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Via Electronic Submission

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for Comment on a Proposal to Exempt the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products

Dear Mr. Stawick:

This letter is submitted by The Options Clearing Corporation ("OCC")[1] in response to the Commodity Futures Trading Commission's ("CFTC" or the "Commission") Federal Register Release ("Release") regarding a proposal to exempt the trading and clearing of certain products related to the CBOE Gold ETF Volatility Index ("GVZ Index"). In particular, the Release proposes to exempt the trading and clearing of options on the GVZ Index from the provisions of the Commodity Exchange Act ("CEA") and the regulations thereunder pursuant to Section 4(c).[2] In addition, the Release proposes to provide a categorical exemption that would permit the trading and clearing of options on indexes that measure the volatility of shares of gold exchange-traded funds ("ETFs") generally, regardless of issuer, including options on any index that measures the magnitude of changes in, and is composed of the price(s) of, shares of one or more gold ETFs and the price(s) of any other instrument(s) that are securities as defined in the Securities Exchange Act of 1934 (the "Exchange Act"). Finally, OCC is providing comments on the Commission's belief that options on a volatility index based on shares of precious metal commodity-based ETFs do not raise the same regulatory concerns as options and futures on shares of an ETF that is based on the underlying commodity.

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[1] OCC is the world's largest derivatives clearing organization by contract volume and open interest. Operating under the jurisdiction of the Securities and Exchange Commission and the Commodity Futures Trading Commission, OCC provides central counterparty clearing and settlement services to a number of exchanges and platforms for options, financial and commodity futures, security futures and securities lending transactions. OCC's clearing membership consists of approximately 130 of the largest U.S. broker-dealers, U.S. futures commission merchants and non-U.S. securities firms representing both professional traders and public customers.
[2] 75 FR 69058-69060 (November 10, 2010).

1. Proposed Exemption Related to the GVZ Index

As noted in the Release, OCC filed with the CFTC a request for approval of a rule that would enable OCC to clear and settle options on the GVZ Index traded on the Chicago Board Options Exchange ("CBOE") in its capacity as a registered securities clearing agency.[3] As also noted in the Release, the Commission approved three previous rule changes enabling OCC to clear options and futures on several ETFs based on precious metals as options on securities and security futures.[4] Given the similarity of the jurisdictional issues implicated by the Previous Orders to those raised by the GVZ Index, OCC believes that the Commission should grant the proposed exemption. Further, OCC believes that the proposed exemption is warranted given the language in Section 4(c) of the CEA to "promote responsible economic or financial innovation and fair competition."

2. Proposed Categorical Exemption

OCC certainly supports the Commission's proposal to exempt the trading and clearing of options on indexes that measure the volatility of shares of gold ETFs generally, regardless of issuer. No legitimate regulatory purpose is served by requiring case-by-case filings in respect of essentially identical products having different issuers. In fact, to prevent needless cost and delay associated with repeated filings, OCC encourages the Commission to issue the broadest possible exemption. OCC believes that the exemption should apply to any index of commodity-based ETFs that are traded as securities, whether it is a volatility index, a price index, a relative performance index or some other index. In the event that the CFTC is not prepared to grant an exemption of that breadth, OCC believes that the exemption should not be limited to indexes based on gold ETFs, but should broadly cover any precious-metal based ETF (i.e., gold, silver, platinum or palladium) as well as any index that includes such ETFs along with other securities.

Notwithstanding our request for an exemption, OCC continues to believe that options on the GVZ Index are securities. The fundamental legal issue is whether the underlying (or reference) ETFs are themselves securities. If they are, then options on such securities or indexes of such securities would be securities for purposes of the Exchange Act and outside the Commission's jurisdiction under Section 2(a)(1)(C)(i) of the CEA. While we recognize that arguments can and have been made concerning the status of the underlying ETFs, OCC strongly believes that they are securities both because they are investment contracts within the meaning of that term as used in the Exchange Act and because essentially identical ETFs have been traded on securities exchanges and sold by registered broker-dealers to securities customers for several years and are commonly known as securities. Based on the foregoing, as well as information previously provided to the Commission, OCC believes that the more appropriate and definitive action would

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[3] *See* Rule Filing SR-OCC-2010-07.

[4] *See* CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares,* 73 FR 31981 (June 5, 2008), 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 30, 2008), and CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares,* 75 FR 37406 (June 29, 2010) (collectively, the ''Previous Orders'').

be for the Commission to simply acknowledge the jurisdiction of the Securities and Exchange Commission ("SEC") over these products.

3. *CFTC's Regulatory Views*

The Commission states in the Release that it believes options on a volatility index based on shares of precious metal commodity-based ETFs do not raise the same regulatory concerns as options and futures on an ETF that is based on the underlying commodity. The Release goes on to say that, "In this regard, trading in options and futures on shares of a gold ETF could have a potential impact on the deliverable supply by removing physical gold from physical marketing channels, while an index based on volatility measures does not raise these concerns in that such an index does not involve ownership of the commodity, either directly or indirectly, by traders in options on such an index."[5]

While OCC certainly concurs with the Commission's conclusion that an option on a volatility index based on gold ETFs does not affect the deliverable supply of the underlying metal, the same is obviously true with respect to an option on a volatility index on silver ETFs or ETFs holding any other precious metal or other commodity. OCC believes that the same is true of a cash-settled option on a price index on such ETFs or an option on a single commodity ETF. Indeed, the only transaction that affects the deliverable supply of the underlying metal is the creation of the ETFs themselves. Only if trading in the derivative tends to increase, rather than serve as a substitute for, trading in the underlying ETFs would there be any effect on the deliverable supply, and the Commission cites no evidence to support such a conclusion.

It appears that the Commission's concerns relate more to the trading of commodity-based ETFs themselves than to options on such ETFs. Since the ETFs already exist and are regulated by the SEC, to the extent the Commission believes that some concern needs to be addressed, the Commission should consult with the SEC and coordinate its efforts with that agency.

4. *Conclusion*

The Cost-Benefit Analysis section of the Release states that, "The Commission has determined that the benefits of the proposed order are substantial. The proposed order would promote efficiency in the markets, as it would provide certainty that the subject options will not be subject to duplicate regulation."[6] OCC concurs, and therefore supports the Commission's proposal to exempt the trading and clearing of certain products related to the GVZ Index from the applicable provisions of the CEA. In addition, OCC supports the CFTC's proposal for a categorical exemption for options based on gold ETF volatility indexes generally, regardless of issuer.

Notwithstanding the above, OCC fails to see any valid regulatory purpose in the Commission's continued policy of issuing a series of narrowly crafted exemptions that fail to cover products that very clearly raise no different concerns than the products being exempted. Distinguishing between volatility options on gold ETFs and volatility options on silver ETFs, for example, is without any rational basis. We continue to urge the Commission to exempt not only the specific

[5] 75 FR 69058-69060 at 69060.
[6] Id.

options identified in the Release, but also any other option or security future on any index based on, or that includes, any commodity-based ETF that is traded as a security. Failing that, the Commission should exempt any index based on, or including, ETFs that underlie options that trade as securities pursuant to exemptions issued by the Commission.

We appreciate the Commission's attention to these issues and its consideration of streamlining the process of bringing new and innovative products to market. If you would like to discuss any of these issues in greater detail, please contact me at (312) 322-1817.

Sincerely,

William H Navin

William H. Navin
Executive Vice President and General Counsel
The Options Clearing Corporation

cc: Chairman Gary Gensler
Commissioner Bart Chilton
Commissioner Michael Dunn
Commissioner Scott O'Malia
Commissioner Jill E. Sommers