

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61958; File No. SR-OCC-2010-03)

April 22, 2010

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to ETFS Palladium Shares And ETFS Platinum Shares

I. Introduction

On March 1, 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 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to add ETFS Palladium Shares and ETFS Platinum Shares to the interpretation following the definition of “fund share” in Article I, Section 1 of OCC’s By-Laws. The proposed rule change was published for comment in the Federal Register on March 18, 2010.<sup>3</sup> No comment letters were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The proposed rule change will add ETFS Palladium Shares and ETFS Platinum Shares to the interpretation following the definition of “fund share” in Article I, Section 1 of OCC’s By-Laws. The purpose of this 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.<sup>4</sup>

Under the current proposed rule change, OCC will (i) clear and treat as securities options any option contracts on ETFS Palladium Shares and ETFS Platinum Shares that are traded on

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 61254 (Mar. 11, 2010), 75 FR 13169.

<sup>4</sup> The Commission recently approved a related rule change by the Chicago Board Options Exchange to enable the listing and trading of options on the EFTS Palladium Trust and the EFTS Platinum Trust. Securities Exchange Act Release No. 61892 (Apr. 13, 2010), 75 FR 20649.

securities exchanges and (ii) clear and treat as security futures any futures contracts on ETFS Palladium Shares and ETFS Platinum Shares.

In addition, in its capacity as a “derivatives clearing organization” registered with the Commodity Futures Trading Commission (“CFTC”), OCC also filed this proposal 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 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, iShares Silver Shares, ETFS Physical Swiss Gold Shares, and ETFS Physical Silver Shares that OCC currently clears pursuant to rule changes approved by the Commission.<sup>5</sup>

### 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.<sup>6</sup> By amending its By-Laws to help clarify that options on ETFS Palladium Shares and ETFS Platinum Shares that are traded on securities exchanges will be treated and cleared as securities options and that futures on ETFS Palladium and ETFS Platinum shares will be treated as security futures, OCC’s rule change should help clarify the jurisdictional status of such contracts and accordingly should help to promote the prompt and

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<sup>5</sup> Securities Exchange Act Release Nos. 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008); 59054 (Dec. 4, 2008), 73 FR 75159 (Dec. 10, 2008); 61591 (Feb. 25, 2010), 75 FR 9981 (Mar. 4, 2010).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

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).

#### 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 Act<sup>7</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-OCC-2010-03) be and hereby is approved.<sup>9</sup>

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

Florence E. Harmon  
Deputy Secretary

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<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 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).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

