physical Palladium has yet to deplete the shares initially registered in December 2009. See id.

101 See Sections 5 and 6 of the Securities Act, 15 U.S.C. 77e and 15 U.S.C. 77f, respectively.

not redeem any Shares.[102] Based on the existence of the arbitrage mechanism of the Trust,[103] which is common to many exchange-traded vehicles, the Commission believes it is very unlikely that no Shares will be redeemed.

The Commission believes that the amount of copper held by the Trust will depend on investor demand for the Shares and the extent to which authorized participants fulfill such demand by exchanging copper for Baskets of Shares and do not redeem issued Shares. Investor demand for the Shares is currently unknown. The Commission notes that ETFS Physical Copper has not grown to a substantial size since its inception.[104]

The commenter also predicts that copper supply will not increase fast enough to accommodate what he views as the new demand that will be created by the Trust. The Commission believes that the commenter has not provided evidence to support this projection. Data submitted by the commenter provides that the global supply of refined copper has increased every year since 2000 – except 2002 and 2003 – and in those years where supply increased, in all but one year (2009), it increased by more than the amount of copper that the commenter predicts

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102 The Commission drew a similar conclusion regarding the size of the JPM Copper Trust. See JPM Order, supra note 6, 77 FR 75468, 75476 ("6,180,000 issued Shares will correspond with 61,800 metric tons of copper held by the [JPM Copper Trust] only if authorized participants do not redeem any Shares").

103 The arbitrage mechanism allows authorized participants to create and redeem Shares, and is designed to align the secondary market price per Share to the NAV per Share. See, e.g., BlackRock Letter, supra note 6, at 7 n.32.

104 According to the commenter, on December 17, 2010 (one week after the product was launched), ETFS Physical Copper held 1,445.4 metric tons of copper, and on August 3, 2012, it held 1,763.7 metric tons of copper, although there have been periods where ETFS Physical Copper has held greater quantities of copper, reaching as high as 7,072.9 metric tons of copper in March and April of 2012. See V&F August 24 Letter, supra note 6, at 15.

the iShares Trust and the JPM Copper Trust will hold collectively.[105] Further, data provided by the commenter project that production will increase through 2016 in amounts that also exceed – and in most years greatly exceed – the amount of copper that the commenter predicts the iShares Trust and the JPM Copper Trust will hold collectively.[106]

As discussed above, the Commission believes that copper held by the Trust will be available for immediate delivery.[107] However, even assuming that the Trust's copper will be unavailable for immediate delivery, the Commission believes that the commenter has not supported his predictions that the Trust will grow so quickly, and that the supply of copper will not increase sufficiently, such that that the Trust will significantly disrupt the supply of copper available for immediate delivery.

4. Other Physical Commodity Trusts

The commenter admits that the introduction of commodity-based trusts that hold other metals had virtually no impact on the available supply, but asserts that these other metals – gold, silver, platinum, and palladium – are fundamentally different because they have traditionally been held for investment purposes and currently are used as currency, and that, as a result, there were ample stored sources available to fund commodity-based trusts overlying those metals.[108] The commenter asserts that copper, in contrast, generally is not held as an investment, but rather is used exclusively for industrial purposes, with the annual demand generally exceeding the

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105 See id. at 2.

106 See id. (providing data indicating that global refined copper production is projected to increase by 519,000 metric tons in 2012; 1,603,000 metric tons in 2013; 1,195,000 metric tons in 2014; 1,091,000 metric tons in 2015; and 375,000 metric tons in 2016).

107 See supra Section III.A.1.

108 See V&F May 9 Letter, supra note 6, at 2.

available supply, and, therefore, believes that the introduction of the Trust would impact supply.[109]

In response, the Sponsor states that while gold is used primarily as a currency equivalent and perhaps silver is as well, "there is little plausible reason to regard platinum and palladium as currency equivalents in a manner that copper is not;"[110] the Sponsor states that silver, platinum, and palladium are used primarily for industrial purposes.[111] The Sponsor also asserts that copper trading on the OTC market and futures exchanges "clearly demonstrates that copper is utilized for investment purposes and is viewed by the investment community as an investable asset."[112]

Given the industrial usage of silver, platinum, and palladium as compared to copper,[113] the Commission believes that it is reasonable to project that any impact of the listing and trading

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109 See V&F May 9 Letter, supra note 6, at 2–3. The Levin Letter, which the commenter attached to the V&F July 18 Letter, states that because copper is very expensive to store and difficult to transport, relative to precious metals, copper is not currently held for investment purposes, and predicts that holding copper for investment purposes will have a significantly greater impact on the copper market than the precious metals commodity-based trusts had on their markets and the broader economy. See Levin Letter, supra note 6, at 7.

110 See BlackRock Letter, supra note 6, at 7.

111 See id. at 7–8.

112 See id. at 8. For example, the Sponsor cites data showing that non-commercial market participants trading copper futures on the COMEX accounted for, on average, 40% of total reported copper positions in the first half of 2012, which the Sponsor suggests is similar to the non-commercial market participation in the precious metals markets. See id. at 8 n.35.

113 In the Order Instituting Proceedings, the Commission asked for comment regarding how much gold, silver, platinum, and palladium has been used for investment and industrial purposes in each of the last 10 years. See Order Instituting Proceedings, supra note 5, 77 FR 48181, 48187. In response, the Sponsor stated that silver, platinum, and palladium are used "primarily for industrial purposes." BlackRock Letter, supra note 6, at 7–8. The Sponsor also provided data to support its contention that the investment community regards copper – like gold, silver, platinum, and palladium – as an investable asset. See id. While declining to provide data regarding the industrial usage of silver, the commenter presented evidence that gold, platinum, and palladium are put to industrial

of the Shares will not be meaningfully different than that of the listing and trading of shares of these other commodity-based trusts due solely to the nature of the underlying commodity markets. In any event, the Commission's analyses above in Sections III.A.1–3 are the primary bases for the Commission's belief that the listing and trading of the Shares is not likely to disrupt the supply of copper available for immediate delivery. The non-impact of those other trusts on the supplies in the underlying precious metals markets is consistent with this view, but it is not a significant factor underlying it.

B. The Trust's Impact on the Price of Copper

Due to what he predicts will be a rapid growth of the Trust, the commenter believes a substantial portion of the supply of immediately available LME-warranted copper would be removed from the market,[114] which would drive up the price of copper.[115] As noted above, the commenter estimates that the iShares Trust, which would hold up to 121,200 metric tons of copper, and the JPM Copper Trust, which would hold up to 61,800 metric tons of copper, collectively would hold approximately 63% of the copper available in LME and COMEX warehouses, which the commenter asserts is the only refined copper generally available for immediate delivery.[116] The commenter concludes that the removal of so much copper from LME and COMEX warehouses will lead to artificially inflated prices.[117] The commenter also

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use. See V&F August 24 Letter, supra note 6, at 18–19. Further, in approving the listing and trading of shares of the JPM Copper Trust, the Commission similarly noted the industrial use of silver, platinum, and palladium. See JPM Order, supra note 6, 77 FR 75468, 75477.

114 See supra Section III.A.1.

115 See V&F May 9 Letter, supra note 6, at 5. See also V&F September 12 Letter, supra note 6, at 4.

116 See V&F July 18 Letter, supra note 4, at 1.

117 See id. at 1–2.

states: "[t]he LME settlement price is axiomatically affected by the quantity of copper on warrant . . . because the quantity on warrant defines how much copper is eligible to be delivered against a cash contract, i.e. it is the total supply that is available when setting the settlement price."[118] The commenter further asserts that the launch of the UK-listed ETFS Physical Copper security and announcements about the proposed copper trusts in the United States were part of the cause of a copper price run up,[119] and predicts that the price increases for copper would be especially dramatic in the U.S., where copper currently is relatively inexpensive.[120] The commenter further argues that the listing and trading of the Shares would "risk endangering the price discovery functions of the LME and [COMEX]."[121]

In contrast, the Sponsor asserts that copper prices are a function of demand and supply, as well as other factors, and that it would be difficult to predict the impact of the introduction of an exchange-traded vehicle backed by physical copper on copper prices given the many variables that exist.[122] The Sponsor argues that it is impossible to predict demand for the Shares; the future behavior of investors and copper market participants; the supply and demand dynamics of the copper market outside of the Trust; or fundamental economic factors that impact demand for copper.[123] In addition, the Sponsor asserts that data show that there is a weak correlation

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118 See V&F August 24 Letter, supra note 6, at 7.

119 See id. at 16.

120 See V&F July 18 Letter, supra note 4, at 4.

121 See id. The commenter does not explain why he believes the listing and trading of the Shares would endanger the price discovery functions of the LME and COMEX.

122 See BlackRock Letter, supra note 6, at 5.

123 See id.

between LME copper prices and global supply and demand balances.[124] The Sponsor also states its disagreement with contentions that any increase in copper prices that results from the listing and trading in the Shares will be especially dramatic in the U.S.[125] According to the Sponsor, "[t]here exists widespread lack of consensus in the marketplace regarding where authorized participants will have the most ready access to copper and where an authorized participant will be economically incentivized to deliver copper in connection with a creation of Shares of the Trust."[126]

As discussed above,[127] the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery, which is what the commenter predicts would increase the price of copper. However, even if the supply of copper under LME warrant would decrease because previously warranted copper were transferred to the Trust, for the reasons discussed below, the Commission does not believe that lower LME inventory level by itself will increase the LME Bid Price (or any other price of copper).

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124 See id. The Sponsor provided charts showing correlation coefficients between monthly and annual changes in copper prices and copper supply/demand balance. As discussed below, Commission staff performed its own analyses to look for evidence of price impact related to changes in copper inventory levels and fund flows. See infra note 128.

125 See BlackRock Letter, supra note 6, at 5 n.26. See also supra notes 91–93 and accompanying text (stating the Commission's belief that there is significant uncertainty about the locations from which copper will be purchased to create Shares).

126 See BlackRock Letter, supra note 6, at 5 n.26.

127 See supra Section III.A.

To analyze the potential impact of changes in the LME inventory level on changes in the LME Bid Price, Commission staff performed two regression analyses.[128] The first analysis was a linear regression of daily copper price changes, using five years of daily data from 2007–2012, against the following explanatory variables: the change in LME copper inventory from the previous day (i.e., the lagged change in LME copper inventory), and the changes in spot prices of nickel, tin, gold, silver, platinum, and palladium, and the S&P 500, VIX index, and the China A-Shares index returns. The results indicate that LME copper inventories do not appear to have any independent statistical effect on prices.[129]

Commission staff also performed a similar regression analysis using monthly data from January 2000 until June 2012 obtained from the International Copper Study Group ("ICSG") to determine whether a relation between copper prices and LME inventories exists over a longer time horizon. The second analysis was a linear regression of monthly copper price changes against the following explanatory variables: the previous month's change in LME copper inventory, total exchange copper inventory (i.e., combined inventory from LME, COMEX, and SHFE), non-exchange copper inventory (i.e., inventory from merchants, producers, and consumers), and spot price changes for nickel, tin, and platinum. This analysis again indicates that LME inventories specifically do not appear to have any independent statistical effect on prices.[130]

128 See Memorandum to File, dated November 6, 2012, from the Division of Risk, Strategy, and Financial Innovation ("RF Analysis"). The RF Analysis was designed to look for evidence of price impact related to changes in copper inventory levels and fund flows.

129 See id. at 10.

130 See id. at 11.

Based on these analyses, even if the listing and trading of Shares were to result in the removal of copper on warrant from LME inventories, the Commission does not believe that such a supply reduction will by itself directly impact the LME Bid Price (or any other price of copper). Although total exchange inventories, in contrast to LME inventories, appear to have some effect on monthly copper prices in this linear regression analysis, the coefficient estimate associated with total exchange inventories indicates that copper prices should decrease when copper is taken off-exchange.[131]

Commission staff also performed Granger causality analyses[132] to test the causal effect the holdings of other commodity-based trusts historically have had on the prices of their underlying commodities. Specifically, to evaluate whether the introduction of the SPDR Gold Trust, iShares Silver Trust, ETFS Platinum Trust, ETFS Physical Palladium Shares, and ETFS Physical Copper had an impact on the return of the metals underlying those trusts, using monthly data from their inceptions until September 2012, Commission staff examined flows into these funds and subsequent changes in underlying prices over time.[133] This analysis revealed no

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131 See id. The commenter asserts that Commission staff "included likely heteroskedastic variables of other LME and LBMA metals prices in the regression, which may in the least, have undermined the cogency of the coefficient pertaining to LME copper inventory levels." See V&F November 16 Letter, supra note 6, at 1–2. There is no evidence in the record of the existence of heteroskedasticity in these variables that would affect the results of the RF Analysis.

132 Granger causality is a statistical concept of causality that is based on prediction. If a signal X "Granger-causes" a signal Y, past values of X should contain information that helps predict Y above and beyond the information contained in past values of Y alone. See RF Analysis, supra note 128, at 3 n.9.

133 See id. at 2–9. Because ETFS Physical Copper is small relative to the potential size of the Trust – holding only approximately 2,000 metric tons of copper as of August 2012 – Commission staff augmented its analysis by comparing asset growth of SPDR Gold Trust, iShares Silver Trust, ETFS Platinum Trust, and ETFS Physical Palladium Shares with changes in spot prices for the underlying metals.

observable relation between the flow of assets and subsequent price changes of the underlying metal prices.[134] Commission staff repeated this analysis on a daily frequency for iShares Silver Trust, ETFS Platinum Trust, ETFS Physical Palladium Shares, and ETFS Physical Copper.[135] Again, Commission staff found no evidence that fund flows were statistically related to subsequent changes in the underlying metals prices. Given the industrial usage of silver, platinum, and palladium as compared to copper,[136] the Commission believes that it is reasonable to project that any impact of the listing and trading of the Shares will not be meaningfully different from that of the listing and trading of shares of other commodity-based trusts due solely to the nature of the underlying commodity markets.

In connection with the proposed rule change, the Commission received one comment letter regarding the Commission staff's analysis.[137] This letter includes comments on both the substantive conclusions reached as well as the methodology used. As described further below, the Commission believes the staff's analysis reasonably evaluates whether historical price impacts are associated with changes in copper supply, one of the commenter's contentions.

The commenter states that the Granger causality analyses appear on their face to be incongruous.[138] The commenter asserts that Commission staff appears to be comparing assets under management to the respective price of the commodity held by the trust, and provides a chart that the commenter purports to show that there is a 92% correlation between the rolling

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134 See id. at 4.

135 Daily asset data was not available for the SPDR Gold Trust within the Commission's existing data sources.

136 See supra note 113.

137 See V&F November 16 Letter, supra note 6.

138 See id.

monthly change in NAV of the iShares Silver Trust and the silver price.[139] The Granger causality analysis from Tables 1 and 2 of the RF Analysis examines the relation between dollar flows into the funds and subsequent changes in the prices of the underlying metals. It does not examine the relation between changes in assets under management, which are driven by both flows and returns of the underlying, and the concurrent change in the prices of the underlying metals. Therefore, the Commission believes that the relation between the change in NAV for these funds and the concurrent change in the prices of the underlying metal is irrelevant for the purposes of the cited analysis.

The commenter also asserts that the Commission staff should have examined alternative price variables in its analysis. The commenter suggests that Commission staff should have examined the cash to three month time spread and provides its own analysis, which the commenter concludes demonstrates a strong relationship between LME inventory changes and the cash to three month time spread.[140] The commenter states that if the iShares Trust and the JPM Copper Trust were to sell all of the shares registered through their respective registration statements, the cash to three month time spread "would blow out to a massive backwardation, potentially approaching record levels, making it impossible for copper consumers to finance their inventory."[141] The analysis provided by the commenter, however, does not provide the

139 See id. at 6–7.

140 See id. at 3.

141 See id. The commenter further states that the mechanics of unit creation for commodity-based trusts backed by precious metals are fundamentally different than those for commodity-based trusts backed by industrial metals, citing the lack of copper in unallocated accounts that could be used in creating Shares. According to the commenter, neither producers nor consumers carry meaningful inventories of copper, which would require authorized participants to acquire copper from LME and COMEX inventories to create Shares. The commenter asserts that a backwardation would be necessary to trigger

significance level of any test statistics associated with these findings, which would provide an assessment of the likelihood that relations were observed in the data by statistical chance. Without an assessment of statistical significance, it is difficult to conclude whether observed relations in the commenter's data are systematic or anecdotal. Furthermore, an assessment of the statistical significance of these results is not possible without knowing which alternative tests of the hypothesis were also examined and reported. The commenter did not provide any information about which alternative tests were examined, if any. In addition, the commenter's analysis appears to analyze inventory changes against concurrent price changes. The Commission does not believe that such a concurrent analysis can isolate the effect of inventory changes on prices because such an analysis cannot distinguish whether price changes lead to inventory changes or vice versa.

Further, as discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery,[142] and believes that the commenter has not supported its prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery.[143]

The commenter also states that Commission staff should have considered the impact on locational premia.[144] The commenter asserts that the relationship between COMEX inventory

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the movement of copper to authorized participants, and that consumers would have to compete for this metal or lend to authorized participants. See id. at 4.

142 See supra Section III.A.

143 See supra Section III.A.3.

144 See V&F November 16 Letter, supra note 6, at 3, 5. The commenter refers to "physical" premia in describing the manner in which the Trust will value its copper holdings: "Another market price that the SEC could have done well to look into is the physical

and locational premia in the U.S. is strong, and provides data that the commenter suggests shows that when COMEX inventories are at anemic levels, locational premia can be very high (above $200 per metric ton).[145] Thus, the commenter argues that if the Trust results in the removal of inventory from LME and COMEX warehouses, the associated market impact will be much higher locational premia.[146] The analysis provided by the commenter, however, does not provide the significance level of any test statistics associated with these findings.[147] In addition, the commenter's analysis appears to analyze inventory changes against concurrent price changes. The Commission does not believe that such a concurrent analysis can isolate the effect of inventory changes on prices, as discussed previously.[148] In addition, according to data provided by the commenter, locational premia typically appear to be no greater than 2%.[149] Therefore, the Commission believes the degree to which such premia can be influenced is limited. Further, even assuming that copper was taken off LME warrant to be deposited into the Trust, the Commission believes that the Trust's copper will remain available for immediate delivery to

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premia, especially in light of the [Trust's] implied objective to value metal . . . on an in-situ basis, taking into account regional physical price variations." See id. at 5. Consistent with this description, the Commission refers to locational premia rather than physical premia. The Trust will value its copper using the LME Bid Price, and unlike the JPM Copper Trust, will not take into account locational premia. See infra note 216.

145 See V&F November 16 Letter, supra note 6, at 3, 5.

146 See id.

147 See supra text following note 141.

148 See supra text following note 141.

149 See V&F August 24 Letter, supra note 6, at 11–12. The data provided relates to locational premia for warehouses that would be used to store copper held in the JPM Copper Trust, which are different from the warehouses that would be used by the iShares Trust. As the locational premia provided do not reflect all of the cities in which the iShares Trust's warehouses will be located, the Commission evaluated the data only to understand the significance of locational premia as compared to copper prices.

consumers and participants in the physical markets,[150] which will limit the possible effect on locational premia.

The commenter also believes that Commission staff erred by using lagged daily LME stock data. The commenter asserts that because there are "many consecutive and non-consecutive days that LME stock levels and LME traded metals do not change while LME prices do . . . , running a daily LME stock series through a regression analysis will yield statistically weak results in most cases."[151] The commenter states that LME inventory data for the prior day is released at 9:00 a.m. in the London trading day, thereby giving the market a full trading day to digest the data.[152] The lagged daily LME inventory change used in the RF Analysis in fact was regressed against the change in copper prices for the day on which this information was released at 9:00 a.m.[153]

In addition, the commenter asserts that there is not a strong statistical relationship between lagged copper inventories and contemporaneous copper prices because the LME represents the copper market's "warehouse of last resort."[154] According to the commenter, when LME stocks are drawn down or added to, market participants "should have already fully

150 See supra text accompanying note 94.

151 See V&F November 16 Letter, supra note 6, at 2.

152 See id. at 5–6.

153 To confirm this, Commission staff reconciled a sample of historical LME stock data from the LME website (http://www.lme.com/dataprices.asp) and the Bloomberg LME stock data used in the RF Analysis. Additional reconciliation was done against historical LME copper warehouse stock data found at http://www.metalprices.com/historical/database/copper/lme-copper-warehouse-stocks.

154 See V&F November 16 Letter, supra note 6, at 6.

discounted the fundamental information contained within that particular stock move."[155] This assertion seems consistent with a hypothesis that price changes precede inventory changes, which is contrary to the commenter's assertions that inventory changes precede price changes.[156] The Commission believes that this argument provides further weight to the Commission staff's finding that the LME copper inventory changes do not appear to precede price changes. In sum, the Commission believes the daily periods used in the RF Analysis were reasonable and appropriate because evidence of the relationship between inventories and prices would likely be seen at daily intervals.[157]

The commenter suggests that, instead of looking at lagged daily LME stock data, the Commission staff should have looked at the 30 largest quarter-to-quarter LME inventory declines against changes in the LME cash price over the same time periods. The commenter asserts that such analysis, which the commenter submitted, shows that for the 30 largest observations, the median stock decline was 28.6%, and that the LME cash price rose in 25 out of 30 observations, for a median increase of 10.5%.[158] The commenter states that these findings

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[155] See id. (stating that LME stocks are drawn down by consumers because neither producers nor traders have material to sell to consumers and consumers are willing to go through the logistical hassle of being long LME warrants, swapping the warrants for their preferred brands, and transporting the copper to their individual plant, and that "[i]t is nonsensical to assume that the trading community has not already discounted this information into the LME price"). But see id. at 2 ("Intuitively it doesn't make sense to argue that in a physically settled exchange system that fungible stock levels don't exert some statistically robust influence on metals prices.").

[156] See supra notes 115–120 and accompanying text.

[157] In particular, LME inventory data for the previous day is released on the morning of each trading day so that prices are able to react over the course of that day. Moreover, the use of the monthly lag period confirmed the results of the daily analysis and allowed for the examination of the effect of non-exchange copper inventories for which only monthly data were available within the Commission's existing data sources.

[158] See V&F November 16 Letter, supra note 6, at 2.

suggest that if LME and COMEX inventories were to decline by more than 50%, which the commenter asserts could happen if the iShares Trust and the JPM Copper Trust were to sell all of the shares registered through their respective registration statements, prices could increase 20–60% in the quarter that the LME and COMEX inventory decline occurs.[159]

The analysis provided by the commenter, however, does not provide the significance level of any test statistics associated with these findings.[160] In addition, the commenter's analysis appears to analyze inventory changes against concurrent price changes. The Commission does not believe that such a concurrent analysis can isolate the effect of inventory changes on prices.[161] Further, as discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery,[162] and believes that the commenter has not supported his prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery.[163]

Finally, the commenter asserts that the listing and trading of the Shares could change the fundamental structure of the copper market, and that Commission staff should "ponder" such a structural change in the copper market.[164] The commenter states that the ex-post implications for copper outright prices in a market that involves listing and trading of the Shares cannot be accurately inferred from what the commenter characterizes as "an overly-simplistic ex-ante

159 See id.

160 See supra text following note 141.

161 See supra text following note 141.

162 See supra Section III.A.

163 See supra Section III.A.3.

164 See V&F November 16 Letter, supra note 6, at 3–4.

statistical analysis of LME/global inventories and LME settlement prices."[165] According to the commenter, never before has it been possible for financial players to "lock up" significant amounts of LME and COMEX inventory in a short period of time and remove that copper from the market.[166] Further, while the commenter indicates that "[o]verall historically the level of LME inventories has been generally indicative of the trading environment, not a driver of the metal price per se," the commenter believes creation of the Trust could change the role of LME inventories from being a function of the fundamentals to being a fundamental, and "arguably THE fundamental, as has become the case in precious metals."[167]

The Commission believes that such assertions are speculative and unsupported by the record. As discussed in detail throughout this order, the Commission does not believe that the listing and trading of the Shares is likely to alter the supply and demand fundamentals of the copper market. Further, as discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery[168]

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165 See id. at 4.

166 See id. at 3–4, 8.

167 See id. at 6 (emphasis in original). The commenter states that exchange-traded vehicles backed by silver, platinum, and palladium have become the largest single holder of those metals in a remarkably short period of time (less than eight years) and that exchange-traded vehicles backed by gold are eclipsed at a national level only by the U.S. and Germany. According to the commenter, while the cumulative impact of exchange-traded vehicles on prices has dissipated as these products have matured, "the reality is that they have become a key fundamental in terms of analyzing the precious metals markets," and have become the main asset class. See id. at 7. The commenter asserts that it is not certain, and that it should not be assumed, that potential investors in the Trust will "be as sticky as they have been in gold and silver, and to a lesser degree in platinum and palladium." See id. The commenter's "stickiness" argument has been addressed above. See supra Section III.A.1.

168 See supra Section III.A. Even assuming that the Trust's copper will be unavailable for immediate delivery, the Commission believes that the commenter has not supported his

and, even assuming that copper was taken off LME warrant to be deposited into the Trust, the Commission believes that the Trust's copper will remain available for immediate delivery to consumers and participants in the physical markets.[169]

Because the Commission does not believe that the listing and trading of the Shares, by itself, will increase the price of copper, the Commission also believes that approval of the proposed rule change will not have an adverse effect on the efficiency of copper allocation for industrial uses and will also not have an adverse effect on capital formation for industrial uses of copper.

C. The Trust's Impact on Copper Price Volatility

The commenter asserts that the successful creation and growth of the Trust would make the price of copper, which the commenter states already is volatile, even more volatile.[170] Specifically, the commenter asserts that the successful creation and growth of the Trust, which the commenter believes would substantially restrict supply and increase copper prices, would create a boom and bust cycle in copper prices.[171] The commenter predicts that this ultimate sell-off would be quick, and that the expected "dumping" of thousands of metric tons of copper back

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prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery. See supra Section III.A.3.

169 See supra text accompanying note 94.

170 See V&F May 9 Letter, supra note 6, at 5.

171 See id. But see V&F November 16 Letter, supra note 6, at 8 (stating that if Commission staff were to analyze whether the discrete flow of ounces in and out of exchange-traded vehicles drives underlying metals price, it would likely show that volatility in precious metals is not solely a function of net metal flow in and out of the exchange-traded vehicles). The commenter cites to a statement in the Registration Statement to argue that the Sponsor admits that this boom and bust cycle may occur. See V&F July 18 Letter, supra note 4, at 4 (citing Registration Statement, supra note 15, at 10).

onto the market would depress the price of copper and negatively impact the world economy at large.[172]

In contrast, the Sponsor asserts that it would be difficult to predict the impact of the introduction of an exchange-traded vehicle backed by physical copper on price volatility given that many variables exist.[173] The Sponsor asserts that the arguments presented in the Levin Letter based on research reports and hearing testimony related to futures and other derivative-based instruments do not demonstrate that an exchange-traded vehicle backed by physical copper would contribute to price volatility.[174] Further, the Sponsor believes that "the physical-backed nature of the Trust may in fact reduce price volatility as the Trust may take up excess supply during times when the market is oversupplied and provide an inventory of metal ready for delivery during times when the market is in a shortage."[175]

The commenter's prediction that the listing and trading of the Shares would cause a boom and bust is premised upon both the supply and price impacts he predicts. As discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery[176] or increase the price of copper.[177] In addition, this boom and bust prediction is unsupported by any empirical evidence. As a result, the Commission does not believe that the proposed listing and trading of the Shares will impact

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172 More specifically, the commenter states that, because of this predicted boom and bust, mines will go bust and resources will be needlessly misallocated. See V&F August 24 Letter, supra note 6, at 28.

173 See BlackRock Letter, supra note 6, at 5. See also supra text accompanying note 123 (discussing the Sponsor's view of the variables that can impact price volatility).

174 See BlackRock Letter, supra note 6, at 5–6.

175 See id. at 6.

176 See supra Section III.A.

177 See supra Section III.B.

copper volatility in the manner that the commenter suggests. Further, the Commission does not believe that approval of the proposed rule change will impede the use of copper because the listing and trading of the Shares is not expected to, as discussed above, result in heightened volatility. Therefore, the Commission does not believe that the listing and trading of the Shares will have an adverse effect on the efficiency of copper allocation and capital formation.

D. The Trust's Impact on the Potential to Manipulate the Price of Copper

The commenter sets forth a number of arguments about why the Trust would increase the potential for manipulation of the copper market. The commenter asserts that the Trust, in effect, would introduce so much transparency into the copper market that it would allow the Trust to manipulate, or alternatively provide market participants an effective means to manipulate, the price of copper and thereby the price of the Shares.[178] According to the commenter, investors in the Trust would be able to measure how much impact their collective removal of copper from the supply available for immediate delivery would have on copper prices each day, and could adjust their purchasing strategies accordingly.[179] Therefore, the commenter argues that the increased market transparency would not be in the public interest.[180] Instead, the commenter believes the transparency of the Trust's holdings would provide market participants with critical information about "how much copper needs to be removed on any given day in order to artificially inflate [copper] prices and thus the price of the Trust's shares."[181]

178 See V&F May 9 Letter, supra note 6, at 9–10.

179 See id. at 9.

180 See id. at 10.

181 See V&F July 13 Letter, supra note 6, at 10. The commenter also states that anyone who knows that market participants are buying LME warrants to create Shares could front-run the creation by buying Shares on the Exchange and profit thereby. See V&F September 12 Letter, supra note 6, at 9. The profitability of such action appears premised upon the

The commenter also predicts that the Trust would make the copper market more susceptible to squeezes and corners by reducing the supply of copper available for immediate delivery.[182] According to the commenter, after a substantial portion of the copper market is deposited in one or more physical copper trusts, the costs of acquiring the remaining inventory would be relatively inexpensive, thus reducing a hurdle to engineering a corner or squeeze.[183] The Levin Letter, which the commenter attached to the V&F July 18 Letter, also states that such manipulative activities could go undetected by the LME because trusts that hold physical commodities are not subject to any form of commodity regulations; by holding physical copper rather than LME warrants, the Trust would be able to control more of the available supply of copper without triggering LME reporting or rules.[184]

The Sponsor does not believe that the presence of the Trust would increase the likelihood of market squeezes because in the Sponsor's view: (1) market squeezes have been occurring in

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commenter's belief that the creation of Shares will cause the LME Bid Price, and correspondingly the price of the Shares, to increase. As discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery, which is what the commenter predicts would cause the price of copper to increase. See supra Section III.B. With respect to other types of front-running, the Exchange's surveillance program for the Trust, which is designed in part to identify and deter manipulative activity, is described in Section III.E.

182 See V&F May 9 Letter, supra note 6, at 1, 10. The Levin Letter, which the commenter attached to the V&F July 18 Letter, describes a squeeze on the copper market as occurring "when a lack of supply and excess demand forces the price upward, and a corner is when one party acquires enough copper to be able to manipulate its price." Levin Letter, supra note 6, at 7. Senator Levin asserts that the Trust will make the copper market more susceptible to squeezes because it could be used by market participants to remove copper from the available supply in order to artificially inflate the price. See id. at 7.

183 See V&F September 10 Letter, supra note 6, at 7. The commenter also suggests that mere launch of the Trust could create a corner and squeeze given the relatively small amount of copper on LME warrant.

184 See Levin Letter, supra note 6, at 7.

the markets since long before the introduction of commodity-based trusts; (2) no evidence has been presented to show that the introduction of the Trust will contribute to a market squeeze; (3) current investors in the physical copper markets, which the Sponsor expects will be the most likely investors in the Trust, are not "'speculators in the guise of purchasers' seeking to create a squeeze on the copper market;" (4) incremental demand from new investors will broaden the investor base in copper, which could reduce the possibility of collusion among market participants to manipulate the copper market; and (5) trading in the Shares would be overseen by the Exchange and the Commission, while the CFTC would police for manipulation in the underlying copper market.[185]

The Sponsor also identifies a number of features of the Trust designed to meet the requirements of Section 6(b)(5) of the Act.[186] Specifically, the Sponsor states that "[t]he Trust offers complete transparency through its website, where information on the Trust's copper holdings as well as additional detailed data regarding the Trust will be available."[187] In addition, the Trust will provide daily valuations of the Trust's copper based on that day's announced LME Bid Price.[188] The Sponsor also expects the Trust's arbitrage mechanism will facilitate the correction between the Share price and the price of the Trust's copper.[189]

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185 See BlackRock Letter, supra note 6, at 6.

186 15 U.S.C. 78f(b)(5).

187 See BlackRock Letter, supra note 6, at 9. More specifically, the Trust will disclose on its website: (1) for each copper lot held by the Trust, the warehouse location, warehouse identification number, lot number, net weight, and brand; and (2) the order in which lots will be delivered to redeeming authorized participants pursuant to the algorithm. See Amendment No. 2, supra note 9. See also notes 27–28 and accompanying text (describing the Trust's redemption procedure).

188 See BlackRock Letter, supra note 6, at 10.

189 See id.

The Sponsor also argues "that the physical copper market is no more susceptible to manipulation than other existing commodity markets, particularly given the[] many layers of regulatory oversight."[190] The Sponsor states that (1) trading in the Shares would be subject to the oversight of both NYSE Arca and the Commission, and (2) manipulation of physical copper would be subject to the oversight jurisdiction and enforcement authority of the CFTC.[191] The Sponsor also asserts the introduction of exchange-traded vehicles backed by other metals "has not led to any credible evidence of an increase in manipulation of the markets for their underlying metals."[192]

The Commission does not believe that the listing and trading of the Shares is likely to increase the likelihood of manipulation of the copper market and, correspondingly, of the price of the Shares. Generally, the Commission believes that increased transparency helps mitigate risks of manipulation. For example, in approving the listing and trading of shares of the iShares Silver Trust, the Commission stated that the dissemination of information about the silver shares would "facilitate transparency with respect to the Silver Shares and diminish the risk of manipulation or unfair informational advantage."[193] In this case, the Commission believes the transparency that the Trust will provide with respect to its holdings,[194] as well as the

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190 See id. at 6.

191 See id.

192 See id. While the commenter states that "traders and investors have sought to manipulate silver on at least two occasions," the commenter does not identify any instances of manipulation tied to exchange-trade vehicles. Nonetheless, the commenter asserts that "[f]undamentally the copper market is much easier to manipulate" based on its reasoning, discussed above. See V&F September 12 Letter, supra note 6, at 8.

193 See Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967, 14975 (March 24, 2006) (approving the listing and trading of shares of the iShares Silver Trust).

194 See supra note 187 and accompanying text.

dissemination of quotations for and last-sale prices of transactions in the Shares and the IIV and NAV of the Trust,[195] all are expected to help reduce the ability of market participants to manipulate the physical copper market or the price of Shares.[196] Also, the Commission believes that the listing and trading of the Shares on the Exchange (and any other national securities exchange that trades the Shares pursuant to unlisted trading privileges)[197] may serve to make the overall copper market more transparent if OTC trading of unreported warehouse receipts shifts to trading Shares on exchanges.[198] In particular, additional information regarding the supply of

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195 See supra notes 31–36 and accompanying text.

196 Further, the Trust is a passive vehicle, and therefore the commenter's concerns about manipulation by the Trust itself are misplaced.

197 When a national securities exchange extends "unlisted trading privileges" to a security, it allows the trading of a security that is not listed and registered on that exchange. See Securities Exchange Act Release No. 35637 (April 24, 1995), 60 FR 20891, 20891–92 (April 28, 1995) (adopting rules to reduce the period that exchanges have to wait before extending unlisted trading privileges to any listed initial public offering security). A number of national securities exchanges have rules that allow the extension of unlisted trading privileges to issues such as the Shares. See, e.g., Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR-Phlx-2008-34); Securities Exchange Act Release No. 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR-BATS-2008-004).

198 Market participants that acquire a large percentage of the Shares must identify themselves to the Commission by filing Schedules 13D or 13G. See 17 CFR 240.13d-1. Specifically, Section 13(d) of the Act, 15 U.S.C. 78m(d), and the rules thereunder require that a person file with the Commission, within ten days after acquiring, directly or indirectly, beneficial ownership of more than five percent of a class of equity securities, a disclosure statement on Schedule 13D, subject to certain exceptions. See 17 CFR 240.13d-1. Section 13(g) and the rules thereunder enable certain persons who are the beneficial owners of more than five percent of a class of certain equity securities to instead file a short form Schedule 13G, assuming certain conditions have been met. Beneficial owners are also required to report changes in the information filed.

In addition, Section 13(f)(1) of the Act and Rule 13f-1 thereunder require every "institutional investment manager," as defined in Section 13(f)(5)(A) of the Act, that exercises investment discretion with respect to "section 13(f) securities," as defined in Rule 13f-1, having an aggregate fair market value of at least $100 million ("Reportable Securities"), to file with the Commission quarterly reports on Form 13F setting forth each copper will be disseminated, which will enable users of copper to make better-informed decisions. Over the long term, this additional transparency could enhance efficiency in the market for copper and capital formation for participants in this market. In addition, the Commission believes that the listing and delisting criteria for the Shares are expected to help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares.[199]

The commenter asserts that serious disruptions in the supply of copper would make corners and squeezes more likely.[200] As discussed above, the Commission does not believe that the listing and trading of the Shares is likely to disrupt the supply of copper available for immediate delivery.[201] Depending on the size of the Trust though, it is possible that copper holdings may be dispersed across an additional market – i.e., less copper may be held under LME and/or COMEX warrant and more copper may be held by the Trust. However, the availability of inter-market arbitrage is expected to help mitigate any potential increase in the ability of market participants to engage in corners or squeezes as a result of any dispersion of copper holdings across markets (as distinguished from a reduction in the copper supply). For example, if the Trust grows large relative to the market for warrants on the LME, LME market

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Reportable Security's name, CUSIP number, the number of shares held, and the market value of the position.

199 For example, under NYSE Arca Equities Rule 8.201(e)(2)(ii), the Exchange will consider suspending trading in the Shares or delisting the Shares if, following the initial 12-month period following commencement of trading, there are fewer than 50,000 Shares issued and outstanding.

200 See supra notes 182–184 and accompanying text.

201 See supra Section III.A. Similarly, the Commission has recently stated that it does not believe that the listing and trading of shares of the JPM Copper Trust is likely to disrupt the supply of copper available for immediate delivery. See JPM Order, supra note 6, 77 FR 75468, 75474.

participants faced with a potential corner or squeeze may acquire Shares, redeem them (through an authorized participant) for LME warrants, and deliver the warrants.[202] Further, although the Exchange currently provides for the listing and trading of shares of commodity-based trusts backed by physical gold, silver, platinum, and palladium, the commenter has not identified any evidence that the trading of shares of these commodity-based trusts has led to manipulation of the gold, silver, platinum, or palladium markets.

For the reasons discussed above, the Commission does not believe that the proposed listing and trading of the Shares is likely to render the copper market or the price of the Shares more susceptible to manipulation. Correspondingly, the Commission does not believe that approval of the proposed rule change will impose any burden on competition between participants in the market for copper as it will not provide market participants a greater opportunity to achieve an unfair competitive advantage.

E. Surveillance

The commenter questions whether NYSE Arca's surveillance procedures are adequate to prevent fraudulent and manipulative trading in the Shares. According to the commenter, NYSE Arca's surveillance procedures are not adequate because they are the kind of "garden-variety measures" that are always in place to prevent collusion and other forms of manipulation by traders.[203]

NYSE Arca states that its surveillance procedures will be adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of

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202 See supra notes 80–82 and accompanying text.

203 See V&F May 9 Letter, supra note 6, at 10.

Exchange rules and applicable federal securities laws.[204] In particular, the Exchange represents the following:

- Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in Commodity-Based Trust Shares must file with the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the Market Maker may have or over which it may exercise investment discretion. No Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by NYSE Arca Equities Rule 8.201.

- In addition, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying copper, copper futures contracts, options on copper futures, or any other copper derivative, through ETP Holders acting as registered Market Makers, in connection with their proprietary or customer trades that they effect on any relevant market.[205]

- NYSE Arca has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business.[206]

- With respect to a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange can obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.[207]

- Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker in the Shares, and its affiliates, to establish,

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[204] See Notice, supra note 3, 77 FR at 38360. The Exchange also states that its existing surveillances will be augmented with a product-specific review designed to identify potential manipulative trading activity through the use of the creation and redemption process. See Amendment No. 1, supra note 7.

[205] See Notice, supra note 3, 77 FR at 38360. See also Arca September 14 Letter, supra note 6, at 2–3.

[206] See Amendment No. 1, supra note 7.

[207] See id.

maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).[208]

- NYSE Arca may obtain trading information via ISG from other exchanges that are members of the ISG, including the COMEX.[209] The Exchange also states that it has entered into a comprehensive surveillance sharing agreement with LME that applies to trading in copper and copper derivatives.[210]

Further, in the context of preventing fraudulent and manipulative acts, the Exchange discusses its authority to halt trading in the Shares in the interest of promoting a fair and orderly market and protecting the interests of investors.[211]

In addition, NYSE Arca has obtained a representation from the Sponsor that it will: (1) implement a firewall with respect to its affiliates regarding access to material non-public information of the Trust concerning the Trust and the Shares; and (2) will be subject to procedures designed to prevent the use and dissemination of material non-public information of the Trust regarding the Trust and the Shares.[212] The Commission believes the firewall that the

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208 See Notice, supra note 3, 77 FR at 38360. See also Arca September 14 Letter, supra note 6, at 3.

209 See Notice, supra note 3, 77 FR at 38360.

210 See id.

211 See Arca September 14 Letter, supra note 6, at 3 ("As stated in the Notice, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares, and trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.").

212 See Amendment No. 1, supra note 7.

Exchange will require the Sponsor to erect is a reasonable measure to help prevent the flow of non-public information to the Sponsor's affiliates.[213]

More generally, based on the Exchange's representations, the Commission believes that the Exchange's surveillance procedures appear to be reasonably designed to permit the Exchange to monitor for, detect, and deter violations of Exchange rules and applicable federal securities laws and rules.[214] In addition to all of the same surveillance procedures employed with respect to the trading of all other Commodity-Based Trust Shares, NYSE Arca states that a new product-specific review will be employed to monitor trading in the Shares to identify potential manipulative trading activity through the use of the creation and redemption process.[215] The commenters have not identified any specific deficiency in the proposed procedures or provided any evidence that the Exchange's surveillance program has been ineffective with respect to trading in other Commodity-Based Trust Shares.

F. Dissemination of Information About the Shares and Copper

The Commission believes the proposal is reasonably designed to promote sufficient disclosure of information that may be necessary to price the Shares appropriately. Specifically, the Commission believes that dissemination of the NAV, IIV, and copper holdings information,

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213 Further, NYSE Arca represents that it can obtain information about the activities of the Sponsor and its affiliates under the Exchange's listing rules. See Amendment No. 1, supra note 7.

214 The Commission has discussed above in Section III.D other reasons why it believes that the listing and trading of the Shares as proposed is unlikely to increase the likelihood of manipulation of the copper market and, correspondingly, of the price of the Shares.

215 See Amendment No. 1, supra note 7.

as discussed above, will facilitate transparency with respect to the Shares and diminish the risk of manipulation or unfair informational advantage.[216]

Further, as noted above, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association, and the Exchange will make available via the Consolidated Tape trading volume, closing prices, and NAV for the Shares from the previous day.[217] Additionally, as discussed above, the Exchange has identified numerous sources of copper price information unconnected with the Exchange that are readily available to

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216 See supra notes 193–198 and accompanying text. The commenter asserts that, because the Trust will be valued using the LME Bid Price without taking into account locational premia, under certain circumstances, the NAV of the Trust may not be accurate. See V&F September 12 Letter, supra note 6, at 7–8. The commenter asserts that the values of LME-traded industrial metals are determined by their location, and that the LME Bid Price is the value of copper at the cheapest-to-deliver location. See id. The commenter predicts that, if the Trust accumulates all of the metal from LME warehouses in the cheapest-to-deliver location, then the cheapest-to-deliver location will change, and correspondingly the LME Bid Price will be based on a new location. See id. In that circumstance, the commenter argues, there may be a significant divergence between the NAV of the Trust and the actual value of the Trust's copper. See id. at 7–8.

The Sponsor states that the Trust does not assign locational premia because any warrant, regardless of location, can be delivered at the LME Bid Price, and further asserts that this valuation method will allow an authorized participant to effectively reconcile its position in copper. See BlackRock Letter, supra note 6, at 9.

The Commission believes that the use of the LME Bid Price to value the Trust's copper may lead to a divergence between the NAV of the Trust and the market value of the Trust's copper because the LME Bid Price is used to value the Trust's copper and the Trust's copper may not be in the cheapest-to-deliver location. The Commission does not expect any possible divergence to cause any problems with respect to trading in the Shares, and notes that the commenter did not assert it would. The Commission believes that the degree of divergence will be limited to the difference in the price of copper held by the Trust and the price of copper at the cheapest-to-deliver location. The Commission notes that the Trust will disclose on its website the location, warehouse identification number, lot number, net weight of the lot, and brand of each lot of copper it holds, as well as the order in which all lots will be delivered to redeeming authorized participants. See Amendment No. 2, supra note 9.

217 See supra text accompanying notes 31–32.

investors.[218] The Commission therefore believes that sufficient venues for obtaining reliable copper pricing information exist to allow investors in the Shares to adequately monitor the price of copper and compare it to the NAV of the Shares.

G. Listing and Trading of the Shares

The Commission believes that the Exchange's proposed rules and procedures for the listing and trading of the Shares are consistent with the Act. For example, the Commission believes that the proposal is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. As detailed above, NYSE Arca Equities Rules 7.34(a)(5) and 8.201(e)(2) respectively provide that: (1) if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants;[219] and (2) the Exchange will consider suspension of trading if, after the initial 12-month period following commencement of trading: (a) the value of copper is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, or Custodian, or the Exchange stops providing a hyperlink on its website to any such unaffiliated source providing that value; or (b) if the IIV is no longer made available on at least a 15-second delayed basis.[220] In addition, the Exchange's general authority to halt trading because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, also will advance this objective. Further, trading in the Shares will be subject to

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218 See Notice, supra note 3, 77 FR at 38358–59.

219 See id. at 38359.

220 Additionally, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IIV occurs. If the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the of the trading day following the interruption. See id.

NYSE Arca Equities Rule 7.12, the Exchange's circuit breaker rule, which governs trading halts caused by extraordinary market volatility.

Further, the Shares will be subject to Exchange rules governing the responsibilities of market makers and customer suitability requirements. In addition, the Shares will be subject to Exchange Rule 8.201 for initial and continued listing of Shares.[221] As discussed above,[222] the Commission believes that the listing and delisting criteria for the Shares are expected to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. The Commission also believes that the Information Bulletin will adequately inform members and member organizations about the terms, characteristics, and risks of trading the Shares.

H. Commission Findings

After careful review, and for the reasons discussed in Sections III.A–G above, the Commission finds that the proposed rule change is consistent with the requirements of the Act, including Section 6 of the Act,[223] and the rules and regulations thereunder applicable to a national securities exchange.[224] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[225] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market

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221 See id.

222 See supra note 199 and accompanying text.

223 15 U.S.C. 78f.

224 This approval order is based on all of the Exchange's representations.

225 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest; with Section 6(b)(8) of the Act,[226] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act; and with Section 11A(a)(1)(C)(iii) of the Act,[227] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[228]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendments No.1 and No. 2 to the proposed rule change are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2012-66 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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226 15 U.S.C. 78f(b)(8).

227 15 U.S.C. 78k-1(a)(1)(C)(iii).

228 As noted above, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association, and the Exchange will make available via the Consolidated Tape trading volume, closing prices, and NAV for the Shares from the previous day. See supra text accompanying notes 31–32.

All submissions should refer to File Number SR-NYSEArca-2012-66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filings also will be available for inspection and copying at the principal offices of the Exchanges. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2012-66 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change As Modified by Amendments No. 1 and No. 2

As discussed above, the Exchange submitted Amendment No. 1 to make additional representations regarding the Exchange's surveillance program,[229] and submitted Amendment No. 2 to supplement representations regarding website disclosure of the Trust's copper

[229] See supra note 7.

holdings.[230] The Commission believes these additional representations are, among other things, useful to help assure adequate information is available to the Exchange to support its monitoring of Exchange trading of the Shares in all trading sessions; to help the Exchange deter and detect violations of NYSE Arca rules and applicable federal securities laws; and to help assure adequate availability of information to support the arbitrage mechanism. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[231] for approving the proposed rule change, as modified by Amendments No. 1 and No. 2, prior to the 30th day after the date of publication of notice in the Federal Register.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[232] that the proposed rule change (SR-NYSEArca-2012-66), as modified by Amendments No. 1 and No. 2, be, and hereby is, approved on an accelerated basis.

By the Commission.

Kevin M. O'Neill
Deputy Secretary

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[230] See supra note 9.

[231] 15 U.S.C. 78s(b)(2).

[232] 15 U.S.C. 78s(b)(2).