opposing the proposed rule change. On July 16, 2012, United States Senator Carl Levin submitted a comment letter opposing the proposed rule change. Additionally, on July 19, 2012, the Commission received a comment letter from another party opposing the proposed rule change. On July 19, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change. The initial comments for the proceeding were due on August 24, 2012, and the Commission received four comment letters (another letter from V&F, another letter from the Exchange, a letter on behalf of the Sponsor, and a letter from several copper fabricators). Rebuttal comments to submissions made during the initial comment period were due on September 10, 2012. The Commission received three more comment letters (another letter from V&F and two more on behalf of the Sponsor). On October 2, 2012, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change. The Commission subsequently received six more comment letters (two more letters from V&F, two letters from Americans for Financial Reform, and two letters from Robert E. Rutkowski). On November 30, 2012, the Exchange filed Amendment No. 1 to the proposed rule change. On December 7, 2012, the

14 See letters from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated October 23, 2012 (VAF October 23 Letter); to Americans for Financial Reform ("AFR"); to Elizabeth M. Murray [sic], Secretary, Commission, dated October 23, 2012 ("AFR October 23 Letter"); email from Robert E. Rutkowski, Chair, Commission, dated October 24, 2012 ("Rutkowski October 24 Letter"); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated November 16, 2012 ("V&F November 16 Letter"); AFR, to Elizabeth M. Murray [sic], Secretary, Commission, dated November 16, 2012 ("AFR November 16 Letter"); and email from Robert E. Rutkowski, to Mary Schapiro, Chair, Commission, dated November 17, 2012 ("Rutkowski November 17 Letter").
15 In Amendment No. 1, the Exchange represented that: (1) it has obtained a representation from the Sponsor that the Sponsor is affiliated with one or more broker-dealers and other entities, and the Sponsor will implement a firewall with respect to such affiliate(s) regarding the dissemination of material non-public information of the Trust concerning the Trust and the Shares, and 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; (2) it will obtain a representation from the Trust prior to commencement of trading of the Shares that the net asset value ("NAV") of the Trust and the NAV of each Share will be calculated daily and made available to all market participants at the same time; (3) if the First-Out ("FO") or the Liquidation ("Liq") event (as defined infra in note 42) 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: (4) its comprehensive surveillance sharing agreement with the London Metal Exchange ("LME") applies to trading in copper derivatives (as well as copper); (5) it will require that a minimum of 100,000 Shares be outstanding at the start of trading of the Shares; and (6) it 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 represents that trading in the Shares would be subject to the existing trading surveillance administered by the Financial Industry Regulatory Authority ("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 are designed to prevent the use and dissemination of material non-public information of the Trust concerning the Trust and the Shares. On November 30, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.

December 14, 2012.

I. Introduction

On April 2, 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") and Rule 19b-4 thereunder, a proposed rule change to list and trade shares ("Shares") of JPM XF Physical Copper Trust ("Trust") pursuant to NYSE Arca Equities Rule 8.201. J.P. Morgan Commodity ETF Services LLC is the sponsor of the Trust ("Sponsor"). The proposed rule change was published for comment in the Federal Register on April 20, 2012. The Commission initially received one comment letter, which opposed the proposed rule change. On May 30, 2012, the Commission extended the time period for Commission action to July 19, 2012. On June 19, 2012, NYSE Arca submitted a letter in support of its proposal. On July 13, 2012, V&F submitted a second comment letter in opposition to the proposed rule change.
II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.11, which governs the listing and trading of “Commodity-Based Trust Shares.” The Trust’s investment objective is for the value of the Shares to reflect, at any given time, the value of its copper, less the Trust’s expenses and liabilities. The Trust will invest in Grade A copper in physical form from a source refinery that has had its brand registered with the LME (an “Acceptable Delivery Brand”). The Exchange states that, although the Shares are not the exact equivalent of an investment in copper, they are designed to provide investors with an alternative that allows a participation in the copper market through the securities market. A. Description of the Copper Market

The following is a summary of the description of the copper market that the Exchange included in its filing. The market participants in the copper market include primary and secondary producers; fabricators, manufacturers, and end-use consumers; physical traders and merchants, who generally facilitate the domestic and international trade of copper supplies along the value chain and support the distribution of supplies to consumers; and the banking sector. Copper supply generally comes from the extraction and processing of ore (“primary production”) and the recovery of existing stock (“secondary production”). Primary production accounts for the majority of new global copper supply. Copper’s physical, chemical, and aesthetic properties make it a material of choice in a wide range of electrical, electronics and communication, construction, transportation, industrial machinery and equipment, and general consumer applications. From copper derived from primary and secondary production, fabricators produce semi-fabricated products, such as copper wire, copper alloys, tube products, rods, bars, section, plate, sheets and strips, for various applications. The location of copper relative to consumption demand is important given the bulk and cost of transportation. The source of copper also is important to fabricators and consumers and affects buying behavior. Copper end-users will pay an additional locational premium to obtain copper of a specific location. The global market in copper consists of: (i) trading within the physical copper market; and (ii) financial trading, through either (a) the exchange-traded futures and options market or (b) the over-the-counter (“OTC”) market. Each of these is described below in further detail.

1. Physical Copper Market

The physical copper market is comprised of sales directly by producers and refiners to end-users, and by sales transacted by merchants, dealers, and trading banks. A major portion of annual copper production and use is effected through transactions in the physical copper market, often through renewable annual supply contracts.

2. Futures Exchanges

A majority of copper derivatives trading occurs on three exchanges: The LME, the Commodity Exchange, Inc. (“COMEX”) (a division of CME Group, Inc.), and the Shanghai Futures Exchange (“SHFE”). LME members are regulated by the Financial Services Authority (“FSA”), the regulator of the financial services industry in the United Kingdom. COMEX is regulated by the U.S. Commodity Futures Trading Commission (“CFTC”) under the Commodity Exchange Act (“CEA”). The SHFE is regulated by the Chinese Securities Regulatory Commission (“CSRC”). At present, Chinese regulations stipulate that only companies or organizations organized and registered in China or Chinese citizens are allowed to participate in trading on the SHFE.

Futures exchanges provide for the trading of futures and options on futures contracts, which producers and consumers use to fix a price in the future as a hedge against price variations. Producers and consumers take long or short positions to manage price risk, which activity is facilitated by investors who buy the price risk. Only eligible organizations or members are able to participate directly in trading on the LME. The LME publishes prices discovered as a result of daily trading of exchange contracts on the LME. The LME Settlement Price and forward prices serve as the global benchmark prices of Grade A copper. The copper industry uses these prices as the basis of price negotiations for the physical purchase and sale of copper. All contracts registered with the LME are executed on the basis of physical settlement: LME members deliver base metal against LME futures contracts in the form of LME warrants.

Commission received another comment letter opposing the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.
has the right to select the LME warrant delivered to the buyer. Pertinent information about LME warrants is recorded in the LMEsword system. The LME publishes the number of LME warrants and associated tonnage (including canceled LME warrants for which copper has yet to be delivered out of the relevant LME warehouse).

3. OTC Market

Physical traders, merchants, and banks participate in OTC spot, forward, option, and other derivative transactions for copper. 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 arrangements, which otherwise could be constrained by contract terms on a futures exchange. Participants in OTC transactions are subject to counter-party risk, including credit risk and contractual obligations to perform. The OTC derivative market for copper remains largely unregulated with respect to public disclosure of information by the parties, thus providing confidentiality among principals.

4. Copper Market Regulation

The CFTC is authorized under the CEA to monitor, investigate, and take action with respect to public disclosure of information by the parties, thus providing confidentiality among principals.

B. Description of the Proposed Rule Change and the Trust

The exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201. J.P. Morgan Treasury Securities Inc. and J.P. Morgan Chase Bank, National Association, is the administrative agent of the Trust ("Administrative Agent"). Wilmington Trust Company is the custodian of the Trust ("Trustee"). The Henry Bath Group is the warehouse-keeper of the Trust ("Warehouse-keeper").

As mentioned above, the Trust will hold Grade A copper in physical form, and the Trust’s investment objective is to purchase the LME Settlement Price. As part of this calculation, the Administrative Agent will determine the value of the Trust’s copper using the LME Settlement Price and locational premia/discount information provided by the Valuation Agent.

31 See Notice, supra note 3, for a more detailed description. Additional details regarding the Trust are set forth in the registration statement for the Trust, most recently amended on July 12, 2011 (No. 333-170085) ("Registration Statement").

32 Each of Henry Bath & Son Limited, Henry Bath LLC, Henry Bath Singapore Pte Limited, Henry Bath Italia Srl, and Henry Bath BV is a member of the Henry Bath Group of companies and a wholly owned subsidiary of J.P. Morgan Ventures Energy Corporation, and is an affiliate of the Sponsor. See Notice, supra note 3, 77 FR at 23773 n.10.

33 A Business Day is a day that the Exchange is open for regular trading and that is not a holiday in London, England. See Notice, supra note 3, for a more detailed description.

34 The "LME Settlement Price" is, with respect to any Business Day, the official cash settlement price per metric ton of Grade A Copper on the LME, stated in U.S. dollars, as determined by the LME at the close of the London afternoon trading session (4:00 p.m. London time) for copper on each day that the LME is open for trading. The LME Settlement Price is made publicly available in real-time through third-party vendors such as Bloomberg and Reuters (on Bloomberg, it is currently displayed on Bloomberg page "LOCADY commodity"). It is also made publicly available on a delayed basis on the LME’s Web site at approximately 10:00 a.m. London time. See id. at 23773 n.17.

35 The value of copper depends in part on its location, i.e., copper stored in a location that is low in supply and high in demand carries a higher
The Trust will store its copper in both LME-approved warehouses and non-LME-approved warehouses that are maintained by the Warehouse-keeper, but none of the copper held by the Trust will be on LME warrant, and therefore will not be subject to regulation by the LME.\textsuperscript{36} Initially, the permitted warehouse locations will be in the Netherlands (Rotterdam), Singapore (Singapore), South Korea (Busan and Gwangyang), China (Shanghai), and the United States (Baltimore, Chicago, and New Orleans). Although the Trust may hold copper in any warehouse location, in order to facilitate arbitrage activity by authorized participants, the Trust will store copper in locations with high supply and low demand. The Trust will not be subject to regulation by the LME, and therefore the Transfer of whole lots of copper, the Administrative Agent will instruct the Warehouse-keeper to adjust for any relocations that are necessary by transferring ownership of copper from the Trust Account to the relevant authorized participant’s Reserve Account.\textsuperscript{40} Because the copper held by the Trust in different locations may vary in value based on the applicable locational premium, the value of the copper actually received by the authorized participant will depend on the location of the specific whole lot(s) and fractional lots, if any, of the copper transferred to the authorized participant.

Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association. The Exchange also will make available via the Consolidated Tape trading volume, closing prices, and NAV for the Shares on the previous day.\textsuperscript{41} In addition, NYSE Arca will calculate and disseminate, approximately every 15 seconds during the Exchange’s Core Trading Session, two different IVs for the Shares: The First-Out IV and the Liquidation IV.\textsuperscript{42}

On each Business Day, as promptly as practicable after 4:00 p.m. E.T., the Trust will publish the following on its Web site: (1) The number of outstanding Shares as of the beginning of the Business Day; (2) the NAV of the Trust; (3) the NAV per Share; (4) the locational premium for each warehouse location, as calculated by the Valuation Agent at 5:00 p.m. London time, quoted both in U.S. dollars and as a percentage premium relative to the LME settlement price; (5) the price per metric ton of copper in each warehouse location where the Trust is permitted to hold copper; (6) the aggregate weight in metric tons of all copper owned by the Trust; (7) the aggregate weight in metric tons of the copper owned by the Trust in each warehouse location; (8) the gross value in U.S. dollars of the copper owned by the Trust in each warehouse location; (9) the Creation Unit Ratio; and (10) the Creation Unit Weight.\textsuperscript{43} The Exchange will obtain a representation from the Trust prior to the commencement of trading of the Shares that the NAV will be calculated daily and made available to all market participants at the same time.\textsuperscript{44}

Additionally, as promptly as practicable after 4:00 p.m. E.T. on each Business Day, the Trust will make available on its Web site a downloadable file containing the following information relating to each lot of copper owned by the Trust: (1) the unique identification number of the lot; (2) the warehouse location in which the lot is held; (3) the brand of the lot and, if such brand of copper is not an Acceptable Delivery Brand (as defined in the Trust Agreement), an indication that the lot consists of a brand of copper that has been de-registered; (4) the weight in metric tons of the lot; and (5) the date upon which the lot was delivered to the Trust.\textsuperscript{45}

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, discount or premium during the trading day. See \textit{id.} at 23785. It represents, as of the time of such calculation, the hypothetical U.S. dollar value per Share of the copper that would need to be transferred to or from the Trust to create or redeem one Share included in a Creation Unit, assuming that copper in the cheapest-to-deliver location was used for such creation or redemption. See \textit{id.} at 23783. The “Liquidation IV” is an intraday indicative value that represents, as of the time of the calculation, the hypothetical U.S. dollar value per Share of all of the copper owned by the Trust divided by the number of Shares then outstanding. See \textit{id.} for a description of how the Exchange will calculate the First-Out IV and the Liquidation IV, See \textit{id.} at 23784–86.

\textsuperscript{36} See \textit{id.} at 23778.

\textsuperscript{37} The Creation Unit Weight for a particular day will be equal to 25.0 metric tons multiplied by the Creation Unit Ratio in effect for such day. The Creation Unit Weight will initially be equal to 1.0, but will decline gradually over time to reflect the payment of expenses by the Trust. As a result, the Creation Unit Weight will decline gradually over time as well. The Creation Unit Weight and the Creation Unit Ratio in effect on any Business Day will have been calculated on the prior Business Day, after the calculation of the Trust’s NAV on the previous Business Day, and the calculation of the Trust’s NAV on any Business Day will have been calculated on the prior Business Day.

\textsuperscript{38} According to NYSE Arca, the Selection Protocol is intended to provide a consistent and transparent method of selecting lots, by requiring the Administrative Agent to select lots in the following manner: (1) Lots will be selected first from the warehouse where it holds available copper that has the lowest locational premium at a particular time (i.e., the “cheapest-to-deliver location”), and then from other warehouse locations successively based on a ranking of their respective locational premia from lowest to highest; (2) if there are multiple lots in the same warehouse location specified by the first step, lots in such warehouse location will be selected based on the date such lots were first delivered to the relevant account, with the earliest delivered lot being selected first; and (3) if there are multiple lots in the same warehouse location that were first delivered to the relevant account on the same date, lots will be selected based on the actual weight of the lot, with the lot having the lowest actual weight being selected first. See \textit{id.} at 23781–82.

\textsuperscript{39} According to NYSE Arca, when copper is redeemed in this manner, the amount of copper received by the authorized participant will equal a pro rata share of the copper held by the Trust based on the weight of the Trust’s aggregate copper holdings at the time of the processing of redemptions. See \textit{id.} at 23782.

\textsuperscript{40} See \textit{id.} at 23786.

\textsuperscript{41} The “First-Out IV” is designed to facilitate arbitrage activity by authorized participants by indicating whether the Shares are trading at a premium or discount relative to the share price. See \textit{id.} at 23784.

\textsuperscript{42} See Amendment No. 1, supra note 15.

\textsuperscript{43} See Notice, supra note 3, 77 FR at 23783.
such as Reuters and Bloomberg.\textsuperscript{46} Reuters and Bloomberg provide at no charge on their Web sites 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.\textsuperscript{47} Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on copper prices directly from market participants.\textsuperscript{48} There are a variety of public Web sites providing information on copper, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal.\textsuperscript{49} The Trust’s Web site will provide ongoing pricing information for copper spot prices and the Shares.\textsuperscript{50} The Exchange will provide on its Web site (www.nyse.com) a link to the Trust’s Web site.\textsuperscript{51} NYSE Arca will require that a minimum of 100,000 Shares be outstanding at the start of trading,\textsuperscript{52} which represents 1,000 metric tons of copper. The Trust seeks to initially register 6,180,000 Shares.\textsuperscript{53} NYSE Arca represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares, and thereby qualify for listing and trading on the Exchange.\textsuperscript{54}

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 First-Out IV or the Liquidation IV 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.\textsuperscript{55} 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: (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 Web site to any such unaffiliated source providing that value; or (2) if the Liquidation IV 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. 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. 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. Additionally, trading in the Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange’s circuit breaker rule.\textsuperscript{56} NYSE Arca represents that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and detect violations of NYSE Arca rules and applicable federal securities laws.\textsuperscript{57} To support this, the Exchange 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 ETP Holders acting as registered market makers, in connection with their proprietary or customer trades. 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.\textsuperscript{58} 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.\textsuperscript{59} Further, NYSE Arca states that it may obtain trading information via the Intermarket Surveillance Group (“ISG”) from other exchanges that are members of the ISG, including the COMEX,\textsuperscript{60} and that it has entered into a comprehensive surveillance sharing agreement with the LME that applies with respect to trading in copper and copper derivatives.\textsuperscript{61}

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 Shares in the Creation Unit (including noting that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) how information regarding the IV 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; and (f) trading information. The Notice and the Registration Statement include additional information about: 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.\textsuperscript{62}

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,\textsuperscript{63} and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent

\textsuperscript{46} See id. at 23786.
\textsuperscript{47} See id.
\textsuperscript{48} See id.
\textsuperscript{49} See id.
\textsuperscript{50} See id.
\textsuperscript{51} See id.
\textsuperscript{52} See Amendment No. 1, supra note 15.
\textsuperscript{53} See Registration Statement, supra note 31.
\textsuperscript{54} With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Act (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A–3(c)(7). See Notice, supra note 3, at 23773 n.12.
\textsuperscript{55} See Amendment No. 1, supra note 15. NYSE Arca Equities Rule 8.201(e)(2) also provides that the Exchange may seek to delist the Shares in the event the underlying commodity or the IV is no longer calculated or available as required.
\textsuperscript{56} See NYSE Arca Equities Rule 7.12.
\textsuperscript{57} See Notice, supra note 3, 77 FR at 23787.
\textsuperscript{58} See Amendment No. 1, supra note 15.
\textsuperscript{59} See Notice and the Registration Statement, supra notes 3 and 31, respectively.
\textsuperscript{60} See Notice, supra note 3, 77 FR at 23787.
with Section 6(b)(5) of the Act, 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, 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, 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. Further, pursuant to Section 3(f) of the Act, the Commission has considered whether the proposed rule change will promote efficiency, competition, and capital formation.

Six commenters submitted fourteen comment letters to explain their opposition to the proposed rule change. Generally, the opposing commenters assert that the proposed rule change is inconsistent with Section 6(b)(5) of the Act. V&F (collectively, “Owning Commenters”) assert 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. The Owning Commenters assert 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. They further state that the predicted decrease in copper available for immediate delivery would make the physical copper market more susceptible to manipulation.

In response, the Exchange and the Sponsor generally state that the Trust would serve as an accessible alternative by which participants in the copper market can access or offload physical copper inventory and associated price risk. The Sponsor believes that the Trust would move copper from one type of liquid stock to another type of liquid stock, rather than removing inventory from the market, and would track, rather than drive, copper prices. The Exchange and the Sponsor believe the structure of the Trust and the regulatory regime for the Shares and copper derivatives (including non-securities) suggest approval of the proposed rule change would not render the copper market more susceptible to manipulation.

Given the concerns expressed by the commenters 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, 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 Owning Commenters believe 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 quantities of copper from LME and COMEX warehouses, thus negatively impacting the supply of copper available for immediate delivery. 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 that the record does not support each of the 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

Opposing Commenters assert 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.77 In response, the Sponsor asserts that the Trust would not remove immediately available copper inventory from the market.78 The Sponsor points out that a report cited by one of the commenters defines inventories held in exchange-traded funds as “liquid stocks.”79 The Sponsor asserts that, in effect, the Trust would move copper from one type of liquid stock (warrants) to another type of liquid stock ( Shares).80

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;81 (2) Shares are redeemable (in size) for copper on every Business Day;82 and (3) redeeming authorized participants will receive the right to obtain their copper within three business days.83 Additionally, as the Sponsor explains, the copper received in exchange for Redem ed Shares could be: (1) Sold in the OTC market for cash; (2) swapped in the OTC market for copper in a different location or for a different brand; and/or (3) removed from the warehouse and consumed.84 The Sponsor states that these three types of transactions are commonplace in the copper market.85 Further, copper delivered from the Trust considers to be copper available for immediate delivery, takes time; according to that 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 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.”86 V&F August 24 Letter, supra note 11, at 14.

This commenter expresses further concern in its latest comment letter about an increasing length of time that it takes to withdraw copper, 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 United States copper consumers to obtain the physical copper they need in a timely manner. See generally EVW December 7 Letter, supra note 16. By its December 7 submission, 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 its 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.

For purposes of analyzing this proposed rule change, the Commission assumes that copper will be transferred to an authorized participant’s book-entry account within three days, and that an authorized participant taking delivery of copper from an LME warehouse will then have to wait in the queues described by this Opposing Commenter, just like other copper merchants. The record does not show that in actuality this would take time; according to the Trust, the copper they would receive after paying for it would be delivered from the Trust unavailable for immediate delivery. In this regard, the Commission notes that the commenter, who acknowledges that taking copper off of LME warrant takes time, considers copper on LME warrant to be available for immediate delivery. See, e.g., V&F July 13 Letter, supra note 7, at 1 (stating its view that there are no substantial sources of copper available for immediate delivery available to the Trust other than warrant copper in LME warehouses). Further, as noted above, the Trust’s copper may be held in both LME-approved warehouses and non-LME-approved warehouses, and there is nothing in the record concerning the existence of unloading queues in non-LME warehouses. The Commission also notes that the LME approval 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 warehouse aluminum and zinc, not just copper. See also EVW December 7 Letter, supra note 16, at 3.88

Finally, the Commission believes that the proposed rule change will not burden capital formation for users who acquire copper for industrial and other purposes.

The Commission recognizes that one group of end users state that they 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.87 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 exist and are regularly addressed by end-users of copper holding LME warrants. Currently, a purchaser of an LME warrant does not know the location or brand of the underlying copper, and therefore warrant holders sometimes need to swap the warrants to acquire copper of a preferred brand in a convenient location.88 The end user commenters explain that, because not all available brands of copper held at LME and COMEX warehouses are acceptable for the efficient operation of their fabricating plants, they currently rely on copper merchants to obtain their desired brands of copper by aggregating the lots from copper on warrant at LME and COMEX warehouses.89 Nothing in the record indicates that copper merchants will not be able to perform the same function in connection with copper delivered in connection with Share redemptions. As discussed above,90 on a daily basis, the Trust will publish information on the location and brand of copper that will be delivered to the next redeeming authorized participant, and this may assist end...
users of copper and copper merchants to locate suitable copper.

One of the Opposing Commenters also expresses concern that investors who hold the Shares would not sell them, and therefore Shares would not be readily available for redemption. This claim is unsupported. There is no evidence in the record to suggest that investors holding the Shares will be unwilling to sell them, particularly in response to market movements or changes in investor needs.

The Commission believes that the listing and trading of the Shares, as proposed, could provide another way for market participants and investors to trade in 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

The Opposing Commenters believe 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 they believe that Shares would be created primarily using copper already under LME or COMEX warrant.

One of the Opposing Commenters states that the size of the market for copper available for immediate delivery is small relative to the size it expects the Trust to attain, asserting that there is only 230,000 metric tons available on the LME, with an additional 60,000 metric tons available on the COMEX, and projects that the Trust would remove as much as 61,800 metric tons from the market, which would be about 21.3% of the copper available for immediate delivery. Another Opposing Commenter states that, in 2011, total global copper stocks were 3.515 million metric tons, of which it believes only 808,000 metric tons were considered to be “liquid.”

Levin Letter, supra note 8, at 4. The commenter then goes on to assert that: (1) Of those liquid stocks, most actually are unavailable for purchase; (2) most of that liquid copper that is available for immediate delivery is under LME or COMEX warrant; and (3) as of August 2011, the LME and COMEX had only 537,500 metric tons under warrant.

That commenter estimates that the Trust, which he expects would hold up to 121,200 metric tons of copper, and the iShares Copper Trust would be created primarily using liquid global copper inventories that are considered LME-branded are estimated at approximately 1.4 million metric tons as of July 31, 2012, and that approximately 70% of these inventories are not under warrant with the LME, COMEX, or any other exchange. Additionally, the Sponsor asserts that authorized participants would not deposit into the Trust copper exclusively or disproportionately from the U.S.; according to the Sponsor, five of the initial permitted warehouses are located outside of the U.S. and, based on current conditions, the Sponsor states that Shanghai, South Korea, and Singapore are the most likely locations at which copper would be delivered to the Trust.

The Commission believes that there is significant uncertainty about the locations from which copper will be purchased to create Shares. 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. Further, the Commission understands, based on information submitted by the Sponsor, that premia in different locations have fluctuated historically relative to one another and will continue to change over time, and that a region with the highest locational premia at a given time may have the lowest locational premia at a later date.

The Commission also believes that the record supports the view that there are sufficient copper stockpiles such that up

Agent. See id. at 15 n.44. Metal Bulletin Research estimates that 1.36 million metric tonnes of the 1.78 million metric tonnes considered to be liquid are in the form of LME brands. See id. at Annex C-5 at 7. Metal Bulletin Research further estimates that 249,000 metric tonnes are on LME warrant and 136,000 metric tonnes are LME-branded but located on other exchanges, leaving approximately 70% (or 975,000 metric tonnes) of liquid copper stocks that are eligible to be placed on LME warrant. See id. at Annex C-5 at 10.

See DP September 10 Letter, supra note 12, at 8 n.32; and DP August 24 Letter, supra note 11, at 26.

The Sponsor provided the following information provided by the Valuation Agent regarding locational premia: (1) In the United States, the average locational premium as a percentage of average physical price was 1.4217% for the year ended December 31, 2010; 1.3777% between January 1 and March 31, 2011, and 1.1590% between April 1 and June 15, 2011; (2) in Europe, the average locational premia as a percentage of average physical price was 0.9426% for the year ended December 31, 2010; 0.7035% between January 1 and March 31, 2011; and 0.7327% between April 1 and June 15, 2011; (3) in Shanghai, China, the average locational premia as a percentage of average physical price was 1.3500% for the year ended December 31, 2010; 0.9828% between January 1 and March 31, 2011, and 0.4935% between April 1 and June 15, 2011; and in Singapore, the average locational premia as a percentage of average physical price was 1.1259% for the year ended December 31, 2010; 0.7177% between January 1 and March 31, 2011, and 0.4964% between April 1 and June 15, 2011; See DP August 24 Letter, supra note 11, at C-3. The Sponsor states that this data provided in Annex C-3 demonstrates that locational premia vary over time and, as a result, “a region with the highest premia in one interval of time may have the lowest premia at a later date, and vice versa.” See id. at 32.
to 61,800 metric tons of copper could be deposited into the Trust without authorized participants taking copper off of either LME or COMEX warrant. For example, the Valuation Agent estimates liquid global copper inventories that are considered LME-branded to be approximately 1.4 million metric tons as of July 31, 2012, and approximately 70% of these inventories are not under warrant with the LME, COMEX, or any other exchange. One of the Opposing Commenters argues that this supply of non-warranted copper belongs to producers, consumers, and/or merchants and traders and is not otherwise in the supply pipeline, and that the only copper available for immediate delivery is in LME and COMEX warehouses. The Commission believes, however, that it is more plausible that a sufficient portion of the estimated 1.4 million metric tons of copper inventories cited by commenters currently is available for authorized participants to use to create Shares. For example, an Opposing Commenter states that there is estimated to be between 500,000 and 600,000 metric tons of bonded copper inventory in Shanghai and Guangzhou, China, and that up to 10% of this stockpile is not deliverable because it has not been kept under cover. In the Commission’s view, this leaves between 450,000 and 540,000 tons of copper that may be deliverable to the Trust. The Sponsor says that “Metal Bulletin” estimates that 80% of these bonded stocks are LME acceptable metal given the imported status of such metal and arbitrage activity between the LME and SHFE. One of the Opposing Commenters argues that the Commission should not include copper located in China as inventory available for immediate delivery, noting that China is one of the largest copper-consuming countries in the world, leading the commenter to conclude that China would not export copper. That commenter does not provide any empirical support for this view. That commenter also suggests that copper in China is unavailable because “a substantial percentage of the inventory in bonded warehouses in China is being held in financing structures,” but the commenter admits that it does not know either how much of the copper is so encumbered under financing arrangements or how long such copper would be restricted. Further, even if the commenter is correct that, as a practical matter, such copper may be unavailable to U.S. copper consumers, that does not preclude copper in Shanghai from being deposited into the Trust (if it is otherwise eligible), as one of the Trust’s initial permitted warehouse locations is Shanghai.

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 that the Trust’s copper will remain available for immediate delivery to consumers and participants in the physical markets. 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

One of the Opposing Commenters believes 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) “the stated desire to have the Trust remove enough copper from the market each month to move prices upward to cover the costs of storage”; (2) the 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 Trust, iShares Copper Trust, and ETFS Physical Copper were announced. That 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. Opposing commenters state that the Trust would hold approximately 61,800 metric tons of copper if the Sponsor sells all of the 6,180,000 Shares covered by its Registration Statement. The Sponsor states that it does not expect to sell all registered Shares within three months after the Registration Statement becomes effective, and states: “[l]ike all other physical metal ETVs, the Trust would register significantly more Shares than it initially intends to sell so that it is able to meet any such demand.” The Sponsor predicts that, in connection with the initial offering of Shares, the Trust would hold 9,893 metric tons of copper.

As a preliminary matter, the Opposing Commenters appear 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. Accordingly, 6,180,000 issued Shares will correspond with 61,800 metric tons of copper held by the Trust only if authorized participants do not redeem any Shares. Based on the existence of the arbitrage mechanism of the Trust, 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

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101 The Exchange states that the Valuation Agent is an independent, third-party valuation agent that is not affiliated with the Sponsor. See Notice, supra note 3, 77 FR at 23773.
104 See V&F August 24 Letter, supra note 11, at 9-10. In contrast, the Sponsor states that there is estimated to be 550,000 metric tons of copper in bonded warehouses in Shanghai alone. See DP August 24 Letter, supra note 11, at 33.
105 See DP August 24 Letter, supra note 11, at 30.
108 See id.
109 See supra Section III.A.1.
110 See V&F August 24 Letter, supra note 11, at 20. EFTS Physical Copper is a trust that holds copper under LME warrant and its shares are traded on the London Stock Exchange and Deutsche Borse. See http://www.etfscurities.com/en/uploads/document_pdf/ETFsPhysicalIndustrialCopperCoreFactSheet.pdf. A discussion of the effect of ETFS Physical Copper on the price of copper is included below. See infra Section III.B.
111 See V&F May 9 Letter, supra note 4, at 5. That commenter states that, in the longer term, copper and silver mineral are likely to respond to price signals and increase production. See V&F August 24 Letter, supra note 11, at 26. Another Opposing Commenter generally asserted that the Trust actually would change “supply and demand relationships.” AFR October 23 Letter, supra note 14, at 4. That commenter offered neither an explanation for nor quantitative data to support its claim. As discussed below, the Commission believes that the Opposing Commenters have not supported their prediction that the assets of the Trust will grow so quickly, and that copper supply is sufficiently inelastic, such that copper prices would be impacted. See infra text following note 118.
112 See V&F May 9 Letter, supra note 4, at 3; Levin Letter, supra note 8, at 5.
113 DP August 24 Letter, supra note 11, at 41.
114 See id.
116 The Trust’s 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 Notice, supra note 3, 77 FR at 23780.
depend on investor demand for the Shares and the extent to which authorized participants fulfill such demand by buying Creation Units and not redeeming issued Shares. Investor demand for the Shares is currently unknown. The Commission notes that ETFS Physical Copper, shares of which are listed and traded on the London Stock Exchange and Deutsche Börse, has not grown to a substantial size since its inception.117

As discussed above, the Commission believes that copper held by the Trust will be available for immediate delivery.118 However, even assuming that the Trust’s copper will be unavailable for immediate delivery, the Commission believes that the Opposing Commenters have not supported their prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery.

4. Other Physical Commodity Trusts

Opposing commenters admit that the introduction of Commodity-Based Trusts that hold other metals had virtually no impact on the available supply, but they assert that these other metals—gold, silver, platinum, and palladium—are fundamentally different because they have traditionally been held for investment purposes, currently are used as currency, and that, as a result, there were ample stored sources available to fund Commodity-Based Trusts overlying those metals.119 They assert 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 available supply, and they therefore believe that the introduction of the Trust would impact supply.120

In response, the Sponsor states that the majority of the market for silver, platinum, and palladium is industrial in nature.121 The Sponsor has provided statistics from Thomson Reuters GFMS, a provider of information about the international metals industries, showing that in 2011, industrial use accounted for 84% of global palladium demand, 66% of global platinum demand, and 53% of global silver demand.122 The Sponsor also states its belief that any holding of physical copper inventories, or of a financial replicating position, is implicitly an investment in copper.123

Given the industrial usage of silver, platinum, and palladium as compared to copper,124 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 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 our 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 underlining it.

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

The Opposing Commenters assert that, due to the rapid growth of the Trust, which they believe would occur and would remove a substantial portion of the supply of immediately available LME-warranted copper,125 the price of copper would be driven up.126 As noted above, one of the Opposing Commenters estimates that the Trust, which would hold up to 61,800 metric tons of copper, and the iShares Copper Trust,127 which would hold up to 121,200 metric tons of copper, collectively would hold approximately 34% of the copper available for immediate delivery.128 That commenter concludes that, “[i]f the supply of copper available for immediate delivery drops by about 34%, it naturally follows that the price of copper will rise.”129 Another of the Opposing Commenters 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.” 130 That commenter also 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.131 and predicts that the price increases for copper would be especially dramatic in the U.S., where copper is currently relatively inexpensive.132 Another Opposing Commenter also asserts that the value of copper is based on “consumption rather than intrinsic value,” and the creation of the Trust would introduce a financial element to copper pricing.133

In contrast, the Sponsor asserts that copper cash prices are not determined only by changes in on-warrant LME copper stocks.134 The Sponsor believes

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117 According to one Opposing 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 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 11, at 15. See supra Section III.A.1.

118 See V&F May 9 Letter, supra note 4, at 2; and Levin Letter, supra note 8, at 6.

119 See V&F May 9 Letter, supra note 4, at 2–3; and Levin Letter, supra note 8, at 7. Senator Levin 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 8, at 7.

120 See supra Section III.A.1.

121 See DP August 24 Letter, supra note 11, at 39. Similarly, the Exchange states that the Trust would not be the first Commodity-Based Trust to hold a metal that is used primarily for industrial purposes. See Arca June 19 Letter, supra note 6, at 6.

122 See DP August 24 Letter, supra note 11, at 39. No other commenter provided comparable statistics regarding the industrial usage of palladium, platinum, or silver.

123 See id. at 17, 19. The Sponsor believes copper held for investment purposes would include copper inventories on the LME, SHFE, and COMEX (453,464 metric tons as of July 31, 2012); copper inventories held through exchange-traded vehicles (2,356 metric tons as of July 31, 2012); and non-exchange-registrered copper stocks (3.6 million metric tons as of July 31, 2012, 100,000 metric tons of which were held by hedge funds and private investors in private warehousing arrangements). See id. at 17–18.

124 As mentioned above, the Sponsor provided statistics showing that in 2011, industrial use accounted for 84% of global palladium demand, 66% of global platinum demand, and 53% of global silver demand. See supra text accompanying note 122.

125 See supra Section III.A.1.
that supply and demand fundamentals, independent of the Trust, drive the price of copper.\textsuperscript{135} According to the Sponsor, the main determinants of price in the copper market are production and demand fundamentals such as: Demand expectations; mine and refinery capacity; marginal costs of production (in particular, the change in marginal costs of production at different production levels); global and regional industrial growth patterns; cost of financing; and inventory levels.\textsuperscript{136} The Sponsor states that: (1) Prices have reached the highest level and been among the lowest levels both in a “normal” regime and a low-stocks environment; and (2) copper inventories and prices do not always have an inverse relationship.\textsuperscript{137} In response to questions posed by the Commission about the impact of LME inventories on the LME Settlement Price, the Sponsor states that 5-day changes in the supply of LME inventories of 10,000 metric tons or more are not that uncommon, and that inventory builds or withdrawals equivalent to the amount of copper required for the initial creation unit of Shares currently occur at the LME at least one quarter of the time.\textsuperscript{138} The Sponsor and the Exchange also state that, due to the Trust’s creation/redemption mechanism and the related ability of authorized participants to exchange Shares for physical copper, Shares—like shares of other physical commodity backed trusts—would track rather than drive the price of the commodity it holds.\textsuperscript{139}

As discussed above,\textsuperscript{140} 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 Opposing Commenters predict would increase the price of copper. However, even if the supply of copper under LME warrant would decrease because previously warranted copper was 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 Settlement Price (or any other price of copper).

To analyze the potential impact of changes in the LME inventory level on changes in the LME Settlement Price, Commission staff performed two regression analyses.\textsuperscript{141} 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.\textsuperscript{142}

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.\textsuperscript{143} 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.\textsuperscript{144}

Based on these analyses, even if the listing and trading of Shares of the Trust 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 Settlement 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.\textsuperscript{145}

Commission staff also performed Granger causality analyses\textsuperscript{146} 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, EFTS Physical Palladium Shares, and ETFS Physical Copper trust 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.\textsuperscript{147} This analysis revealed no observable relation between the flow of assets and subsequent price changes of the underlying metal prices.\textsuperscript{148} Commission staff repeated this analysis on a daily frequency for iShares Silver Trust, ETFS Platinum Trust, ETFS Physical Palladium Shares, and ETFS Physical Copper.\textsuperscript{149} 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,\textsuperscript{150} 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 than that of the listing and trading of shares of other Commodity-Based Trusts due solely to the nature of the underlying commodity markets.

135 See id. at 10. See also AFR November 16 Letter, supra note 14, at 6–7 (“It is true that if all other factors were equal, the removal of supply from the market through hoarding would increase prices, leading to a positive correlation between inventory and prices. But other supply and demand factors will frequently introduce exactly the opposite relationship between inventory and price.”) (footnote omitted).

136 See DP August 24 Letter, supra note 11, at 10.

137 See id. at 24.

138 Id.

139 See id. at 25; and Arca June 19 Letter, supra note 6, at 4.

140 See supra Section III.A.

141 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.

142 See id. at 10.

143 The Sponsor suggests that some of the inventory data published by the ICSG may be incomplete, but the Sponsor did not question the ICSG LME copper inventory data that was used in the Staff’s analysis. See DP August 24 Letter, supra note 11, at 19.

144 See RF Analysis, supra note 141, at 11.

145 See id.

146 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 id. at 3, n.9.

147 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.

148 See id. at 4.

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

150 As mentioned above, the Sponsor provided statistics showing that in 2011, industrial use accounted for 84% of global palladium demand, 66% of global platinum demand, and 51% of global silver demand. See supra note 122 and accompanying text.
The Commission received three comment letters regarding the Commission staff’s analysis.151 These letters include comments on both the substantive conclusions reached as well as the methodology used.152 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 Opposing Commenters’ contentions.

One of the Opposing Commenters states that the results in Table 4 in the RF Analysis appear to contradict the staff’s conclusion that there is no statistically significant relationship between copper inventories and copper prices as the results show a strong positive relationship between total exchange inventories and copper prices.153 The Commission believes that the aforementioned linear regression analysis conducted by staff indicates that LME copper inventories do not appear to have any independent statistical effect on copper prices. Further, we recognize that the linear regression analysis summarized in Table 4 also indicates that total exchange inventory has a positive relation to copper prices. Specifically, this linear regression analysis indicates that removal of copper from exchanges would lead to a decrease in the price of copper, thus benefiting market participants who use copper as an input.154

This Opposing Commenter also states that the Commission staff’s decision to use the inventory of LME-warranted copper, total exchange copper inventory, and total non-exchange inventory as independent variables makes it difficult to interpret any single coefficient.155 The commenter states that because LME copper inventory makes up a significant portion of total exchange inventory, the two variables are obviously highly correlated, creating the problem of collinearity between regressors.156 As a response to these comments, the Commission notes that its staff conducted a separate analysis, in which COMEX and SHFE copper inventory were substituted for total exchange copper (i.e., the inventory of LME-warranted copper was removed from total exchange inventory). Consistent with the findings in the RF Analysis, this separate analysis shows that, even when replacing total exchange inventories with non-LME exchange inventories, LME inventories specifically do not appear to have any independent statistical effect on copper prices.157

Further, this Opposing Commenter states: “There are growing doubts about the utility of not just LME inventories but any established exchange inventories in representing the true global inventory stocks of copper.”158 The commenter asserts that, if there are large global inventories of copper that are not being measured, the utility of any of the models in the Commission staff’s analysis is highly doubtful.159 As discussed above, the Commission believes that there are sufficient copper stockpiles such that up to 61,800 metric tons of copper could be deposited into the Trust without authorized participants taking copper off of either LME or COMEX warrant.160 This may, as the commenter suggests, limit the utility of the RF Analysis regarding the relation between LME inventories and prices. However, other Opposing Commenters have argued that the price of copper will increase precisely because authorized participants will create Shares by taking copper off of LME and/or COMEX warrant, and the RF Analysis addresses this concern.161 Moreover, the Commission believes that if there are large global inventories of copper that are not being measured, it is less likely that the listing and trading of the Shares will by itself increase the price of copper compared with the scenario suggested by other Commenters who assert that LME inventories drive prices.

This Opposing Commenter also argues that the Commission staff’s analysis ignores key “institutional factors” in the copper market.162 The commenter asserts that price determination in any market is highly dependent on the rules that govern that market, and that for an industrial commodity, factors concerning the practical use of the commodity are important.163 According to the commenter, the most important institutional factor is the LME’s requirement “that any holder of 50 percent or more of LME warrants in any metal must lend its inventory on demand at rates designed to prevent any

151 See AFR November 16 Letter, supra note 14; V&F November 16 Letter, supra note 14; and Rutkowski November 17 Letter, supra note 14. Mr. Rutkowski urges that the Commission afford the AFR November 16 Letter the attention Mr. Rutkowski believes is due. See Rutkowski November 17 Letter, supra note 14. The Commission discusses both the AFR November 16 Letter and the V&F November 16 Letter below.
152 AFR states that “[t]he detailed regression data, models (including computer code), and full results used in [the RF Analysis] should be released to the public.” See AFR November 16 Letter, supra note 14, at 3. The Commission does not believe it is necessary to release this information because the RF Analysis includes sufficient data and information to permit commenters to evaluate the staff’s analyses.
153 See id. at 2. The commenter’s concern appears to be based on the notion that supply changes “on the margin” influence price and that, if supply hoarding increases prices, the key determinant of price levels will be inventories for the supply of the marginal unit of copper. The commenter sets forth reasons why it believes the LME inventory no longer represents the marginal unit of copper, and its belief that total exchange inventory (or potentially off-exchange inventory) is the type of inventory most likely to include the marginal unit of copper inventory on the world market. AFR states that in recent years, inventories have been moving from the LME toward other exchanges, and that since 2008, most inventory flow has been to non-LME exchanges. AFR also argues that LME lending rules would make it illogical to use LME-warranted copper to influence market prices. In addition, AFR asserts that total exchange inventories may be a better guide to price impact since the Trust would hold copper that is not on LME warrant. See id. at 4. AFR also states that because the Commission staff’s analysis “does not properly report the units in which these regression variables are measured in, and does not standardize coefficients, it is not possible to fully assess the economic (as opposed to statistical) significance of” total exchange inventories and compare it to other coefficients. While the Commission acknowledges this comment, the RF Analysis does not rely on the magnitude of coefficient estimates, but rather on the statistical significance of those estimates.
154 In contrast, the Opposing Commenters argue that the removal from the market of a substantial portion of copper available for immediate delivery would drive up the price of copper. See supra notes 125–132 and accompanying text.
155 See AFR November 16 Letter, supra note 14, at 4. Another 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 14, at 3–4. There is no evidence in the record of the existence of heteroskedasticity in these variables that would affect the results of the RF Analysis.
156 See AFR November 16 Letter, supra note 14, at 4. This commenter did not identify which independent variables Commission staff should have used and did not provide its own regression analysis for Commission staff’s decision.161
157 In this alternative regression specification, the coefficient for non-LME exchange inventories is estimated to be positive and statistically significant, like the coefficient for total exchange inventory in Table 4 of the RF Analysis. This result again implies that taking inventory off these exchanges may result in a decrease in copper prices, as opposed to an increase in prices as predicted by the Opposing Commenters.
158 See AFR November 16 Letter, supra note 14, at 8. AFR states: “Table 4 does include a variable for the off-exchange inventory. The coefficient is large but not statistically significant. It is difficult to assess this finding given the collinearity issue and the lack of detail on how the off-exchange inventory variable is calculated.” See id. at 4 n.8. The Commission does not believe that the magnitude of the coefficient for off-exchange inventory in Table 4 of the RF Analysis is relevant as the p-value is statistically insignificant.
159 See id. at 9.
160 See supra Section III.A.2.
161 See supra notes 125–132 and accompanying text.
162 See AFR November 16 Letter, supra note 14, at 8.
163 See id.
profit from the dominant position.” 164 The commenter asserts that the findings in the RF Analysis are based on analyses of exchange-traded funds backed by LME warrants, and asserts that the findings of that analysis likely do not accurately reflect the likely price impact of the Trust as the assets of the Trust would not be backed by LME warrants.165 As discussed above, however, Commission staff evaluated whether the introduction of the SPDR Gold Trust, iShares Silver Trust, ETF Physical Palladium Shares, and ETF Physical Copper had an impact on the return of the metals underlying those trusts. Only ETF Physical Copper holds LME warrants; the SPDR Gold Trust, iShares Silver Trust, ETF Physical Palladium Trust, and ETF Physical Palladium Shares all hold physical gold, silver, platinum, and palladium, respectively, not warrants on those metals. Accordingly, the Commission believes the staff’s analysis considers the institutional factor cited by the commenter. Further, one of the Opposing Commenters asserts that the Commission staff’s analysis ignores endogeneity problems.167 The commenter argues that the Commission staff’s Granger causality analyses168 are inappropriate because they look for a statistical relationship between variables that are simultaneously determined—specifically, asset flows into Commodity-Based Trusts and metals prices.169 In addition, this commenter argues that the Commission staff’s regression analyses, performed to determine whether a relationship exists between copper prices and LME inventory, are subject to endogeneity bias.170 The commenter asserts that the Commission staff’s analysis “attempts to retrieve the causal impact of supply hoarding on prices through regressing price on quantity in the market generally.” 171 According to the commenter, although, “if all other factors were equal, the removal of supply from the market through hoarding would increase prices, leading to a positive correlation between inventory and prices,” other supply and demand factors, such as an inventory buildup in connection with a decline in prices caused by decreased market demand, can lead to a negative correlation between inventory level and prices.173 Thus, according to the commenter, a correlation between inventory levels and price will not isolate the effect of supply hoarding.174 The Commission does not believe that endogeneity biases are problematic with regard to the linear regression analyses and the Granger causality analyses Commission staff conducted because the analyses examine the relation between lagged inventory changes (in case of the regression analyses) or lagged flows (in the case of the Granger causality analyses) and subsequent price changes. For this reason, the inventory and flow variables are determined prior to the price variables being determined, and are not determined simultaneously with prices.175

Another of the Opposing Commenters states that the Granger causality analyses appear on their face to be incongruous.176 This commenter states its belief 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 monthly change in NAV of the iShares Silver Trust and the silver price.177 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.

Two of the Opposing Commenters question the time periods used in the Commission staff’s analysis. One of these Opposing Commenters states that Commission staff failed to account for the term structure of prices (e.g., whether, and the extent to which, the market is in contango or backwardation).178 This commenter states: “[t]he correct lag period to test for price impacts on copper consumers depends upon the delivery times and production lead times, which also affect the price impacts of deep backwardation on consumer access to supplies.” 179 While this commenter suggests that the Commission staff did not use the correct lag period in its analysis, the commenter did not provide any specific time intervals that should be used from the many possible alternatives, nor did it explain what time intervals would have been more appropriate than those used by Commission staff. 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.180 Another of the Opposing Commenters 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.181 This commenter states that if the Trust and the iShares 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.” 182 The

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164 See id.
165 See id. See also supra text accompanying note 147.
166 See supra note 147 and accompanying text.
167 See AFR November 16 Letter, supra note 14, at 5. AFR states that endogeneity refers to the simultaneous determination of quantity and price in supply-demand systems and “involves a causal loop between the dependent and independent variable such that the causal impact of the independent variable cannot be isolated.” See id.
168 See supra notes 146–150 and accompanying text.
169 See AFR November 16 Letter, supra note 14, at 5.
170 See supra notes 141–144 and accompanying text.
171 See AFR November 16 Letter, supra note 14, at 6.
172 See id.
173 See id. at 6–7.
174 See id. at 7.
175 The commenter asserts: “The most preferred method [to address endogeneity issues] is to use an instrumental variables approach that isolates factors that affect market supply but are unrelated to other causal factors.” Id. This commenter, however, did not submit for Commission consideration the analysis it asserts is necessary, nor did the commenter provide any examples of instrumental variables it asserted would rectify the analysis.
177 See id. at 6–7.
178 See AFR November 16 Letter, supra note 14, at 9.
179 See id.
180 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.
181 See V&F November 16 Letter, supra note 14, at 3.
182 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
analysis provided by this commenter, however, does not provide the 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. In addition, this commenter’s analyses appear 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 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, and believes that the Opposing Commenters have not supported their prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery.

This Opposing Commenter also asserts that Commission staff erred by using lagged daily LME stock data. This 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.”

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. 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.**

In addition, this Opposing Commenter asserts that there is not a strong statistical relationship between lagged copper inventory changes and contemporaneous copper prices because the LME represents the copper market’s “warehouse of last resort.”

According to this commenter, when LME stocks are drawn down or added to, market participants “should have already fully discounted the fundamental information contained within that particular stock move.”

This assertion seems consistent with a hypothesis that price changes precede inventory changes, which is contrary to Opposing Commenters’ assertions that inventory changes precede price changes. 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.

This Opposing 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%.**

The commenter’s analysis finds that if LME and COMEX inventories were to decline by more than 50%, which the commenter asserts could happen if the Trust and the iShares 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.**

The analysis provided by this commenter, however, does not provide the significance level of any test statistics associated with these findings. In addition, this 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. 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, and believes that the Opposing Commenters have not supported their prediction that the Trust would grow so quickly that it would significantly disrupt the supply of copper available for immediate delivery.

One of the Opposing Commenters states that Commission staff should have considered the impact on locational premia. This commenter asserts that the relationship between COMEX inventory 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). 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. The analysis provided by this commenter, however, does not provide the significance level of any test statistics associated with these findings. In addition, this commenter’s analysis appears to analyze inventory changes against concurrent price changes. The Commission does not believe that such

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182 See id. at 2.
183 See supra text following note 182.
184 See supra text following note 182.
185 See supra Section III.A.
186 See supra Section III.A.3.
188 See id. at 5–6.
189 See id.
190 See id.
191 See id.
192 See id.
193 See id.
194 See id.
195 See id.
196 See id.
197 To confirm this, Commission staff reconciled a sample of historical LME stock data from the LME Web site (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.
199 See id. at 6 (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 the SEC’s view 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 metal prices.").
200 See supra text following note 182.
a concurrent analysis can isolate the effect of inventory changes on prices, as discussed previously. In addition, according to data provided by commenters, locational premia typically appear to be no greater than 2%. 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 consumers and participants in the physical markets, which will limit the possible effect on locational premia.

Finally, this Opposing 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. This 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 this commenter characterizes as “an overly-simplistic ex-ante statistical analysis of LME/global inventories and LME settlement prices.” According to this 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. Further, while this commenter indicates that “[overall historically the level of LME inventories has been generally indicative of the trading environment, not a driver of the metal price per se,” 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.”

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 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.

Lastly, one of the Opposing Commenters cites a study that “examines the hedging activity of sponsors using futures as hedges for the total return swaps” entered into as part of commodity index funds. According to the commenter, the sponsor of a commodity index fund must replace expiring futures contracts with later-maturing futures on a continuous basis (referred to as the “roll”). The commenter states that the Frenk & Turbeville Study “found an extremely strong and significant correlation” over a multi-year period between the five-day roll period for hedges of the Goldman Sachs Commodity Futures Index in each month with a movement in the forward price curve toward higher prices in the future. The commenter believes that suppliers hold onto more of the underlying commodity to take advantage of the rising prices signaled by the movement in the forward price curve (although no fundamental market forces have signaled such higher prices), which in turn increases spot prices to attract supply that otherwise could be hoarded.

The commenter believes that the proposed trust will have a more direct effect on the copper market as withdrawal of supply in rising-price markets (and flooding of supply in decreasing-price markets) constitutes an actual change in supply and demand relationships.

The Commission is not persuaded that the conclusions of a study on correlations between the roll periods of futures indexes and commodities prices should be extrapolated to predict the impact of the Trust, which will hold physical copper (not copper derivatives), on the price of copper. As discussed above, the Commission believes that copper delivered into and held by the Trust will remain available for immediate delivery and, even if it is “removed from the market” as commenters have suggested, the supply of copper available for immediate delivery is sufficient such that the creation and quick growth of the Trust alone is not expected to impact the price of copper. 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 Opposing Commenters assert that the successful creation and growth of the Trust would make the price of copper, which one of those commenters states already is volatile, even more volatile. Specifically, they assert that the successful creation and growth of the Trust, which would in their view substantially restrict supply and increase copper prices, would create a boom and bust cycle in copper prices. For example, the Copper Fabricators predict that: (1) The Trust would remove copper from the market, and thus drive the price of copper higher, which in turn would...
drive the price of the Shares higher; (2) at some point, the anticipated incremental increase in price would either be insufficient to cover the increasing costs of storage or would not be enough to generate a profit; and (3) that when that expected outcome occurs, Share holders would sell their Shares and authorized participants would redeem them, returning the copper held in the Trust to the physical market.\textsuperscript{217} The Opposing Commenters predict that this ultimate sell-off would be quick, and predict that the expected “dumping” of thousands of metric tons of copper back onto the market would depress the price of copper and negatively impact the world economy at large.\textsuperscript{218}

In contrast, NYSE Arca and the Sponsor assert that the Trust would not increase copper price volatility in this manner and in fact may reduce it. The Exchange states that, because of the arbitrage mechanism common to all exchange-traded vehicles, share prices of physical commodity-backed exchange-traded vehicles generally follow rather than drive the price of the underlying assets.\textsuperscript{219} The Sponsor asserts that volatility in prices results when there is a major change in prevailing expectations about fundamental market parameters, and the Trust would not affect any of the fundamental parameters that drive supply and demand.\textsuperscript{220} Further, the Sponsor states that the Trust may reduce copper price volatility because, if holders of the Shares act according to their incentives—namely, to sell into rallies and buy on price dips—their actions may tend to reduce peaks and valleys in pricing, and help to reduce volatility.\textsuperscript{221}

The Opposing Commenters’ prediction that the listing and trading of the Shares would cause a boom and bust is premised upon both the supply and price impacts they predict. 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\textsuperscript{222} or increase the price of copper.\textsuperscript{223} 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 copper volatility in the manner that Opposing Commenters suggest. 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 Opposing Commenters set forth a number of arguments about why the Trust would increase the potential for manipulation of the copper market. One of the Opposing Commenters 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. According to that 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 then adopt or change their strategies accordingly.\textsuperscript{224} Therefore, that commenter believes that the increased market transparency, which the Exchange asserts would result from the formation and operation of the Trust, would not be in the public interest.\textsuperscript{225} 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.”\textsuperscript{226}

Due to their view of the Trust’s impact on the supply of copper available for immediate delivery, Opposing Commenters predict that the Trust would make the copper market more susceptible to squeezes and corners.\textsuperscript{227} According to an Opposing 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.\textsuperscript{228} According to another commenter, 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 that Trust would be able to control more of the available supply of copper without triggering LME reporting or rules.\textsuperscript{229}

In response, the Exchange states that the Trust instead may reduce the potential for fraud or manipulation in the physical copper market because: (1) The Trust may hold copper in multiple global locations, which is intended to provide a larger, more liquid supply of copper than would be available if creations and redemptions were only permitted using copper held in a single location; (2) the Trust and transactions in the Shares would be transparent, publishing information about its holdings and operations through its Web site; (3) the Trust would utilize a consistent, transparent, non-discretionary, rules-based, and fully disclosed selection protocol for redemptions; and (4) the Trust’s copper would be valued by a recognized, independent valuation agent.\textsuperscript{230} The Sponsor also claims that the Trust may reduce the potential for fraud or manipulation in the physical copper market,\textsuperscript{231} which would have an impact on any potential manipulation of the

\textsuperscript{217} See Copper Fabricators Letter, supra note 11, at 5–6.

\textsuperscript{218} See, e.g., Levin Letter, supra note 8, at 6. More specifically, V&F 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 11, at 28.

\textsuperscript{219} See Arca June 19 Letter, supra note 6, at 4.

\textsuperscript{220} See DP August 24 Letter, supra note 11, at 11. The Sponsor also asserts: (1) Changes in realized volatility of physical copper prices and prices of copper derivatives based on changes in global copper supply are not constants; (2) LME prices and price volatility do not increase or decrease based solely on LME copper stocks or on-warrant LME copper stocks; and (3) in general, realized volatility of copper prices tends to be higher in a lower stocks environment, as strong physical demand draws production and distribution systems to full capacity utilization. See id. at 24–25.

\textsuperscript{221} See id. at 11.

\textsuperscript{222} See supra Section III.A.

\textsuperscript{223} See supra Section III.B.

\textsuperscript{224} See V&F May 9 Letter, supra note 4, at 9.

\textsuperscript{225} See id. at 10.

\textsuperscript{226} V&F July 13 Letter, supra note 7, at 10.

\textsuperscript{227} See supra Section III.A.

\textsuperscript{228} See supra Section III.B.

\textsuperscript{229} See V&F May 9 Letter, supra note 4, at 9.

\textsuperscript{230} See Arca June 19 Letter, supra note 6, at 5–6.

\textsuperscript{231} See DP August 24 Letter, supra note 11, at 4. The Sponsor also states that neither it nor the Trust could deliberately influence copper prices even if it sought to because the Trust is not managed—it does not take positions or buy and sell copper, and it cannot place large orders that could affect the market. See id. at 12.
Shares as well. Specifically, the Sponsor asserts that the Trust already has introduced greater transparency into the copper market. 232 According to the Sponsor, prior to July 16, 2011, locational premia (i.e., prices) for physical copper were reported infrequently, available only by subscription, and available only for certain broad regions. 233 Since then, in anticipation of the Trust’s potential launch, the Valuation Agent has calculated the locational premium for physical copper in each of the Trust’s approved warehouses on a daily basis, and published the locational premia on a weekly basis. 234 The Sponsor expects that transparency would increase through the listing of the Shares because when trading of the Shares commences: (1) The Trust would post on its Web site these locational premia on a daily basis; (2) the Exchange would continuously disseminate pricing information as part of its required intraday indicative value (“IIV”) reporting; (3) the Sponsor believes that Shares would be created using previously unreported non-exchange-registered stocks, and thus copper market participants would have more information about supply; and (4) the Trust would furnish complete visibility into creation and redemption activity by certain authorized participants. 235 The Sponsor also argues that the underlying copper market is subject to extensive and explicit regulatory authority, and the increased transparency furnished by the Trust would enhance regulators’ ability to oversee the copper market and enforce applicable laws and rules. Specifically, the Sponsor states: (1) The CFTC has explicit anti-fraud and anti-manipulation authority under the CEA that extends over the U.S. physical commodity markets; (2) the Department of Justice has the ability to pursue antitrust violations, such as concerted buying and selling involving commodities, under the federal antitrust laws; and (3) the LME has broad rights to obtain information relating to the activities of LME members and their affiliates if the LME has cause to suspect undesirable or improper trading that affects the copper markets, including the markets for both LME-warranted and non-warranted copper, and therefore the LME can obtain information about both LME and non-LME metal trading activities from J.P. Morgan Securities plc, an affiliate of the Sponsor that is a ring-dealing member of the LME, as well as from the Sponsor. 236 The Sponsor also asserts that there has been no 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, and that the creation of commodity backed trusts holding gold, silver, platinum, and/or palladium has not led to manipulation of the markets for those precious metals. 237 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.” 238 In this case, the Commission believes the transparency that the Trust will provide with respect to its holdings, the locational premium for and price per metric ton of the copper in each warehouse location of the Trust, and creation and redemption activity, including the locations of creations and redemptions, as well as the dissemination of quotations for and last-sale prices of transactions in the Shares and the IIV and NAV of the Trust, 239 will help reduce the ability of market participants to manipulate the physical copper market or the price of Shares. 240 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) 241 may serve to make the overall copper market more transparent if OTC trading of unreported warehouse receipts shifts to trading Shares on exchanges. 242 In particular, additional information regarding the supply of 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 maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. 243 The Opposing Commenters assert serious disruptions in the supply of copper would make corners and squeezes more likely. 244 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. 245 Depending on the size of the Trust though, it is possible that certain holdings may be dispersed across an additional market—i.e., less copper may be held under LME and/or COMEX that allow the extension of unlisted trading privileges to issues such as the Shares. See, e.g., Securities Exchange Act Release No. 57800 (May 9, 2008), 73 FR 28984 (May 16, 2008) (SR–Phlx–2008–34); Securities Exchange Act Release No. 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR–IATS–2008–004). 242 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 Exchange Act, 15 U.S.C. 78m(d), and the rules thereunder require that a person file a Schedule 13G if they acquire beneficial ownership of more than five percent of a class of equity securities, calculate a market value of at least $100 million (“Reportable Securities”), and thereby file a short form Schedule 13G, 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 Reportable Security’s name, CUSIP number, the number of shares held, and the market value of the position. 243 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. 244 See supra notes 227–229 and accompanying text. 245 See supra Section III.A.
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 participants faced with a potential corner or squeeze may acquire Shares, redeem them (through an authorized participant) for LME warrantable copper, put the copper on LME warrant, and deliver the warrants. 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, none of the commenters has identified any evidence that the trading of copper 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 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

One of the Opposing Commenters questions whether NYSE Arca’s surveillance procedures are adequate to prevent fraudulent and manipulative trading in the Shares. According to that 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 collusional or other forms of manipulation by traders. Two other Opposing Commenters assert that the Sponsor would be in a privileged informational position and could improperly trade on that non-public information. One of those commenters asserts that the Sponsor participates in other, non-security copper derivatives markets (namely futures and swaps), and states that the Sponsor has an extensive commodities trading operation and “owns copper warehousing capacity in the United States giving it access to physical supply.” The commenter also expresses concern that, if the Sponsor “knows information regarding ETF inflows and outflows and understands the volatility consequences of changes in the holdings of the ETF,” it can take advantage of that asymmetrical information and could “be a potential source of disruption to the markets.” NYSE Arca asserts that the statements about its surveillance are unsubstantiated and states 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 Exchange rules and applicable federal securities laws. In particular, the Exchange represents the following:

- Pursuant to NYSE Arca Equities Rule 8.201(e), 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 or may 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, physical copper, copper futures contracts, options on copper futures, or any other copper derivative from ETP Holders acting as registered market makers, in connection with their proprietary or customer trades.

- 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.

- 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.

- 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, 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).

- NYSE Arca may obtain trading information via ISG from other exchanges that are members of the ISG, including the COMEX. 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.

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. According to the Exchange, the Valuation Agent will exclude any information provided by any JPMorgan-
affiliated entity when calculating the locational premium of copper in any permitted warehouse location. In addition, NYSE Arca has obtained a representation from the Sponsor that it will (i) 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 (ii) 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. The Commission believes the firewall that the 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.

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. 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. 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.

The Commission believes that disseminating the NAV, IIV, and copper holdings information, as discussed above, will facilitate transparency with respect to the Shares and diminish the risk of manipulation or unfair informational advantage. 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. Additionally, as discussed above, the Exchange has identified numerous sources of copper price information unconnected with the Exchange that are readily available to investors. 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(o)(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 must halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants; 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 Web site to any such unaffiliated source providing that value; or (b) if the Liquidation IV is no longer made available on at least a 15-second delayed basis. 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 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. As discussed above, 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,274 and the rules and regulations thereunder applicable to a national securities exchange.275 In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,276 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; with Section 6(b)(8) of the Act,276 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,277 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.276

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No.1 to 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–NYSEArca–2012–28 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–NYSEArca–2012–28. 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 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 Web site 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–2012–28 and should be submitted on or before January 10, 2013.

V. Accelerated Approval of Proposed Rule Change As Modified by Amendment No. 1

As discussed above, the Exchange submitted Amendment No. 1 to make additional representations regarding trading in the Shares, availability of information, and the Exchange’s surveillance program.277 The Commission believes these additional representations are useful to, among other things, help: (1) Assure adequate liquidity in the Shares; (2) assure adequate availability of information to investors to support the arbitrage mechanism; (3) assure adequate information available to the Exchange to support its monitoring of Exchange trading of the Shares in all trading sessions; and (4) the Exchange deter and detect violations of NYSE Arca rules and applicable federal securities laws. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,278 for approving the proposed rule change, as modified by Amendment No. 1, 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,279 that the proposed rule change (SR–NYSEArca–2012–28), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

By the Commission.
Kevin M. O’Neill.
Deputy Secretary.

[FR Doc. 2012–30647 Filed 12–19–12; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34–68438; File No. AN–OCC–2012–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Filing To Revise the Method for Determining the Minimum Clearing Fund Size To Include Consideration of the Amount Necessary To Draw on Secured Credit Facilities

December 14, 2012.

I. Introduction

On October 18, 2012, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) an advance notice concerning a proposed rule change AN–OCC–2012–04 pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).1 entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Title VIII” or “Clearing Supervision Act”) and Rule 19b–4 under the Securities Exchange Act of 1934 (“Exchange Act”).2 The advance notice was published in the Federal Register on November 20, 2012.3 The Commission did not receive comments on the advance notice publication. This publication serves as a notice of no objection to the proposed rule change discussed in the advance notice.

II. Description of Proposed Rule Change

A. Background

On September 23, 2011, the Commission approved a proposed rule change by OCC to establish the size of OCC’s clearing fund as the amount that is required, within a confidence level selected by OCC, to sustain the maximum anticipated loss under a defined set of scenarios as determined by OCC, subject to a minimum clearing fund size of $1 billion.4 OCC implemented this change in May 2012. Until that time, the size of OCC’s


276 As noted above (see supra Section II.B), 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 note 41.

277 See supra note 15.