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

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

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

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

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2012–69 on the subject line.

Paper Comments

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

All submissions should refer to File Number *SR–ISE–2012–69*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–69 and should be submitted on or before September 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19739 Filed 8–10–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67616; File No. SR–NYSEArca-2012–66]

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

August 8, 2012.

I. Introduction

On June 19, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of iShares Copper Trust (''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on June 27, 2012.[3] The Commission received one comment letter on the proposed rule change.[4]

This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change. The institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the

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

[2] 17 CFR 240.19b–4.

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

[4] *See* letter from Robert B. Bernstein, Vandenberg & Feliu, LLP (''V&F''), to Elizabeth M. Murphy, Secretary, Commission, dated July 18 2012 (''July 18 V&F Letter''). The July 18 V&F Letter is available at *http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266-1.pdf*. V&F identified itself as a U.S. law firm that represents RK Capital LLC, an international copper merchant, and four end-users of copper: Southwire Company, Encore Wire Corporation, Luvata, and AmRod. V&F states that these companies collectively comprise about 50% of the copper fabricating capacity of the United States. *See* July 18 V&F Letter at 1.

listing and trading of commodity-based trust shares. BlackRock Asset Management International Inc. is the sponsor of the Trust (''Sponsor''). The Bank of New York Mellon is the trustee of the Trust (''Trustee''). Metro International Trade Services LLC is the custodian of the Trust (''Custodian'').

The Trust's investment objective is for the value of the Shares to reflect, at any given time, the value of the copper owned by the Trust at that time, less the Trust's expenses and liabilities at that time. The Trust would not be actively managed and would not engage in any activities designed to obtain a profit from, or to prevent losses caused by, changes in the price of copper.

The Trust will create Shares only in exchange for copper that: (1) Meets the requirements to be delivered in settlement of copper futures contracts traded on the LME; and (2) is eligible to be placed on London Metal Exchange (''LME'') warrant at the time it is delivered to the Trust.[5] The Trust expects to create and redeem Shares on a continuous basis but only with authorized participants in blocks of five or more baskets of 2,500 Shares each.[6] Unless otherwise instructed by the Trustee, no copper held by the Custodian on behalf of the Trust may be on LME warrant.[7] The Custodian may keep the Trust's copper at locations within or outside the United States that are agreed from time to time by the Custodian and the Trustee. As of the date of the Registration Statement,[8] the Custodian is authorized to hold copper owned by the Trust at warehouses located in: East Chicago, Indiana; Mobile, Alabama; New Orleans, Louisiana; Saint Louis, Missouri; Hull, England; Liverpool, England; Rotterdam, Netherlands; and Antwerp, Belgium (collectively, ''Approved Warehouses''). Unless otherwise agreed in writing by the Trustee, each of the warehouses where the Trust's copper will be stored must be LME-approved at the time copper is delivered to the Custodian for storage in such warehouse.

The net asset value (''NAV'') of the Trust will be calculated as promptly as practicable after 4:00 p.m. EST on each business day. The Trustee will value the Trust's copper at that day's announced LME Bid Price.[9] If there is no announced LME Bid Price on a business day, the Trustee will be authorized to use the most recently announced LME Bid Price unless the Sponsor determines that such price is inappropriate as a basis for valuation.[10]

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

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

The Notice and the Registration Statement include additional information regarding: The Trust; the Shares; the Trust's investment objectives, strategies, policies, and restrictions; fees and expenses; creation and redemption of Shares; the physical copper market; availability of information; trading rules and halts; and surveillance procedures.[16]

III. Summary of V&F's Comments

V&F opposes the proposed rule change.[17] As discussed in greater detail below, V&F states its belief that the issuance by the Trust of all of the Shares covered by the Registration Statement within a short period of time would result in: (1) A material reduction in the immediately available supply of global copper; (2) increased volatility in the price of copper, which would in turn significantly harm the U.S. economy; and (3) a destabilization of the physical copper market that would make it more susceptible to manipulation.

A. Adverse Copper Market Impact

1. Impact on Supply of Copper Available for Immediate Delivery

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

[5] *See* Notice, *supra* note 3, 77 FR at 38356.

[6] *See id.*

[7] *See id.*

[8] Pre-Effective Amendment No. 4 to Form S–1 for iShares Copper Trust, filed with the Commission on September 2, 2011 (No. 333–170131) (''Registration Statement'').

[9] The ''LME Bid Price'' is announced by the LME at 1:20 p.m. London Time and represents the price that a buyer is willing to pay to receive a warrant in any warehouse within the LME system. *See* Notice, *supra* note 3, 77 FR at 38356 n. 25.

[10] *See id.* at 38358.

[11] *See id.* at 38359.

[12] *See* Registration Statement, *supra* note 8.

[13] *See* Notice, *supra* note 3, 77 FR at 38360.

[14] *See id.*

[15] *See id.*

[16] *See* Notice and Registration Statement, *supra* notes 3 and 8, respectively.

[17] The Commenter also opposes a separate pending proposed rule change by NYSE Arca to list and trade shares of the JPM Copper Trust (''JPM Copper Trust Proposal''). *See generally* Securities Exchange Act Release No. 67470 (July 19, 2012), 77 FR 43620 (July 25, 2012). In the July 18 V&F Letter, V&F incorporated by reference a letter it submitted in opposition to the JPM Copper Trust Proposal, which was received by the Commission on May 9, 2012 (''May 9 V&F Letter''). *See* July 18 V&F Letter, *supra* note 4, at 5. The May 9 V&F Letter is available at *http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228.shtml.* V&F also attached to the July 18 V&F Letter (1) another letter dated July 13, 2012 that it submitted in opposition to the JPM Copper Trust Proposal (''July 13 V&F Letter''); and (2) a letter from U.S. Senator Carl Levin dated July 16, 2012 submitted in opposition to the JPM Copper Trust Proposal (''Senator Levin Letter''). *See id.* The July 13 V&F Letter and the Senator Levin Letter are available, along with the July 18 V&F Letter, at *http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266-1.pdf.* Additionally, the July 13 V&F Letter and the Senator Levin Letter are available at *http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228-5.pdf* and *http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228-6.pdf,* respectively.

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

[19] *Id.* at 4.

[20] *Id.* at 4–5. Additionally, V&F states that copper stored at LME warehouses usually is deposited there by producers with excess supply or by copper merchants looking for purchasers and is sold to traders seeking to close out short positions or to

V&F believes that the only refined copper generally available for immediate delivery is the copper in LME and COMEX warehouses.[21] V&F states that, at present, there is only approximately 240,000 metric tons of copper in LME warehouses worldwide, and an additional 60,000 metric tons of copper in COMEX warehouses in the United States, or about 290,000 total metric tons of copper available for immediate delivery.[22] V&F states that as much as 121,200 metric tons of immediately available copper would be removed from the market if the Trust sells all of the Shares it seeks to register pursuant to the Registration Statement.[23] Taking into account the sale of all of the shares of the JPM Copper Trust, another proposed commodity-based exchange traded product (''CB–ETP'') that would hold physical copper,[24] V&F states that as much as 183,000 metric tons, or 63%, of immediately available copper would be removed from the market.[25]

V&F also expects that much of the copper used to fund the Trust will come from the immediately available supply in the U.S., stating:

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

V&F further states that the collective effect of the Copper Trusts would be ''far-reaching and potentially devastating to the U.S. and world economies,'' and could cause ''shortages of copper, higher prices to consumers, and increased volatility.''[27]

V&F asserts that the supply of copper generally is inelastic and that supply, therefore, will not increase fast enough to account for the increased demand from the creation and growth of the Trust.[28] V&F further states that U.S. producers do not have surplus product to deliver and therefore asserts that, once copper stored in warehouses disappears, it likely will not be replenished any time soon.[29]

V&F states that the Registration Statement ''tries to convey the false impression that because there is copper tonnage outside of LME and Comex warehouses, such copper must therefore be available for [the Trust] to acquire.''[30] V&F states that the only copper eligible for Share creation is copper already under LME warrant or stored in COMEX warehouses,[31] and that all other eligible copper is unavailable because it is: (1) Already part of the supply chain and subject to long-term contracts between producers and consumers; (2) held in bonded warehouses in China and destined for the Chinese market;[32] or (3) held as strategic reserves by the governments of China and South Korea.[33]

V&F also believes that investors' ability to redeem Shares for the Trust's physical copper would not mitigate the impact of removing substantial quantities of copper from the market.[34] According to V&F, most investors in a copper-backed CB–ETP would not have any real economic incentive to redeem their Shares because: (1) They would benefit from a rise in the price of copper; and (2) investors seeking to recognize their profits likely would sell their Shares rather than redeeming them because redeeming them would require assuming delivery risk.[35]

2. Impact on Copper Prices

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

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

fabricators in sudden need of additional supply. *See* May 9 V&F Letter, *supra* note 17, at 3.

[21] *See* July 18 V&F Letter, *supra* note 4, at 1.

[22] *See id.*

[23] *See id.*

[24] *See supra* note 17. *See also* Securities and Exchange Act Release No. 66816 (April 16, 2012), 77 FR 23772 (April 20, 2012) (SR–NYSEArca–2012–28) (notice of the JPM Copper Trust Proposal) (''JPM Notice''). Recently, the Commission instituted proceedings to determine whether to approve or disapprove the JPM Copper Trust Proposal. *See* Securities and Exchange Act Release No. 67470, *supra* note 17. The Trust and the JPM Copper Trust are referred to collectively as the ''Copper Trusts.''

[25] *See* July 18 V&F Letter, *supra* note 4, at 1. The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, states that, if the Commission approves the listing and trading of the shares of the Copper Trusts, the trusts would hold approximately 34% of the copper stocks available for immediate delivery and would remove from the U.S. market over 55% of the available copper. *See* Senator Levin Letter, *supra* note 17, at 5–6.

[26] *See* July 18 V&F Letter, *supra* note 4, at 4.

[27] May 9 V&F Letter, *supra* note 17, at 10. The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, asserts that there is ample evidence that the potentially smaller JPM Copper Trust would disrupt the supply of copper by removing from the market a substantial percentage of the copper available for immediate delivery. *See* Senator Levin Letter, *supra* note 17, at 1.

[28] *See* May 9 V&F Letter, *supra* note 17, at 5 (''[I]t is difficult for copper producers to increase supply, sometimes taking 15 years or longer before a new mine is opened up, and even in areas where copper is considered plentiful, political instability can keep a mine from producing''). Further, V&F states that the consensus among experts is that copper is in deficit, has been in deficit for the past three years, and is expected to remain in deficit for at least the next couple of years. *See id.* at 3. The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, also states that the copper market is inelastic. *See* Senator Levin Letter, *supra* note 17, at 3.

[29] May 9 V&F Letter, *supra* note 17, at 5.

[30] July 18 V&F Letter, *supra* note 4, at 2.

[31] *See id. See also* Senator Levin Letter, *supra* note 17, at 5 (''[I]t appears that most of the remaining copper stocks available for immediate delivery are on the LME and [COMEX]'').

[32] V&F asserts such copper is delivered only rarely to LME warehouses in Asia. *See* July 18 V&F Letter, *supra* note 4, at 2.

[33] *See id.*

[34] *See* May 9 V&F Letter, *supra* note 17, at 5.

[35] *See id.* V&F believes that it is unlikely that fabricators would use Shares to manage their inventory because doing so: (1) Would add cost and risk to fabricators who otherwise would simply purchase available stocks from LME warehouses; (2) may not have any appreciable effect on price or supply in a rising market with tight supply; and (3) would be an inefficient and perhaps impracticable way of obtaining copper because the copper delivered by the Trust may be warehoused in an unhelpful location (*e.g.,* a fabricator in Alabama may need copper in New Orleans, not Shanghai) or of an unacceptable brand or quality. *See id.* at 5–6.

[36] *See id.* at 5.

[37] *See id.*

[38] *See id. See also* July 18 V&F Letter, *supra* note 4, at 4 (''The principal victims will in the first instance be United States consumers who typically rely on supplies of copper for immediate delivery to augment their long-term supply. These fabricators will not only be forced to pay higher prices, and incur the risk of price volatility once prices collapse, but there may be periods of time when those who can least afford it will be unable to get supply.'')

inexpensive.[39] V&F states that U.S. copper fabricators will be forced to pay more for copper and in some instances may not be able to purchase the copper they need.[40] According to V&F:

[m]anufacturers and fabricators will have to pass these increases in price on to their customers, and because it is the U.S. supplies that will be hit the hardest, it will be U.S. consumers that will be hit the hardest. Everything that requires copper, including copper pipes in new homes, to copper wiring for electricity, to the copper used in the air conditioning units and also in automotive wiring, will all increase in price.'' [41]

V&F believes that the ''chief beneficiary'' of a tighter copper supply in the U.S. will likely be competitors in China, because Chinese manufacturers will have the copper feedstock on hand to produce copper rod, tubing, and wire, while at least some of their American counterparts will not.[42]

V&F quotes several statements from the Registration Statement to support its conclusion about the Trust's impact on copper prices, including the following statement that:

a very enthusiastic reception of the Shares by the market, or the proliferation of similar investment vehicles that issue shares backed by physical copper, would result in purchases of copper for deposit into the trust or such similar investment vehicles that could be large enough to result in an increase in the price of physical copper. If that were the case, the price of the Shares would be expected to reflect that increase.[43]

V&F also states that, because the potential size of the Trust is large relative to the size of the market for copper available for immediate delivery, even modest investor demand for the Shares could place upward pressure on the price of copper.[44]

V&F characterizes the current physical copper market as volatile, and believes that the successful creation and growth of the Trust would create a bubble, and the bursting of the bubble would result in increased price volatility in the physical copper market.[45] V&F states that investors in a copper CB–ETP would benefit immediately from any increase in the price of copper because the more copper removed from the market to satisfy the demand for the copper CB–ETP, the higher the price not only of copper, but of the copper CB–ETP itself.[46] V&F further believes that investors in the Trust would be able to measure how much impact their collective removal of copper from the supply available for immediate delivery would have on copper prices each day, and could adjust their purchasing strategies accordingly.[47]

V&F states that the copper bubble will be no different than others, predicting that, as investor demand for this product wanes, the bubble will burst, leaving in its wake a glut of physical copper that the Trust will be forced to dump on the market, causing prices to plummet, and leaving in its wake unsuspecting investors who will have lost the value of their investment.[48] In describing why the bubble it predicts will burst, V&F states that, with

the risk of an ETF removing indefinitely all or substantially all of the copper available for immediate delivery, the risk of price volatility becomes enormous. This is because the greater amount of copper artificially kept off-the-market, the greater the chance that investors will eventually no longer keep propping up the price with further purchases, and the greater the likelihood that the bubble will burst, thus flooding the market with surplus copper, and severely depressing the price.[49]

3. Increased Likelihood of Copper Market Manipulation

V&F asserts generally that the tightened supply of copper it believes would be caused by fully funding the Trust would render the physical copper market more susceptible to manipulation.[50] V&F also states that copper CB–ETPs such as the Copper Trusts ''risk endangering the price discovery functions of the LME and Comex'' because they would drawdown and remove from the market of most of the copper in LME and COMEX warehouses.[51]

According to V&F, the Trust ''is unlike any other metal ETF currently listed on the Exchange and would allow speculators in the guise of purchasers of shares to create a squeeze on the market.''[52] Therefore, V&F concludes that the ''proposed rule change is therefore inconsistent with Section 6(b)(5) of the Securities Exchange Act of 1934, which requires that rules be designed to prevent manipulative acts and protect investors and the public interest.''[53]

Finally, V&F questions whether NYSE Arca's surveillance procedures are adequate to prevent fraudulent and manipulative trading in shares of the JPM Trust.[54]

B. Comparison to Other Commodity-Based Trusts

According to V&F, no ETF backed by a base metal used exclusively for industrial purposes has ever before been listed and sold on any nationally recognized exchange in the United States.[55] V&F states that gold, silver, platinum, and palladium are all precious metals that have traditionally been held for investment purposes and are currently used as currency, and, as a result, there were ample stored sources available to back physical CB–ETPs holding precious metals, such that the introduction of those CB–ETPs had virtually no impact on the available supply.[56] In contrast, V&F states that

[39] *See supra* note 26 and accompanying text.

[40] *See* July 18 V&F Letter, *supra* note 4, at 4–5.

[41] *See* May 9 V&F Letter, *supra* note 17, at 5.

[42] *See* July 18 V&F Letter, *supra* note 4, at 5. V&F also states that the launch of a copper-backed ETF is likely to upset the delicate balance of copper supplied to the United States, with potentially devastating consequences economically across a wide spectrum of industries. *See* May 9 V&F Letter, *supra* note 17, at 3.

[43] *See* July 18 V&F Letter, *supra* note 4, at 3–4.

[44] *See* July 13 V&F Letter, *supra* note 17, at 8–9.

[45] *See* May 9 V&F Letter, *supra* note 17, at 2, 9.

[46] *See id.* at 5.

[47] *See id.* at 9. V&F therefore questions whether the increased market transparency that the Exchange asserts will result from the formation and operation of the Trust (*see* Notice, *supra* note 3, 77 FR at 38361) will be in the public interest. *See* May 9 V&F Letter, *supra* note *17,* at 10.

[48] *See* May 9 V&F Letter, *supra* note *17,* at 2.

[49] *Id.* at 5. The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, also makes statements about the potential effect of the JPM Copper Trust, stating that the ''supply disruption is likely to affect the cash and futures market for copper, increasing volatility and driving up [the share] price to create a bubble and burst cycle.'' *See* Senator Levin Letter, *supra* note 17, at 1.

[50] *See* May 9 V&F Letter, *supra* note 17, at 1, 10.

[51] July 18 V&F Letter, *supra* note 4, at 4.

[52] *Id.* at 5.

[53] *See id.* The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, also states that the JPM Copper Trust may encourage manipulative acts by allowing ''speculators to squeeze or corner the market in copper.'' Senator Levin Letter, *supra* note 17, at 7. According to Senator Levin, market participants could use the shares to remove copper from the available supply with the intent to artificially inflate the price of copper, and this activity would go undetected by the LME because CB–ETPs currently are not subject to any form of commodity regulations. *Id.* Senator Levin states that, by holding physical copper rather than LME warrants, the Trust can control more of the available supply of copper without triggering LME reporting rules. *Id.* Senator Levin further believes that creating this market condition would be inconsistent with the requirements in Section 6(b)(5) of the Act that exchange rules be designed to prevent manipulative acts and protect investors and the public interest. *Id.*

[54] *See* May 9 V&F Letter, *supra* note 17, at 10. According to V&F, NYSE Arca's surveillance procedures are not adequate because they are the kind of garden-variety measures that are always in place to prevent collusion and other forms of manipulation by traders. *See id.*

[55] July 18 V&F Letter, *supra* note 4, at 2.

[56] *See* May 9 V&F Letter, *supra* note 17, at 2. V&F states that, unlike copper, there is enough of a supply of platinum and palladium (which are used for both industrial and investment purposes) available in storage and being produced that the introduction of CB–ETPs backed by these metals did not cause the kind of disruption to the market that a copper-backed CB–ETPs would cause. *See* July 13 V&F Letter, *supra* note 17, at 11. Specifically, V&F states that: (1) In recent years, there has been a surplus in palladium due to the

copper generally is not held as an investment, but rather is used exclusively for industrial purposes,[57] with the annual demand generally exceeding the available supply.[58]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2012–66 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[59] to determine whether this proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. As noted above, the institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[60] the Commission is providing notice of the grounds for disapproval under consideration. The Commission believes that questions remain about whether the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[61] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

As discussed above, the Commission received one comment letter opposing the proposed rule change. V&F asserts that the successful creation of the Trust would materially reduce the supply of copper available for immediate delivery, which would increase the price of copper and volatility in the copper market, and, in turn, would harm the U.S. economy.[62] In addition, V&F argues that, by decreasing the amount of copper available for immediate delivery, the Trust will make the copper market more susceptible to manipulation.[63] V&F further believes the Exchange's surveillance procedures are inadequate to prevent fraudulent and manipulative trading in the Shares.[64]

In light of the comments received, the Commission is soliciting further comments on the proposed rule change, including comments regarding the issues already commented upon.

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have regarding the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. The Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[65]

Interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be disapproved by September 12, 2012. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 27, 2012.

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

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

- What was the world mine production capacity in each of the past 10 years? What data is available regarding projected world mine production over the next 3 to 5 years? What factors impact the ability to increase or decrease mine production?
- What was the refined production in each of the past 10 years? How much of the refined production was from primary and secondary sources? What was the world refinery capacity in each of the past 10 years? What data is available regarding projected refined production over the next 3 to 5 years? What factors impact the ability to increase or decrease refinery production?
- What was the world refined usage in each of the past 10 years? What data is available regarding projected usage over the next 3 to 5 years?
- How much copper has been held for investment purposes over the past 10 years? How much of this copper was taken off LME warrant? How much of this copper has been eligible to be placed on LME warrant?

2. According to the International Copper Study Group (''ICSG'), world refined usage of copper exceeded world refined production by approximately 417,000 tons in 2010 and 231,000 tons in 2011, and world refined stocks decreased by 161,000 tons in 2010 and increased by 13,000 tons in 2011.[66] What factors account for refined stocks decreasing less than the deficit amount (or even increasing) in 2010 and 2011?

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there is about a year's supply of platinum reserves above ground; and (3) there is only a 1–2 week supply of copper available on the LME. *See id.* Similarly, the Senator Levin Letter, which V&F attached to the July 18 V&F Letter, also states that gold, silver, platinum, and palladium are substantially different than copper because these four metals are the only precious metals that are currently treated as world currencies and commonly held for investment purposes, and as a result there are substantial existing supplies of these metals that could be acquired to back an CB–ETPs without affecting the world market price in these metals. *See* Senator Levin Letter, *supra* note 17, at 6–7.

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

[58] *See* May 9 V&F Letter, *supra* note 17, at 2–3.

[59] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

[60] *Id.*

[61] 15 U.S.C. 78f(b)(5).

[62] *See supra* Section III.A.1–2.

[63] *See supra* Section III.A.3.

[64] *See supra* note 54 and accompanying text.

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

[66] Press Release, ICSG, Copper: Preliminary Data for February 2012 (June 20, 2012), available at *http://www.icsg.org/index.php?option=com_content&task=view&id=63&Itemid=64.*

Are there any factors with respect to the supply of copper available for immediate delivery that the Commission should consider in evaluating the market's ability to meet demand for copper? When a deficit occurs, are copper fabricators and other end users able to access copper to meet excess demand? If so, what are the sources of that copper? How much copper is available for immediate delivery that is not on LME warrant?

3. V&F states that the Trust and the proposed JPM Copper Trust,[67] collectively, will remove from the market a substantial percentage of the copper available for immediate delivery.[68] According to V&F, the Copper Trusts would remove 63% of the copper currently held in LME and COMEX warehouses.[69] V&F states that the collective effect of the Copper Trusts would be ''far-reaching and potentially devastating to the U.S. and world economies,'' including ''shortages of copper, higher prices to consumers, and increased volatility.'' [70] Do commenters agree or disagree with these statements? If so, why or why not? For example:

○ Do commenters believe creation of the Trust will have an impact on the supply of copper? If so, what will that impact be? If not, why not?

○ How does a change in the supply of copper impact the price of copper? To what extent do copper stocks need to be reduced or increased to impact the price of copper?

○ To what extent is the LME Bid Price affected by the amount of copper on LME warrant? To what extent must copper on LME warrant be reduced to impact the LME Bid Price? To what extent, if at all, is the LME Bid Price affected by the supply of copper ineligible to be placed on LME warrant?

○ How does a change in the supply of copper impact volatility in the physical copper and copper derivatives markets?

○ Is there empirical evidence that creation of the Trust will impact copper prices and volatility? What impact, if any, will creation of the Trust have on the US economy?

4. V&F states that Shares would be created by removing copper from LME and COMEX warehouses in the United States,[71] thus driving up the cost of copper particularly in the United States.[72] According to V&F, correspondingly:

> The principal victims will * * * be United States consumers who typically rely on supplies of copper for immediate delivery to augment their long-term supply. These fabricators will not only be forced to pay higher prices, and incur the risk of price volatility once prices collapse, but there may be periods of time when those who can least afford it will be unable to get supply.[73]

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

5. V&F states that the only copper eligible for Share creation is copper: (1) Already under LME warrant; (2) stored in COMEX warehouses; (3) already part of the supply chain, subject to long-term contracts between producers and consumers; (4) held in bonded warehouses in China and destined for the Chinese market, which V&F asserts is only rarely delivered to LME warehouses in Asia; or (5) held as strategic reserves by the governments of China and South Korea.[74] The Commission is soliciting further comments regarding physical copper stocks. For example:

○ How much copper is currently held in LME warehouses? How much of the copper currently held in LME warehouses is on warrant? How much copper in LME warehouses is available for investment purposes?

○ How much copper is held in COMEX, Shanghai Futures Exchange (''SHFE''), and Multi Commodity Exchange of India (''MCX'') warehouses? How much copper held in COMEX, SHFE, and MCX warehouses is eligible to be placed on LME warrant (*i.e.,* is of a brand registered with the LME)? How much of this LME warrant-eligible copper is available for investment purposes? Where is this copper located?

○ What quantity of copper stock, if any, is held in other locations that would be eligible to be placed on LME warrant (if it were located at an LME warehouse)?

○ How accessible are stocks of copper eligible to be placed on warrant that are not held in LME warehouses?

○ Are commenters aware of any activities involving the stockpiling of copper? If so, how much copper has been stockpiled? Where is such copper located? How accessible is such copper? How much of this stock was taken off LME warrant? How much of this copper is eligible to be placed on LME warrant?

6. The Custodian will store the Trust's copper in Approved Warehouses around the world.[75] What is the locational premium at each of the Approved Warehouses? What impact would changes in locational premia have on supply and demand for copper at each of the Approved Warehouses? How much copper is held at each of the Approved Warehouses? How much of the copper held at each of the Approved Warehouses is on LME warrant? How much is eligible to be placed on LME warrant? How much copper eligible for LME warrant is available for investment purposes? How much is not eligible to be placed on LME warrant?

7. The Trustee generally will value the Trust's copper at that day's announced LME Bid Price,[76] which represents the price that a buyer is willing to pay to receive a warrant in any warehouse within the LME system.[77] Given the Trust's copper will be held off LME warrant, will the LME Bid Price accurately reflect the value of the Trust's copper? Why or why not?

8. When valuing the Trust's copper, the Trustee will not take into account the location(s) of the copper. In contrast, to support the JPM Copper Proposal, NYSE Arca states that the value of copper depends in part on its location, *i.e.,* copper stored in a location that is low in supply and high in demand carries a higher premium than copper that is stored in a location where supply is high and demand is low.[78]

○ Does the value of the Trust's copper depend on its location? If so, how?

○ If so, does the LME Bid Price account for the locational premia/

[67] *See supra* note 17. *See also* JPM Notice, *supra* note 24.

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

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

[70] *See* July 13 V&F Letter, *supra* note 17, at 10.

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

[72] *See id.* (''[D]epletion of copper from the LME warehouses will most likely be felt the hardest in the United States and, once copper from the LME warehouses is depleted, copper from the Comex warehouses will be depleted as well, as copper there is moved to LME warehouses in order to take advantage of higher prices'').

[73] *See id.*

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

[75] *See* Notice, *supra* note 3, 77 FR at 38356 n.23 (as of the date of the Registration Statement, the Custodian is authorized to hold copper owned by the Trust at warehouses located in: East Chicago, Indiana; Mobile, Alabama; New Orleans, Louisiana; Saint Louis, Missouri; Hull, England; Liverpool, England; Rotterdam, Netherlands; and Antwerp, Belgium).

[76] *See id.* at 38358.

[77] *See id.* at 38356 n.25.

[78] *See* JPM Notice, *supra* note 24, 77 FR at 23779.

discounts of the Trust's copper held in various locations?

9. V&F states: ''the most obvious and freely available source'' of copper eligible to create Shares ''is copper on warrant in LME warehouses today.'' [79] V&F further states that taking copper off LME warrant would involve little or no cost if the LME warrants purchased are for copper that is stored at the Approved Warehouses.[80]

○ What costs are involved in taking copper off LME warrant? What costs are involved in putting copper on LME warrant?

○ How long does it take to take copper off LME warrant? How long does it take to put copper on LME warrant?

○ How does the cost and time required to take copper off warrant compare to the cost and time to ship copper to an Approved Warehouse?

10. The Commission understands that ETFS Physical Copper securities currently trade on the London Stock Exchange. How much copper did ETFS Physical Copper hold following the initial creation? How much copper does ETFS Physical Copper currently hold? What change, if any, was there in the price of copper following creation of ETFS Physical Copper? Did the creation of ETFS Physical Copper result in an observable impact on the copper market? Has ETFS Physical Copper engaged in the lending of copper?

11. The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 of other issues of CB–ETPs backed by gold, silver, platinum, and palladium (collectively ''precious metals''). While these precious metals are often held for investment purposes, the Commission understands they are also used for various industrial purposes. V&F asserts that copper is used exclusively for industrial purposes and is not generally held for investment.[81] The Commission requests information regarding the production and use of precious metals. How much gold, silver, platinum, and palladium has been produced in each of the last 10 years? How much gold, silver, platinum, and palladium has been used for investment purposes in each of the last 10 years? How much gold, silver, platinum, and palladium has been used for industrial purposes in each of the last 10 years? Are there any other uses of gold, silver, platinum, and palladium relevant to understanding utilization of these precious metals? What are the current and historic stocks of gold, silver, platinum, and palladium? Is there any empirical evidence that the listing of CB–ETPs backed by gold, silver, platinum, or palladium impacted prices in these markets?

12. V&F states that creation of the Trust could result in the immediate removal of up to 121,200 metric tons of copper from the market.[82] What is the likelihood that the Trust will sell all registered Shares initially? What is the likelihood that the Trust will sell all registered Shares in the three months after the registration goes effective? How quickly did the CB–ETPs backed by gold, silver, platinum, and palladium sell the shares registered in the first registration statement?

13. V&F argues that, by decreasing the amount of copper available for immediate delivery, the Trust will make the copper market more susceptible to manipulation.[83] Specifically, V&F states that ''the drawing down of stocks in LME and Comex warehouses'' resulting from the listing and trading of the Shares ''will make it much easier and cheaper for [copper market] speculators to engage in temporary market squeezes and corners.'' [84] The Commission requests comment on these concerns, as well as whether commenters agree or disagree with the comments and why or why not. For example:

○ Will creation of the Trust impact the ability to manipulate the physical copper or copper derivatives markets? If so, how? If not, why not?

○ Has there been any increased manipulative behavior due to the reduction of copper available for immediate delivery that resulted from the prior years' deficits in copper production versus copper consumption?

○ Are there any structural aspects of the copper market that render it more or less susceptible to manipulation?

○ Is there empirical evidence that the creation of CB–ETPs backed by gold, silver, platinum, and palladium has led to manipulation of the physical markets for those precious metals? If so, please describe.

14. V&F states the listing and trading of shares of copper CB–ETPs like those ''being proposed by BlackRock and JPM—and the consequent drawdown and removal from the market of most of the copper in LME and Comex warehouses—risk endangering the price discovery functions of the LME and Comex.'' [85] V&F also states that such potential impacts of a copper CB–ETP on the copper market in turn could affect the Shares, stating:

> the risk of an ETF removing indefinitely all or substantially all of the copper available for immediate delivery, the risk of price volatility becomes enormous. This is because the greater amount of copper artificially kept off-the-market, the greater the chance that investors will eventually no longer keep propping up the price with further purchases, and the greater the likelihood that the bubble will burst, thus flooding the market with surplus copper, and severely depressing the price.[86]

V&F further states that investors in a copper CB–ETP would benefit immediately from any increase in the price of copper because the more copper removed from the market to satisfy the demand for the copper CB–ETP, the higher the price not only of copper, but of the copper CB–ETP itself.[87] According to V&F, like all bubbles, as investor demand for this product wanes, the bubble will burst, leaving in its wake a glut of physical copper that the Trust will be forced to dump on the market, causing prices to plummet, and leaving in its wake unsuspecting investors who will have lost the value of their investment.[88] Do commenters agree or disagree with these comments? If so, why or why not?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–66 on the subject line.

Paper Comments

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

[79] *See* July 18 V&F Letter, *supra* note 4, at 2.

[80] *See* July 13 V&F Letter, *supra* note 17, at 6.

[81] *See* May 9 V&F Letter, *supra* note 17, at 2–3.

[82] *See* July 18 V&F Letter, *supra* note 4, at 1.

[83] *See* May 9 V&F Letter, *supra* note 17, at 1, 10. *See also* July 18 V&F Letter, *supra* note 4, at 5 (''In short, the proposed ETF * * * would allow speculators in the guise of purchasers of shares to create a squeeze on the market'').

[84] May 9 V&F Letter, *supra* note 17, at 9. The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, also argues that approval of the proposed rule change would make the copper market more susceptible to squeezes and corners by speculators. *See* Senator Levin Letter, *supra* note 17, at 7.

[85] July 18 V&F Letter, *supra* note 4, at 4.

[86] May 9 V&F Letter, *supra* note 17, at 5. *See also* July 18 V&F Letter, *supra* note 4, at 4 (asserting that BlackRock admits that the boom may bust, and quoting from the Registration Statement).

[87] *See* May 9 V&F Letter, *supra* note 17, at 5.

[88] *See id.* at 2. The Senator Levin Letter, which V&F attached to the July 18 V&F Letter, states that the supply disruption caused by the listing and trading of a copper CB–ETP ''is likely to affect the cash and futures market for copper, increasing volatility and driving up its price to create a bubble and burst cycle.'' *See* Senator Levin Letter, *supra* note 17, at 1.

All submissions should refer to File Number SR–NYSEArca–2012–66. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference 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 such filings also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–66 and should be submitted on or before September 12, 2012. Rebuttal comments should be submitted by September 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[89]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19790 Filed 8–10–12; 8:45 am]

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[89] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67607; File No. SR–EDGA–2012–35]

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

August 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2012 the EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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

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

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

1. Purpose

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

Because the Exchange can now differentiate non-displayed orders that add liquidity using the Mid Point Discretionary Order type[5] (Flag DM) from non-displayed orders that remove liquidity using the Mid Point Discretionary Order type (Flag DT),[6] the Exchange proposes to count the volume generated from Flags DM and DT toward the volume threshold in Footnote 2 since Flags DM and DT represent a non-displayed order type. Therefore, where a Member adds or removes liquidity using non-displayed (hidden) orders, a Member is charged a rate of $0.0010 per share for Flags HA or HR, contingent upon a Member adding or removing greater than 1,000,000 shares hidden on a daily basis, measured monthly (where the volume generated from Flags HA, HR, DM and DT count towards this tier) or a Member posting greater than 8,000,000 shares on a daily basis, measured monthly. Members not meeting either minimum will be charged $0.0030 per share for Flags HA or HR. The Exchange proposes to make conforming amendments to the text of Footnote 2. The Exchange notes that it will continue to charge Members a rate of $0.0005 per share for non-displayed orders that add liquidity using Mid Point Discretionary Orders that yield Flag DM and $0.0005 per share for non-displayed orders that remove liquidity using Mid Point Discretionary Orders that yield Flag DT.

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

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

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month prior to the month in which the fees are calculated.

[5] *See* Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2012) (SR–EDGA–2012–22).

[6] *See* Securities and Exchange Act Release No. 67380 (July 10, 2012), 77 FR 41847 (July 16, 2012) (SR–EDGA–2012–29) (where the Exchange provided additional transparency to Members by bifurcating then existing Flag DM into two flags: Flag DM (adds liquidity in the discretionary range) and Flag DT (removes liquidity in the discretionary range)).