

C.F.T.C.  
OFFICE OF THE SECRETARIAT  
**THE OPTIONS CLEARING CORPORATION**  
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March 1, 2010

**VIA ELECTRONIC SUBMISSION**

David A. Stawick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Rule Filing SR-OCC-2010-03—Request for Commission Rule Approval**

Dear Mr. Stawick:

The Options Clearing Corporation (“OCC”) hereby submits the above-referenced rule filing for approval by the Commodity Futures Trading Commission (the “Commission”) pursuant to Section 5c(c)(2) of the Commodity Exchange Act (the “CEA”) and Sections 39.4(a) and 40.5 of the Commission’s regulations.

The purpose of this filing is to obtain jurisdictional clarity with respect to options and security futures on ETFs Palladium Shares and ETFs Platinum Shares, which are registered as securities under the Securities Act of 1933 and are listed and traded on national securities exchanges pursuant to the Securities Exchange Act of 1934. Options on ETFs Palladium Shares and ETFs Platinum Shares are proposed to be traded on certain national securities exchanges for which OCC provides clearing services.

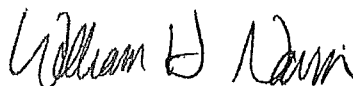
In conformity with the requirements of Regulation 40.5(a), OCC states the following: the proposed effective date of the rule change is the earliest date on which the proposed rule change has become effective under the Exchange Act and the proposed rule change has been, or is deemed to have been, approved by the Commission pursuant to regulation Section 40.5. The text of the proposed rule is set forth in Item 1 of the enclosed filing. The proposed rule was duly authorized by the Board of Directors of OCC as described in Item 2 of the enclosed filing, pursuant to the powers granted to the Board by Article III, Section 8 of OCC’s By-Laws. Item 3 of the enclosed filing sets forth the operation, purpose, and effect of the proposed rule. Item 5 of the enclosed filing sets forth a description of any written comments on the rule filing, including any such comments expressing opposing views that were not incorporated into the proposed rule.

OCC proposes to clear options on ETFs Palladium Shares and ETFs Platinum Shares as securities options subject to the jurisdiction of the SEC, and would therefore not require Clearing Members that carry such options for the accounts of their customers to hold them in accounts that are subject to the segregation requirements of the CEA. Similarly, OCC proposes to treat futures contracts on ETFs Palladium Shares and ETFs Platinum Shares as security futures and would clear these products in

its capacity as a securities clearing agency, subject also to the CEA and Commission rules thereunder applicable to security futures.

As a derivatives clearing organization subject to the jurisdiction of the Commission as well as a registered securities clearing agency, OCC is filing this rule change for prior Commission approval in order to provide legal certainty for the trading of these products. As noted in the attached rule filing, the products for which approval is requested 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 SEC and exemptions issued by the Commission.<sup>1</sup> Likewise, these products are essentially the same as the options and security futures on ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares, which are pending Commission review (See File No. SR-OCC-2009-20). OCC believes that this filing should raise no new regulatory or policy issues. Accordingly, OCC respectfully requests that the Commission consolidate its review of the instant filing with that of OCC-2009-20 without any further extension of time to complete its review thereof. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



William H. Navin

Enclosures

cc: CFTC Central Region (w/ enclosures)  
525 West Monroe, Suite 110  
Chicago, IL 60661

Ananda K. Radhakrishnan  
Director  
Division of Clearing and Intermediary Oversight

John C. Lawton  
Deputy Director and Chief Counsel  
Division of Clearing and Intermediary Oversight

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<sup>1</sup> See Securities and Exchange Commission Release No. 34-57895 (May 30, 2008), Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to SPDR Gold Shares (File No. SR-OCC-2008-07); CFTC Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares, 73 FR 31981 (June 5, 2008); Securities and Exchange Commission Release No. 34-59054 (December 4, 2008), Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to iShares COMEX Gold Trust and iShares Silver Trust Shares (File Nos. SR-OCC-2008-13 and SR-OCC-2008-14); 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 (December 3, 2008).

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

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Form 19b-4

Proposed Rule Change  
by

**THE OPTIONS CLEARING CORPORATION**

Pursuant to Rule 19b-4 under the  
Securities Exchange Act of 1934

**Item 1. Text of the Proposed Rule Change**

The Options Clearing Corporation (“OCC”) proposes to amend an interpretation, as set forth below, following the definition of “fund share” in Article I, Section 1 of its By-Laws. The purpose of the proposed interpretation is to provide legal certainty for the trading of options on exchange-traded fund shares (“ETFs”) holding palladium and platinum. Material proposed to be added to OCC’s By-Laws as currently in effect is underlined and material proposed to be deleted is enclosed in brackets.

**THE OPTIONS CLEARING CORPORATION****BY-LAWS****ARTICLE I****Definitions**

SECTION 1. Unless the context requires otherwise (or except as otherwise specified in the By-Laws), the terms defined herein shall, for all purposes of these By-Laws and the Rules of the Corporation, have the meanings herein specified.

A. - E. [No change]

F.

(1) - (7) [No change]

**Fund Share<sup>1</sup>**

(8) The term “fund share” means a publicly traded security (as defined in Section 3(a)(10) of the Securities Exchange Act of 1934, as amended) that represents an interest in a

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<sup>1</sup> Note that the Interpretations and Policies under Article I, Section 1.F.(8) are presented as giving effect to the changes proposed in OCC-2009-20, which is a pending rule change. In the event OCC-2009-20 remains pending at the time this filing is approved, the Interpretations and Policies under Article I, Section 1.F.(8) would read as follows:

***...Interpretations and Policies:***

For the elimination of doubt, OCC will treat as within this definition of “fund share,” and will clear and treat as options on securities, any option on SPDR Gold Shares, iShares® COMEX Gold Shares, [or] iShares® Silver Shares, ETFs Palladium Shares or ETFs Platinum Shares. Similarly, OCC will clear and treat as security futures any futures contracts on SPDR Gold Shares, iShares® COMEX Gold Shares, [or] iShares® Silver Shares, ETFs Palladium Shares or ETFs Platinum Shares.

trust, investment company, commodity pool, or similar entity holding and/or trading in one or more investments.

**... Interpretations and Policies:**

For the elimination of doubt, OCC will treat as within this definition of "fund share," and will clear and treat as options on securities, any option on SPDR Gold Shares, iShares® COMEX Gold Shares, iShares® Silver Shares, ETFS Physical Swiss Gold Shares, [or] ETFS Physical Silver Shares, ETFS Palladium Shares or ETFS Platinum Shares. Similarly, OCC will clear and treat as security futures any futures contracts on SPDR Gold Shares, iShares® COMEX Gold Shares, iShares® Silver Shares, ETFS Physical Swiss Gold Shares, [or] ETFS Physical Silver Shares, ETFS Palladium Shares or ETFS Platinum Shares.

(9) - (12) [No change]

G. - Z. [No change]

**Item 2. Procedures of the Self-Regulatory Organization**

OCC's Board of Directors authorized the clearing of options and futures on commodity-based ETFs and the filing of a related rule interpretation at a meeting held on January 31, 2008.

Questions regarding the proposed rule change should be addressed to Jean M. Cawley, Senior Vice President and Deputy General Counsel, at (312) 322-6269.

**Item 3. 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 remove any potential cloud on the jurisdictional status of options or security futures on ETFS Palladium Shares or ETFS Platinum 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 as set forth above. On May 30, 2008, the Commission approved rule filing SR-OCC-2008-07, which added this

interpretation with respect to the treatment and clearing of options and security futures on SPDR Gold Shares and on December 4, 2008, the Commission approved rule filings SR-OCC-2008-13 and SR-OCC-2008-14, which extended similar treatment to options and security futures on iShares® COMEX Gold Shares and iShares® Silver Shares. The Commission is currently reviewing OCC's rule filing SR-OCC-2009-20, which would extend similar treatment to options and security futures on ETFs Physical Swiss Gold Shares and ETFs Physical Silver Shares. Under the current proposed rule change, OCC would also (i) clear and treat as securities options any option contracts on ETFs Palladium Shares and ETFs Platinum Shares that are traded on securities exchanges and (ii) clear and treat as security futures any futures contracts on ETFs Palladium Shares and ETFs Platinum Shares.

In its capacity as a "derivatives clearing organization" registered as such with the CFTC, OCC is filing this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the "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 Shares and iShares® Silver Shares that OCC currently clears pursuant to the rule changes referred to above and exemptions issued by the CFTC.<sup>2</sup> OCC believes that this filing raises no new regulatory or policy issues.

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<sup>2</sup> See Securities and Exchange Commission Release No. 34-57895 (May 30, 2008), Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to SPDR Gold Shares (File No. SR-OCC-2008-07); CFTC Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares, 73 FR 31981 (June 5, 2008); Securities and Exchange Commission Release No. 34-59054 (December 4, 2008), Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to iShares COMEX Gold Trust and iShares Silver Trust Shares (File Nos. SR-OCC-2008-13 and SR-OCC-2008-14); 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 (December 3, 2008).

\* \* \*

The proposed interpretation of OCC's By-Laws is consistent with the purposes and requirements of Section 17A of the Exchange Act because it is designed to promote the 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 reducing the likelihood of a dispute as to the Commission's jurisdiction, or shared jurisdiction in the case of security futures, over derivatives based on ETFs Palladium Shares or ETFs Platinum Shares. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC.

**Item 4. Self-Regulatory Organization's Statement on Burden on Competition**

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

**Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none has been received.

**Item 6. Extension of Time Period for Commission Action**

OCC does not consent to an extension of the time period for Commission action on the proposed rule change.

**Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

**Item 8. Proposed Rule Change Based on Rules of Another Regulatory Organization or of the Commission**

The proposed rule change is not based on a rule change of another self-regulatory organization.

**Item 9. Exhibits**

Exhibit 1 Completed notice of the proposed rule change for publication in the Federal Register.



**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

**THE OPTIONS CLEARING CORPORATION**

By: William H. Navin  
**William H. Navin**  
**Executive Vice President**  
**and General Counsel**

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34-\_\_\_\_\_ ; File No. SR-OCC-2010-03

**SELF-REGULATORY ORGANIZATION**

Proposed Rule Change By  
The Options Clearing Corporation

Relating to ETFS Palladium Shares  
And ETFS Platinum Shares

Comments requested within \_\_\_\_\_ days  
after the date of this publication.

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Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on \_\_\_\_\_, 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 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 the Substance of the Proposed Rule Change**

The proposed rule change would remove any potential cloud on the jurisdictional status of options or security futures on ETFS Palladium Shares or ETFS Platinum 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, 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 Statutory Basis for, the Proposed Rule Change**

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of options or security futures on ETFS Palladium Shares or ETFS Platinum 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 as set forth above. On May 30, 2008, the Commission approved rule filing SR-OCC-2008-07, which added this interpretation with respect to the treatment and clearing of options and security futures on SPDR Gold Shares and on December 4, 2008, the Commission approved rule filings SR-OCC-2008-13 and SR-OCC-2008-14, which extended similar treatment to options and security futures on iShares® COMEX Gold Shares and iShares® Silver Shares. The Commission is currently reviewing OCC's rule filing SR-OCC-2009-20, which would extend similar treatment to options and security futures on ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares. Under the current proposed rule change, OCC would also (i) clear and treat as securities options any option contracts on ETFS Palladium Shares and ETFS Platinum Shares that are traded on securities exchanges and (ii) clear and treat as security futures any futures contracts on ETFS Palladium Shares and ETFS Platinum Shares.

In its capacity as a “derivatives clearing organization” registered as such with the CFTC, OCC is filing this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the “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 Shares and iShares® Silver Shares that OCC currently clears pursuant to the rule changes referred to above and exemptions issued by the CFTC.<sup>1</sup> OCC believes that this filing raises no new regulatory or policy issues.

\* \* \*

The proposed interpretation of OCC’s By-Laws is consistent with the purposes and requirements of Section 17A of the Exchange Act because it is designed to promote the 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 reducing the likelihood of a dispute as to the Commission’s jurisdiction, or shared jurisdiction in the case of security futures,

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<sup>1</sup> See Securities and Exchange Commission Release No. 34-57895 (May 30, 2008), Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to SPDR Gold Shares (File No. SR-OCC-2008-07); CFTC Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares, 73 FR 31981 (June 5, 2008); Securities and Exchange Commission Release No. 34-59054 (December 4, 2008), Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to iShares COMEX Gold Trust and iShares Silver Trust Shares (File Nos. SR-OCC-2008-13 and SR-OCC-2008-14); 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 (December 3, 2008).

over derivatives based on ETFS Palladium Shares or ETFS Platinum 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**

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

Within 35 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 90 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.

**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 Number SR-OCC-2010-03 on the subject line.

*Paper Comments:*

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

All submissions should refer to File Number SR-OCC-2010-03. 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 inspection and copying in the Commission's Public Reference Section, 100 F Street, N.E., Washington, D.C. 20549-1090. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. 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-OCC-2010-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register]

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For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Secretary

Dated: \_\_\_\_\_