B. Self-Regulatory Organization’s Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.14 At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is 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 email to rule-comments@sec.gov. Please include File Number SR–ISE–2012–69 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.

All submissions should refer to File Number SR–ISE–2012–69. This file number should be included on the subject line if email 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 Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 Web site viewing and printing in the Commission’s Public Reference 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 filing also will be available for inspection and copying at the principal office of the Exchange. 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–ISE–2012–69 and should be submitted on or before September 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Kevin M. O’Neill, Deputy Secretary.

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of iShares Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

August 8, 2012.

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 iShares Copper Trust (“Trust”) pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the Federal Register on June 27, 2012.3 The Commission received one comment letter on the proposed rule change.4 This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change. The institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission’s analysis of whether to approve or disapprove the proposed rule change.

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. BlackRock Asset Management International Inc. is the sponsor of the Trust (“Sponsor”). 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”).

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 would not be actively managed and would not engage in any activities designed to obtain a profit from, or to prevent losses caused by, changes in the price of copper.

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.5 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.6

Unless otherwise instructed by the Trustee, no copper held by the Custodian on behalf of the Trust may be on LME warrant.7 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,8 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.

The spot copper price (“NAV”) of the Trust will be calculated 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.9 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 Sponsor determines that such price is inappropriate as a basis for valuation.10

NYSE Arca indicates that it will require that a minimum of 100,000 Shares be outstanding at the start of trading,11 which represents 1,000 metric tons of copper. The Trust seeks to register 12,120,000 Shares,12 which represents 121,200 metric tons of copper.

The Exchange states that it intends to utilize appropriate surveillance procedures applicable to derivative products, including commodity-based trust shares, to monitor trading in the Shares, and represents that such procedures will be adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.13 The Exchange further represents that all trading in the Shares will be subject to applicable surveillance procedures.14 In discussing its ability to obtain information relevant to trading of the Shares on its facilities, the Exchange states that it is able to obtain information: (1) Regarding trading in physical copper, the Shares, and other copper derivatives by ETF Holders acting as registered market makers, pursuant to NYSE Arca Equities Rule 8.201(g); (2) from the LME, with which the Exchange has a comprehensive surveillance sharing agreement that applies with respect to trading in copper and copper derivatives; and (3) via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members of the ISG, of which CME Group, Inc., which includes Commodity Exchange, Inc. (“COMEX”), is a member.15

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 expenses; creation and redemption of Shares; the physical copper market; availability of information; trading rules and halts; and surveillance procedures.16

that a buyer is willing to pay to receive a warrant in any warehouse within the LME system. See Notice, supra note 3, 77 FR at 38356 n. 25.

10 See id. at 38358.

11 See Registration Statement, supra note 8.

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

13 See id.

14 See id.

15 See Notice and Registration Statement, supra notes 3 and 8, respectively.

III. Summary of V&F’s Comments

V&F opposes the proposed rule change.17 As discussed in greater detail below, V&F states its belief 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: (1) A material reduction in the immediately available supply of global copper; (2) increased volatility in the price of copper, which would in turn significantly harm the U.S. economy; and (3) a destabilization of the physical copper market that would make it more susceptible to manipulation.

A. Adverse Copper Market Impact

1. Impact on Supply of Copper Available for Immediate Delivery

V&F states that almost all of the refined copper produced annually worldwide is subject to long-term delivery contracts with copper fabricating companies, and that at any given time, there is only a limited supply of copper available for immediate delivery.18 In particular, according to V&F, most American copper fabricators enter into long-term supply contracts for “about 85% of their annual requirements.”19 V&F states that U.S. copper fabricators depend on the market for copper available for immediate delivery to “protect against the risk of reductions in demand for product without having to incur the added expense of storing inventory they cannot use.”20


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

19 Id. at 4.

20 Id. at 4–5. Additionally, V&F states that copper stored at LME warehouses usually is deposited there by producers with excess supply or by copper merchants looking for purchasers and is sold to traders seeking to close out short positions or to
VkF believes that the only refined copper generally available for immediate delivery is the copper in LME and COMEX warehouses.21 VkF states that, at present, there is only approximately 240,000 metric tons of copper in LME warehouses worldwide, and an additional 60,000 metric tons of copper in COMEX warehouses in the United States, or about 290,000 total metric tons of copper available for immediate delivery.22 VkF states that as much as 121,200 metric tons of immediately available copper would be removed from the market if the Trust sells all of the Shares it seeks to register pursuant to the Registration Statement.23 Taking into account the sale of all of the shares of the JPM Copper Trust, another proposed commodity-based exchange traded product (“CB–ETP”) that would hold physical copper,24 VkF states that as much as 183,000 metric tons, or 63%, of immediately available copper would be removed from the market.25 VkF also expects that much of the copper used to fund the Trust will come from the immediately available supply in the U.S., stating:

What is more, these effects are, as a practical matter, most likely to be felt most directly in the United States. The reason is that, as with the JPM offering, the copper that is cheapest to acquire will most likely be copper on warrant in United States warehouses. This is because, for the most part, the cheapest location premiums for copper on warrant is from copper in LME warehouses in the United States. The “Authorized Participants,” like Goldman Sachs, who will be authorized to acquire copper for the BlackRock Trust will want to acquire copper at the cheapest location premium possible in order for the price of ETF shares to be issued in exchange for the copper to mirror as closely as possible, the price per metric ton of copper on the LME. Thus, depletion of copper from the LME warehouses will most likely be felt the hardest in the United States and, once copper from the LME warehouses is depleted, copper from the Comex warehouses will be depleted as well, as copper there is moved to LME warehouses in order to take advantage of higher prices.26

VkF further states that the collective effect of the Copper Trusts would be “far-reaching and potentially devastating to the U.S. and world economies,” and could cause “shortages of copper, higher prices to consumers, and increased volatility.” 27 VkF asserts that the supply of copper generally is inelastic and that supply, therefore, will not increase fast enough to account for the increased demand from the creation and growth of the Trust.28 VkF further states that U.S. producers do not have surplus product to deliver and therefore asserts that, once copper stored in warehouses disappears, it likely will not be replenished by suppliers soon.29 VkF states that the Registration Statement “tries to convey the false impression that because there is copper tonnage outside of LME and Comex warehouses, such copper must therefore be available for [the Trust] to acquire.”30 VkF states that the only copper eligible for Share creation is copper already under LME warrant or stored in COMEX warehouses,31 and that all other eligible copper is unavailable because it is: (1) Already part of the supply chain and subject to long-term contracts between producers and consumers; (2) held in bonded warehouses in China and destined for the Chinese market; or (3) held as strategic reserves by the governments of China and South Korea.32

VkF also believes that investors’ ability to redeem Shares for the Trust’s physical copper would not mitigate the impact of removing substantial quantities of copper from the market.33 According to VkF, most investors in a copper-backed CB–ETP would not have any real economic incentive to redeem their Shares because: (1) They would benefit from a rise in the price of copper; and (2) investors seeking to recognize their profits likely would sell their Shares rather than redeeming them because redeeming them would require assuming delivery risk.35

2. Impact on Copper Prices

According to VkF, removing large amounts of copper from LME and COMEX warehouses would disrupt the supply of copper available for immediate delivery and thereby cause a substantial rise in near-term copper prices.36 VkF argues that this also would cause an immediate spike in the cash-to-three-month spread price of copper, as near-term prices for delivery accelerate compared to prices for delivery later in time.37 VkF is concerned that manufacturers and fabricators that rely on the supply of copper available in LME warehouses would be forced to pay substantially higher prices in the short term, and, in turn, manufacturers and fabricators would pass these price increases on to their customers.38

According to VkF, price increases both for copper and copper products will be especially dramatic in the U.S., where copper currently is relatively

22 May 9 VkF Letter, supra note 17, at 5.
23 See id.
25 See supra note 17, at 5–6.
26 See supra note 17, at 3.
27 See id.
28 See supra note 17, at 5.
29 See supra note 17, at 5 (”[I]t is difficult for copper producers to increase supply, sometimes taking 15 years or longer before a new mine is opened up, and even in areas where copper is considered plentiful, political instability can keep a mine ‘producing’.”) For example, VkF states that the consensus among experts is that copper is in deficit, has been in deficit for the past three years, and is expected to remain in deficit for at least the next couple of years. See id. at 3. The Senator Levin Letter, which VkF attached to the July 18 VkF Letter, also states that the copper market is inelastic. See Senator Levin Letter, supra note 17, at 3.
30 May 9 VkF Letter, supra note 17, at 5.
31 July 18 VkF Letter, supra note 4, at 4.
32 See id.
33 See supra note 17, at 3.
34 See supra note 17, at 5.
35 See supra note 17, at 5.
36 See id.
37 See supra note 17, at 5.
38 See supra note 17, at 5.
39 See id.
40 See supra note 17, at 5.
41 See supra note 17, at 5.
inexpensive. See supra note 26 and accompanying text. 
40 See July 18 V&F Letter, supra note 4, at 4–5.
41 See May 9 V&F Letter, supra note 17, at 5.
42 See July 18 V&F Letter, supra note 4, at 5. V&F also states that the launch of a copper-backed ETF is likely to upset the delicate balance of copper provided for immediate delivery, even modest investor demand for the Shares could place upward pressure on the price of copper.
43 V&F characterizes the current physical copper market as volatile, and believes that the successful creation and growth of the Trust would create a bubble, and the bursting of the bubble would result in increased price volatility in the physical copper market. V&F states that investors in a copper CB–ETP would benefit immediately from any increase in the price of copper because the more copper removed from the market to satisfy the demand for copper, the higher the price of copper. See supra note 26 and accompanying text.
44 See supra note 26 and accompanying text.
45 See supra note 26 and accompanying text.
46 V&F further believes that 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.
47 V&F states that the copper bubble will be no different than others, predicting that, as investment interest in this product wanes, the bubble will burst, leaving in its wake a glut of physical copper that the Trust will be forced to dump on the market, causing prices to plummet, and leaving in its wake unsuspecting investors who will have lost the value of their investment. See supra note 17, at 8–9. According to V&F, the Trust “is unlike any other metal ETF currently
 listed on the Exchange and would allow speculators in the guise of purchasers of shares to create a squeeze on the market.”
52 Therefore, V&F concludes that the “proposed rule change is therefore inconsistent with Section 6(b)(5) of the Securities Exchange Act of 1934, which requires that rules be designed to prevent manipulative acts and protect investors and the public interest.”
53 Finally, V&F questions whether NYSE Arca’s surveillance procedures are adequate to prevent fraudulent and manipulative trading in shares of the JPM Trust.
54 B. Comparison to Other Commodity-Based Trusts

According to V&F, no ETF backed by a base metal used exclusively for industrial purposes has ever before been listed and sold on any nationally recognized exchange in the United States. V&F states that gold, silver, platinum, and palladium are all precious metals that have traditionally been held for investment purposes as a form of currency, and are currently used as currency, and, as a result, there were ample stored sources available to back physical CB–ETPs holding precious metals, such that the introduction of those CB–ETPs had virtually no impact on the available supply. In contrast, V&F states that...
copper generally is not held as an investment, but rather is used exclusively for industrial purposes. There is about a year’s supply of platinum reserves above ground, and (3) there is only a 1–2 week supply of copper available on the LME. See id. Similarly, the Senator Levin Letter, which V&F attached to the July 18 V&F Letter, also states that gold, silver, platinum, and palladium are substantially different than copper because these four metals are the only precious metals that are currently traded as world currencies and commonly held for investment purposes, and as a result there are substantial existing supplies of these metals that could be acquired to back an CR-ETP without affecting the world market price in these metals. See Senator Levin Letter, supra note 17, at 6–7.

37 The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, states that copper is not currently held for investment purposes because it is too expensive to store and difficult to transport, and there is not the same existing supply of copper for the Trust to acquire to back its CR-ETP, and concludes that holding copper for investment purposes will have a significantly greater impact on the copper market than CR-ETPs holding platinum, palladium, silver, or gold had on their respective markets and the broader economy. See Senator Levin Letter, supra note 17, at 7.

38 See May 9 V&F Letter, supra note 17, at 2–3.

39 15 U.S.C. 78b(2)(B). Section 19(b)(2)(B) of the Act also provides that the Commission determines whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. Id. The time for conclusion of the proceeding may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. Id.

40 Id.


42 See supra Section III.A.1–2.

43 See supra Section III.A.3.

44 See supra note 54 and accompanying text.

45 Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice or opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

46 The Commission requests that commenters support their responses to the questions below with empirical data sufficient to inform the Commission’s decision making. In particular, the Commission seeks comment on the following:

1. In light of the comments received, the Commission is soliciting further comments regarding copper usage and supply trends. For example:

○ What was the world mine production capacity in each of the past 10 years? What data is available regarding projected world mine production over the next 3 to 5 years? What factors impact the ability to increase or decrease mine production?

○ What was the refined production in each of the past 10 years? How much of the refined production was from primary and secondary sources? What was the world refinery capacity in each of the past 10 years? What data is available regarding projected refined production over the next 3 to 5 years? What factors impact the ability to increase or decrease refinery production?

○ How much copper has been held for investment purposes over the past 10 years? How much of this copper was taken off LME warrant? How much of this copper has been eligible to be placed on LME warrant?

2. According to the International Copper Study Group (“ICSG”), world refined usage of copper exceeded world refined production by approximately 417,000 tons in 2010 and 231,000 tons in 2011, and world refined stocks decreased by 161,000 tons in 2010 and increased by 13,000 tons in 2011. What factors account for refined stocks decreasing less than the deficit amount (or even increasing) in 2010 and 2011? Interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be disapproved by September 12, 2012. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by September 27, 2012.

The Commission asks that commenters address the sufficiency and merit of the proposed rule change and the comments received, in addition to any other comments they may wish to submit about the proposed rule change. The Commission requests that commenters support their responses to the questions below with empirical data sufficient to inform the Commission’s decision making. In particular, the Commission seeks comment on the following:

1. In light of the comments received, the Commission is soliciting further comments regarding copper usage and supply trends. For example:

○ What was the world mine production capacity in each of the past 10 years? What data is available regarding projected world mine production over the next 3 to 5 years? What factors impact the ability to increase or decrease mine production?

○ What was the refined production in each of the past 10 years? How much of the refined production was from primary and secondary sources? What was the world refinery capacity in each of the past 10 years? What data is available regarding projected refined production over the next 3 to 5 years? What factors impact the ability to increase or decrease refinery production?

○ How much copper has been held for investment purposes over the past 10 years? How much of this copper was taken off LME warrant? How much of this copper has been eligible to be placed on LME warrant?
Are there any factors with respect to the supply of copper available for immediate delivery that the Commission should consider in evaluating the market’s ability to meet demand for copper? When a deficit occurs, are copper fabricators and other end users able to access copper to meet excess demand? If so, what are the sources of that copper? How much copper is available for immediate delivery that is not on LME warrant?

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

4. V&F states that Shares would be created by removing copper from LME and COMEX warehouses in the United States, thus driving up the cost of copper particularly in the United States. According to V&F, correspondingly:

The principal victims will * * * be United States consumers who typically rely on supplies of copper for immediate delivery to augment their long-term supply. These fabricators will not only be forced to pay higher prices, and incur the risk of price volatility once prices collapse, but there may be periods of time when those who can least afford it will be unable to get supply.

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

5. V&F states that the only copper eligible for Share creation is copper: (1) Already under LME warrant; (2) stored in COMEX warehouses; (3) already part of the supply chain, subject to long-term contracts between producers and consumers; (4) held in bonded warehouses in China and destined for the Chinese market, which V&F asserts is only rarely delivered to LME warehouses in Asia; or (5) held as strategic reserves by the governments of China and South Korea. The Commission is soliciting further comments regarding physical copper stocks. For example:

○ How much of this stock was taken off LME warrant?
○ How much copper is held at each of the Approved Warehouses? How much is held at each of the Approved Warehouses?
○ How much copper is held in LME warehouses? How much of the copper currently held in LME warehouses is on warrant? How much copper in LME warehouses is available for investment purposes?
○ How much copper is held in COMEX, Shanghai Futures Exchange (“SHFE”), and Multicommodity Exchange of India (“MCX”) warehouses? How much copper (i.e., is of a brand registered with the LME) does the Trustee will not take into account the location(s) of the copper. In contrast, to support the JPM Copper Proposal, NYSE Arca states that the value of copper depends in part on its location, i.e., copper stored in a location that is high in supply and high in demand carries a higher premium than copper that is stored in a location where supply is high and demand is low.

7. The Trustee generally will value the Trust’s copper at that day’s announced LME Bid Price, which represents the price that a buyer is willing to pay to receive a warrant in any warehouse within the LME system.

5. V&F states that the Trust and the proposed JPM Copper Trust, collectively, will remove from the market a substantial percentage of the copper available for immediate delivery. According to V&F, the Copper Trusts would remove 63% of the copper currently held in LME and COMEX warehouses. V&F states that the collective effect of the Copper Trusts would be “far-reaching and potentially devastating to the U.S. and world economies,” including “shortages of copper, higher prices to consumers, and increased volatility.”

67 See supra note 17. See also JPM Notice, supra note 24.

68 The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, states that the Copper Trusts would hold approximately 34% of the copper stocks available for immediate delivery and would remove from the U.S. market over 55% of the available copper. See Senator Levin Letter, supra note 17, at 5–6.

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

70 See also May 9 V&F Letter, supra note 17, at 3; July 13 V&F Letter, supra note 17, at 3, 5.

71 V&F believes this to be true because it states that the copper that is cheapest to deliver to the Trust will most likely be held in United States warehouses. See July 18 V&F Letter, supra note 4, at 4.

72 See id. (“Depletion of copper from the LME warehouses does not likely be the hardest in the United States and, once copper from the LME warehouses is depleted, copper from the COMEX warehouses will be depleted as well, as copper there is moved to LME warehouses in order to take advantage of higher prices.”).

73 See id.

74 See July 18 V&F Letter, supra note 4, at 2. See also May 9 V&F Letter, supra note 17, at 3; July 13 V&F Letter, supra note 17, at 3, 5.

75 V&F believes this to be true because it states that the copper that is cheapest to deliver to the Trust will most likely be held in United States warehouses. See July 18 V&F Letter, supra note 4, at 4.

76 See id. (“Depletion of copper from the LME warehouses does not likely be the hardest in the United States and, once copper from the LME warehouses is depleted, copper from the COMEX warehouses will be depleted as well, as copper there is moved to LME warehouses in order to take advantage of higher prices.”).

77 See id.

78 See Notice, supra note 3, 77 FR at 38356 n.23 (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).

79 See id. at 38358.

80 See id. at 38356 n.25.

81 See JPM Notice, supra note 24, 77 FR at 23779.
discounts of the Trust’s copper held in various locations?
9. V&F states: “the most obvious and freely available source” of copper eligible to create Shares “is copper on warrant in LME warehouses today.”79 V&F further states that taking copper off LME warrant would involve little or no cost if the LME warrants purchased are for copper that is stored at the Approved Warehouses.80
○ What costs are involved in taking copper off LME warrant? What costs are involved in putting copper on LME warrant?
○ How long does it take to take copper off LME warrant? How long does it take to put copper on LME warrant?
○ How does the cost and time required to take copper off warrant compare to the cost and time to ship copper to an Approved Warehouse?
10. The Commission understands that ETFS Physical Copper securities currently trade on the London Stock Exchange. How much copper did ETFS Physical Copper hold following the initial creation? How much copper does ETFS Physical Copper currently hold? What change, if any, was there in the price of copper following creation of ETFS Physical Copper? Did the creation of ETFS Physical Copper result in an observable impact on the copper market? Has ETFS Physical Copper engaged in the lending of copper?
11. The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 6.201 of other issues of CB–ETPs backed by gold, silver, platinum, and palladium (collectively “precious metals”). While these precious metals are often held for investment purposes, the Commission understands they are also used for various industrial purposes. V&F asserts that copper is used exclusively for industrial purposes and is not generally held for investment.81 The Commission requests information regarding the production and use of precious metals. How much gold, silver, platinum, and palladium has been produced in each of the last 10 years? How much gold, silver, platinum, and palladium has been used for investment purposes in each of the last 10 years? How much gold, silver, platinum, and palladium has been used for industrial purposes in each of the last 10 years? Are there any other uses of gold, silver, platinum, and palladium relevant to understanding utilization of these precious metals? What are the current and historic stocks of gold, silver, platinum, and palladium? Is there any empirical evidence that the listing of CB–ETPs backed by gold, silver, platinum, or palladium impacted prices in these markets?
12. V&F states that creation of the Trust could result in the immediate removal of up to 121,200 metric tons of copper from the market.82 What is the likelihood that the Trust will sell all registered Shares initially? What is the likelihood that the Trust will sell all registered Shares in the three months after the registration goes effective? How quickly did the CB–ETPs backed by gold, silver, platinum, and palladium sell the shares registered in the first registration statement?
13. V&F argues that, by decreasing the amount of copper available for immediate delivery, the Trust will make the copper market more susceptible to manipulation.83 Specifically, V&F states that “the drawing down of stocks in LME and Comex warehouses” resulting from the listing and trading of the Shares “will make it much easier and cheaper for [copper market] speculators to engage in temporary market squeezes and corners.”84 The Commission requests comment on these concerns, as well as whether commenters agree or disagree with the comments and why or why not. For example:
○ Will creation of the Trust impact the ability to manipulate the physical copper or copper derivatives markets? If so, how? If not, why not?
○ Has there been any increased manipulative behavior due to the reduction of copper available for immediate delivery that resulted from the prior years’ deficits in copper production versus copper consumption?
○ Are there any structural aspects of the copper market that render it more or less susceptible to manipulation?
○ Is there empirical evidence that the creation of CB–ETPs backed by gold, silver, platinum, and palladium has led to manipulation of the physical markets for those precious metals? If so, please describe.
14. V&F states the listing and trading of shares of copper CB–ETPs like those “being proposed by BlackRock and JPM—and the consequent drawdown and removal from the market of most of the copper in LME and Comex warehouses—risk endangering the price discovery functions of the LME and Comex.”85 V&F also states that such potential impacts of a copper CB–ETP on the copper market in turn could affect the Shares, stating: the risk of an ETF removing indefinitely all or substantially all of the copper available for immediate delivery, the risk of price volatility becomes enormous. This is because the greater amount of copper artificially kept off-the-market, the greater the chance that investors will eventually no longer keep propping up the price with further purchases, and the greater the likelihood that the bubble will burst, thus flooding the market with surplus copper, and severely depressing the price.86
V&F further states that investors in a copper CB–ETP would benefit immediately from any increase in the price of copper because the more copper removed from the market to satisfy the demand for the copper CB–ETP, the higher the price not only of copper, but of the copper CB–ETP itself.87 According to V&F, like all bubbles, as investor demand for this product wanes, the bubble will burst, leaving in its wake a glut of physical copper that the Trust will be forced to dump on the market, causing prices to plummet, and leaving in its wake unsold contracts and investors who will have lost the value of their investment.88 Do commenters agree or disagree with these comments? If so, why or why not?
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 email 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.

79 See July 18 V&F Letter, supra note 4, at 2.
80 See July 13 V&F Letter, supra note 17, at 6.
81 See May 9 V&F Letter, supra note 17, at 2–3.
82 See July 18 V&F Letter, supra note 4, at 1.
83 See May 9 V&F Letter, supra note 17, at 1, 10. See also July 18 V&F Letter, supra note 4, at 5 (“In short, the proposed ETF’s “...” would allow for speculators in the guise of purchasers of shares to create a squeeze on the market.”).
84 May 9 V&F Letter, supra note 17, at 9. The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, also argues that approval of the proposed rule change would make the copper market more susceptible to squeezes and corners by speculators. See Senator Levin Letter, supra note 17, at 7.
85 May 9 V&F Letter, supra note 17, at 5. See also July 18 V&F Letter, supra note 4, at 4 (asserting that BlackRock admits that the boom may bust, and quoting from the Registration Statement).
86 See supra note 4, at 1.
87 See id. at 2. The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, states that the supply disruption caused by the listing and trading of a copper CB–ETP “is likely to affect the cash and futures market for copper, increasing volatility and driving up its price to create a bubble and burst cycle.” See Senator Levin Letter, supra note 17, at 1.
SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

August 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b–4 thereunder, notice is hereby given that on August 1, 2012, the EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange’s Internet Web site at http://www.directedge.com, at the Exchange’s principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to append Footnote 18 to its standard rebate of $0.0003 per share for adding liquidity on the EDGA fee schedule to add the Step Up Tier. The Exchange also proposes to append Footnote 18 to Flags B, V, Y, 3, and 4 to signify a potential rate change should the Member meet the criteria of the Step Up Tier. Members may qualify for a rebate of $0.0005 per share on their displayed shares (Flags B, V, Y, 3, and 4) for adding liquidity to EDGA if the Member, on a daily basis, measured monthly, posts 0.10% of the Total Consolidated Volume ("TCV") in Average Daily Volume ("ADV") more than their July 2012 ADV added to EDGA.

Because the Exchange can now differentiate non-displayed orders that add liquidity using the Mid Point Discretionary Order type (Flag DM) from non-displayed orders that remove liquidity using the Mid Point Discretionary Order type (Flag DT), the Exchange proposes to count the volume generated from Flags DM and DT toward the volume threshold in Footnote 2 since Flags DM and DT represent a non-displayed order type. Therefore, where a Member adds or removes liquidity using non-displayed (hidden) orders, a Member is charged a rate of $0.0010 per share for Flags HA or HR, contingent upon a Member adding or removing greater than 1,000,000 shares hidden on a daily basis, measured monthly (where the volume generated from Flags HA, HR, DM and DT count towards this tier) or a Member posting greater than 8,000,000 shares on a daily basis, measured monthly. Members not meeting either minimum will be charged $0.0030 per share for Flags HA or HR. The Exchange proposes to make conforming amendments to the text of Footnote 2. The Exchange notes that it will continue to charge Members a rate of $0.0005 per share for non-displayed orders that add liquidity using Mid Point Discretionary Orders that yield Flag DM and $0.0005 per share for non-displayed orders that remove liquidity using Mid Point Discretionary Orders that yield Flag DT.

The Exchange proposes to delete Footnote 4 that is appended to Flag HA in order to clarify for Members that the volume from Flag HA counts towards achieving the tiered pricing in Footnote 4 and the rate for Flag HA does not change where a Member achieves the thresholds outlined in Footnote 4. The Exchange notes that these proposed changes do not modify the Exchanges existing treatment of Flag HA. This amendment supports the Exchange’s

Footnotes:

2 A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.
3 5 U.S.C. 552, will be available for Web site viewing and public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and public in accordance with the provisions of 5 U.S.C. 552.
5 See Securities and Exchange Act Release No. 67380 (July 10, 2012), 77 FR 41847 (July 16, 2012) (SR–EDGA–2012–29) (where the Exchange provided additional transparency to Members by bifurcating then existing Flag DM into two flags: Flag DM (adds liquidity in the discretionary range) and Flag DT (removes liquidity in the discretionary range)).