

with all other market interest and enables it to be priced in accordance with supply and demand dynamics.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

### 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 Exchange 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-NYSE-2010-43 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2010-43. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSE-2010-43 and should be submitted on or before July 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62290; File No. SR-OCC-2010-07]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Clearing Options on the CBOE Gold ETF Volatility Index

June 14, 2010.

#### I. Introduction

On April 26, 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<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to allow OCC to add an interpretation following the introduction in Article XVII of OCC's

By-Laws to clarify that OCC will clear and treat as securities options any option contracts on the CBOE Gold ETF Volatility Index. The proposed rule change was published for comment in the **Federal Register** on May 19, 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 an interpretation following the introduction in Article XVII of OCC's By-Laws to make clear that OCC will clear and treat as securities options any option contracts on the CBOE Gold ETF Volatility Index.<sup>4</sup> This treatment is essentially the same as that extended to other similar options that OCC currently clears.<sup>5</sup>

In its capacity as a "derivatives clearing organization" registered as such with the CFTC, OCC filed this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act ("CEA") in order to foreclose potential liability based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA.

#### 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 make clear that OCC will clear and treat as securities options any option contracts on the CBOE Gold ETF Volatility Index, OCC's 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

<sup>3</sup> Securities Exchange Act Release No. 62094 (May 13, 2010), 75 FR 28085.

<sup>4</sup> The specific language of the new interpretation can be found on OCC's Web site at <http://www.theocc.com/about/publications/bylaws.jsp>.

<sup>5</sup> Securities Exchange Act Release Nos. 59054, 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 Swiss Gold Shares and ETFS Physical Silver Shares); 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008) (SPDR Gold Trust); 61958 (Apr. 22, 2010), 75 FR 22673 (Apr. 29, 2010) (ETFS Palladium Shares and ETFS Platinum Shares). These filings also provided that futures on the exchange-traded funds in question would be cleared and treated as security futures.

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

<sup>29</sup> 17 CFR 200.30-3(a)(12).

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

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

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-2010-07) 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62293; File No. SR-NYSEAmex-2010-50]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 123C(9)(a)(1) To Extend the Operation of a Pilot Operating Pursuant to the Rule Until December 1, 2010

June 15, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 7, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule

change as described in Items I and II 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 Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 123C(9)(a)(1) to extend the operation of a pilot operating pursuant to the Rule until December 1, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

NYSE Amex proposes to amend NYSE Amex Equities Rule 123C(9)(a)(1) to extend the operation of a pilot that allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price ("Extreme Order Imbalances Pilot" or "Pilot")<sup>4</sup> until December 1, 2010.<sup>5</sup>

###### Background

Pursuant to NYSE Amex Equities Rule 123C(9)(a)(1), the Exchange may suspend NYSE Amex Equities Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result

in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close. The provisions of NYSE Amex Equities Rule 123C(9)(a)(1) operate as the Extreme Order Imbalance Pilot.<sup>6</sup>

*As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding:* (i) How often a NYSE Amex Equities Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m.

During the operation of the Pilot, the Exchange believed that the systems modifications to allow Exchange systems to accept orders electronically after 4 p.m. would not be as onerous as previously believed when the Pilot was initially commenced. The Exchange completed the system modifications necessary to accept orders electronically after 4 p.m. and began the process of testing the modifications. The Exchange therefore filed to extend the Extreme Order Imbalance Pilot until the earlier of SEC approval to make such Pilot permanent or June 1, 2010.<sup>7</sup> At the time, the Exchange anticipated that its quality assurance review process would be completed by June 1, 2010 and it would be able to operate under the new system. The quality assurance review determined that additional testing was required in order to assure the optimal functioning of the system modifications. Given unanticipated market wide initiatives that were (i.e., short sale and stock-by-stock circuit breakers), which require systemic modifications and a significant allocation of quality assurance resources, additional testing is not feasible at this time.

##### Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a

<sup>6</sup> The Exchange notes that a version of the instant filing requesting an extension of the Pilot was formally filed with the Commission on May 27, 2010. The Pilot was scheduled to expire on June 1, 2010. On June 7, 2010, SEC systems generated a rejection notice to the Exchange related to the extension request submitted on May 27, 2010, due to technical deficiencies in that filing. The instant version corrects those technical deficiencies and seeks continue the operation of the Pilot until December 1, 2010. The Exchange did not invoke the provisions of the Pilot between June 1, 2010 and June 7, 2010.

<sup>7</sup> See Securities Exchange Act Release No. 61611 (March 1, 2010), 75 FR 10530 (March 8, 2010) (SR-NYSEAmex-2010-15) (extending the operation of the pilot from March 1, 2010 to June 1, 2010).

<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).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 59755 (April 13, 2009) 74 FR 18009 (April 20, 2009) (SR-NYSEALTR-2009-15); see also Securities and Exchange Act [sic] Release No. 61265 (December 31, 2009), 75 FR 1094 (January 8, 2010) (SR-NYSEAmex-2009-96) (extending the operation of the pilot from December 31, 2009 to March 1, 2010).

<sup>5</sup> The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC. See SR-NYSE-2010-42.