

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62329; File No. SR-OCC-2010-09)

June 21, 2010

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Sprott Physical Gold Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on June 7, 2010, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. 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 proposed rule change would add an interpretation following the definition of “fund share” in Article I, Section 1(F)(8), of OCC’s By-Laws to clarify that OCC will clear and treat as options on securities any option contract on Sprott Physical Gold Shares that are traded on a securities exchange and will clear and treat as security futures any futures contracts on Sprott Physical Gold Shares.

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

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

The purpose of the proposed rule change is to clarify OCC's treatment of options and security futures on Sprott Physical Gold Shares. To accomplish this purpose, OCC is proposing to amend the interpretation following the definition of "fund share" in Article I, Section 1, of OCC's By-Laws to make clear that OCC will (i) clear and treat as securities options any option contracts on Sprott Physical Gold Shares that are traded on securities exchanges and (ii) clear and treat as security futures any futures contracts on Sprott Physical Gold-Shares. The Commission has approved rule filings where OCC amended or added other interpretations with respect to its treatment and clearing of options and security futures on SPDR Gold Shares; iShares®-COMEX Gold Shares and iShares® Silver Shares; ETFS Physical Swiss Gold Shares and-ETFS Physical Silver Shares; and ETFS Palladium Shares and ETFS Platinum Shares.<sup>2</sup>

In its capacity as a "derivatives clearing organization" registered as such with the Commodities Futures Trading Commission ("CFTC"), OCC is filing this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act ("CEA") in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options, or the clearing of such futures as security futures, constitutes a violation of the CEA. The products for which approval is requested are essentially the same as the options and security futures on SPDR Gold Shares, iShares® COMEX Gold

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<sup>2</sup> Securities and Exchange Commission Release Nos. 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008) (SPDR Gold Trust); 59054 (Dec. 4, 2008), 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 Gold Shares and ETFS Physical Silver Shares); 61958 (Apr. 22, 2010), 75 FR 22673 (Apr. 29, 2010) (ETFS Palladium Shares And ETFS Platinum Shares).

Shares and iShares® Silver Shares that OCC currently clears pursuant to the rule changes referred to above and exemptions issued by the CFTC.<sup>3</sup> The underlying Sprott Physical Gold Shares, however, are structured differently from the gold and silver ETFs underlying the currently cleared products.<sup>4</sup>

Sprott Physical Gold Trust is described by the issuer as a closed-end mutual fund trust organized under the laws of the Province of Ontario, Canada. Sprott Physical Gold Shares are redeemable for physical gold on a monthly rather than a daily basis and have redemption terms that are different from the fund shares underlying the contracts that were the subject of the previous filings. In addition, unlike the underlying ETFs referred to in the previous filings, Sprott Physical Gold Shares cannot be created through the deposit of gold in “creation unit” size transactions, and therefore the outstanding number of shares in the trust therefore cannot be increased through such a mechanism. OCC believes that these differences do not have jurisdictional significance for purposes of this filing. OCC believes that this filing raises no new regulatory or policy issues with respect to the options and security futures, notwithstanding the differences between the two products.

OCC states that the proposed interpretation of OCC’s By-Laws is consistent with the purposes and requirements of Section 17A of the Act<sup>5</sup> because it is designed to promote the

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<sup>3</sup> CFTC Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares, 73 FR 31981 (June 5, 2008); CFTC Order Exempting the Trading and Clearing of Certain Products Related to iShares® COMEX Gold Trust Shares and iShares® Silver Trust Shares, 73 FR 79830 (Dec. 3, 2008).

<sup>4</sup> Sprott Physical Gold Trust May 26, 2010 Prospectus, available at <http://www.sec.gov/edgar/searchedgar/companysearch.html>.

<sup>5</sup> 15 U.S.C. 78q-1.

prompt and accurate clearance and settlement of transactions in securities options and security futures, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by making clear its treatment of options and security futures on Sprott Physical Gold Shares. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

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

OCC has not solicited or received written comments relating to the proposed rule change. OCC will notify the Commission of any written comments it receives.

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

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change or
  - (B) institute proceedings to determine whether the proposed rule change should be disapproved.
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#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-OCC-2010-09 on the subject line.

##### Paper comments:

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

All submissions should refer to File No. SR-OCC-2010-09. This file number should be included on the subject line if e-mail 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 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at OCC's principal office and on

OCC's Web site at <[http://www.theocc.com/publications/rules/proposed\\_changes/  
proposed\\_changes.jspU](http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jspU)>. 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 submission should refer

to File No. SR-OCC-2010-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).