

Exchange represents that it is able to obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, 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.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders ("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 Creation Unit aggregations (and 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) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to

consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>32</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will invest in debt securities that are, at the time of investment, rated within the top four rating categories by an NRSRO.

(7) The Fund will invest only in non-U.S. corporate bonds that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally, a corporate bond must have \$200 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered as an eligible investment.

(8) The Fund will not invest: (a) More than 20% of its total assets in fixed income instruments of foreign issuers in emerging markets; (b) more than 10% of its total assets in non-agency mortgage- or asset-backed securities; (c) consistent with the Exemptive Order, in options contracts, futures contracts, or swap agreements; and (d) in any non-U.S. registered equity securities.

(9) The aggregate value of all of the Fund's illiquid securities, Rule 144A Securities, master demand notes, fixed and variable rate loan participations and assignments, inverse floaters, and long-term variable and floating rate bonds where the Fund obtains at the time of purchase the right to put the bond back to the issuer or a third party at par at a specified date shall not exceed 15% of the Fund's total assets.

(10) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

(11) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>33</sup> and the rules and regulations thereunder applicable to a national securities exchange.

<sup>32</sup> 17 CFR 240.10A-3.

<sup>33</sup> 15 U.S.C. 78f(b)(5).

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR-NYSEArca-2012-82) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority:<sup>35</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67965; SR-NYSEArca-2012-28]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the JPM XF Physical Copper Trust Pursuant To NYSE Arca Equities Rule 8.201

October 2, 2012.

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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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. The proposed rule change was published for comment in the **Federal Register** on April 20, 2012.<sup>3</sup>

The Commission initially received one comment letter, which opposed the proposed rule change.<sup>4</sup> On May 30, 2012, the Commission extended the time period for Commission action to July 19, 2012.<sup>5</sup> On June 19, 2012, NYSE Arca submitted a letter in support of its proposal.<sup>6</sup> On July 13, 2012, V&F submitted a second comment letter

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 66816 (April 16, 2012), 77 FR 23772.

<sup>4</sup> See letter from Vandenberg & Feliu, LLP ("V&F"), received May 9, 2012. All of the comment letters received by the Commission are available at <http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228.shtml>.

<sup>5</sup> See Securities Exchange Act Release No. 67075, 77 FR 33258 (June 5, 2012).

<sup>6</sup> See letter from Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated June 19, 2012.

opposing the proposed rule change.<sup>7</sup> On July 16, 2012, United States Senator Carl Levin submitted a comment letter opposing the proposed rule change.<sup>8</sup> Additionally, on July 19, 2012, the Commission received a comment letter from another party opposing the proposed rule change.<sup>9</sup>

The Commission initiated proceedings on July 19, 2012, to determine whether to approve or disapprove the proposed rule change.<sup>10</sup> In the Order Instituting Proceedings, the Commission solicited responses to specified questions.<sup>11</sup> The initial comments for the proceeding were due on August 24, 2012, and the Commission received four comment letters;<sup>12</sup> rebuttal comments were due on September 10, 2012, and the Commission received two comment letters.<sup>13</sup> The Commission received an additional comment letter on September 12, 2012.<sup>14</sup>

Section 19(b)(2) of the Act<sup>15</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule

change was published for notice and comment in the **Federal Register** on April 20, 2012. The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is October 17, 2012.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in response to the proposed rule change, including comment letters submitted in response to the Order Instituting Proceedings, and the Exchange's responses to such comments. The Commission also finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the data that has been provided by the commenters to support their positions.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> designates December 14, 2012, as the date by which the Commission should either approve or disapprove the proposed rule change (SR-NYSEArca-2012-28).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67967; File No. SR-BX-2012-062]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Members the Ability To Pay a Regulatory Fine Pursuant to an Installment Plan

October 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 24, 2012, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the

proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 the Substance of the Proposed Rule Change

The Exchange proposes a rule change to offer members the ability to pay a regulatory fine pursuant to an installment plan, under certain conditions. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at the Exchange's principal office, and at the Commission's Public Reference Room.

#### 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 Exchange 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 Exchange 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

BX is proposing to amend Rule 8320 governing "Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay" to offer members the ability to pay a regulatory fine pursuant to an installment plan, under certain conditions. In order for a member to be eligible to pay a regulatory fine via an installment plan, the fine under the applicable letter of acceptance, waiver, and consent ("AWC")<sup>3</sup> must be \$50,000 or more. A fine of less than \$50,000 is not eligible for the installment plan. When submitting its AWC, the member must check the installment plan option on the election of payment form included with the AWC. A sample election of payment form and AWC are included in Exhibit 3<sup>4</sup> to this proposed rule change. A down payment of twenty-five percent

<sup>7</sup> See letter from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated July 13, 2012.

<sup>8</sup> See letter from U.S. Senator Carl Levin, to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2012.

<sup>9</sup> See web comment from Suzanne H. Shatto.

<sup>10</sup> See Securities Exchange Act Release No. 67470, 77 FR 43620 (July 25, 2012) ("Order Instituting Proceedings").

<sup>11</sup> See *id.* at 43626-28.

<sup>12</sup> See letters from Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated August 23, 2012; Joe Williamson, Senior Vice President, Strategic Sourcing, Southwire Company; Janet Sander, Vice President, Director of Purchasing, Encore Wire Corporation; Ron Beal, Executive Vice President, Tubes Division, Luvata; and Mark Woehnkler, President, Amrod Corp., to Elizabeth M. Murphy, Secretary, Commission, dated August 23, 2012; Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated August 24, 2012; and John G. Crowley, Davis Polk & Wardwell LLP ("DP"), to Elizabeth M. Murphy, Secretary, Commission, dated August 24, 2012.

<sup>13</sup> See letter from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 10, 2012; and letter from John G. Crowley, DP, to Elizabeth M. Murphy, Secretary, Commission, dated September 10, 2012.

<sup>14</sup> See letter from John G. Crowley, DP, to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012.

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See BX Rule 9216(a).

<sup>4</sup> The Commission notes that Exhibit 3 is an exhibit to the proposed rule change, not to this Notice.