

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62290; File No. SR-OCC-2010-07)

June 14, 2010

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Clearing Options on the CBOE Gold ETF Volatility Index

I. Introduction

On April 26, 2010, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder² to allow OCC to add an interpretation following the introduction in Article XVII of OCC’s By-Laws to clarify that OCC will clear and treat as securities options any option contracts on the CBOE Gold ETF Volatility Index. The proposed rule change was published for comment in the Federal Register on May 19, 2010.³ No comment letters were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The proposed rule change will add an interpretation following the introduction in Article XVII of OCC’s By-Laws to make clear that OCC will clear and treat as securities options any option contracts on the CBOE Gold ETF Volatility Index.⁴ This treatment is essentially the same as that extended to other similar options that OCC currently clears.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 62094 (May 13, 2010), 75 FR 28085.

⁴ The specific language of the new interpretation can be found on OCC’s Web site at <http://www.theocc.com/about/publications/bylaws.jsp>.

⁵ Securities Exchange Act Release Nos. 59054, 73 FR 75159 (Dec. 10, 2008) (iShares COMEX Gold Shares and iShares Silver Shares); 61591 (Feb. 25, 2010), 75 FR 9979 (Mar. 4, 2010) (ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares); 57895 (May 30, 2008), 73

In its capacity as a “derivatives clearing organization” registered as such with the CFTC, OCC filed this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (“CEA”) in order to foreclose potential liability based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative transactions.⁶ By amending its By-Laws to make clear that OCC will clear and treat as securities options any option contracts on the CBOE Gold ETF Volatility Index, OCC’s rule change should help clarify the jurisdictional status of such contracts and accordingly should help to promote the prompt and accurate clearance and settlement of securities transactions and of derivative transactions. In accordance with the Memorandum of Understanding entered into between the CFTC and the Commission on March 11, 2008, and in particular the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either a CFTC or Commission-regulated environment or both in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

FR 32066 (June 5, 2008) (SPDR Gold Trust); 61958 (Apr. 22, 2010), 75 FR 22673 (Apr. 29, 2010) (ETFS Palladium Shares And ETFS Platinum Shares). These filings also provided that futures on the exchange-traded funds in question would be cleared and treated as security futures.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act⁷ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-OCC-2010-07) be and hereby is approved.⁹

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78s(b)(2).

⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).