

**THE OPTIONS CLEARING CORPORATION**

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**July 23, 2008**

**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-2008-13—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 iShares® COMEX Gold Trust 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 iShares® COMEX Gold Trust 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 adopted 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 iShares® COMEX Gold Trust 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 iShares® COMEX Gold Trust 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. OCC is simultaneously submitting SR-OCC-2008-14, which proposes identical treatment for options and security futures on iShares® Silver Trust Shares.

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 that OCC currently clears pursuant to a rule change approved by the SEC and an exemption issued by the Commission.<sup>1</sup> OCC believes that this filing should raise no new regulatory or policy issues. 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 1100  
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**  
**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” or the “Corporation”) proposes to add 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 particular products. Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is underlined.

**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**

(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 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 or iShares® COMEX Gold Shares. Similarly, OCC will clear and treat as security futures any futures contracts on SPDR Gold Shares or iShares® COMEX Gold Shares.<sup>1</sup>

<sup>1</sup> In the event that SR-OCC-2008-14 is approved prior to this rule filing, the text of this interpretation as proposed to be amended by this rule filing would read as follows:

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.

(9) - (12) [No change]

G. - Z. [No change]

\* \* \*

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

The proposed rule change was approved by OCC's Board of Directors 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 iShares® COMEX Gold Trust Shares by amending the interpretation following the definition of "fund share" in Article I, Section 1 of OCC's By-Laws. 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. Under the proposed rule change, OCC would also (i) clear and treat as securities options any option contracts on iShares® COMEX Gold Shares that are traded on securities exchanges and (ii) clear and treat as security futures any futures contracts on iShares® COMEX Gold Shares.

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Similarly, OCC will clear and treat as security futures any futures contracts on SPDR Gold Shares, iShares® COMEX Gold Shares or iShares® Silver Shares.

In its capacity as a “derivatives clearing organization” registered as such with the CFTC, OCC will file 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 that OCC currently clears pursuant to the rule change referred to above and an exemption issued by the CFTC.<sup>2</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, over derivatives based on iShares® COMEX Gold Trust Shares. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC, including any proposed to be amended

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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-

**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**