

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61591; File No. SR-OCC-2009-20)

February 25, 2010

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares

I. Introduction

On December 14, 2009, 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 1934.¹ On January 8, 2010, the Commission published notice of the proposed rule change in the Federal Register to solicit comments from interested persons.² For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The proposed rule change will amend the interpretation following the definition of “fund share” in Article I, Section 1, of OCC’s By-Laws. This amendment will enable OCC to (i) clear and treat as securities options any option contracts on ETFS Physical Swiss Gold Shares or on ETFS Physical Silver Shares that are traded on securities exchanges and (ii) clear and treat as security futures any futures contracts on ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares.³ In addition, in its capacity as a “derivatives clearing organization” registered with the Commodities Futures Trading Commission (“CFTC”), OCC also filed this proposed rule change with the CFTC for prior approval by the CFTC pursuant to provisions of the

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 61254 (Dec. 29, 2009), 75 FR 1093.

³ The Commission recently approved rule changes permitting NYSE Amex, NYSE Arca, International Securities Exchange, and the Chicago Board Options Exchange to each list and trade options based on the EFTS Gold Trust and EFTS Silver Trust shares. Securities Exchange Act Release No. 61483 (Feb. 3, 2010), 75 FR 6753 (Feb. 10, 2010).

Commodity Exchange Act (“CEA”) in order to foreclose any potential liability under the CEA based on an argument that OCC’s clearing of such options as securities options or the clearing of such futures as security futures constitutes a violation of the CEA.

The products that are affected by this approval order are essentially the same as the options and security futures on SPDR Gold Shares, iShares COMEX Gold Shares, and iShares Silver Shares that OCC currently clears pursuant to rule changes approved by the Commission last year.⁴

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.⁵ By amending its By-Laws to help clarify that options and security futures on ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares will be treated and cleared as securities options or security futures, OCC’s proposed 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

⁴ Securities Exchange Act Release Nos. 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008) and 59054 (Dec. 4, 2008), 73 FR 75159 (Dec. 10, 2008).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

use of all available exemptive and interpretive authority).

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 Act⁶ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-OCC-2009-20) be and hereby is approved.⁸

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 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).

⁹ 17 CFR 200.30-3(a)(12).