

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: November 5, 2008.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8-26834 Filed 11-10-08; 8:45 am]

BILLING CODE 6351-01-P

## COMMODITY FUTURES TRADING COMMISSION

### Proposal To Exempt, Pursuant to the Authority in Section 4(c) of the Commodity Exchange Act, the Trading and Clearing of Certain Products Related to iShares® COMEX Gold Trust Shares and iShares® Silver Trust Shares

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed order and request for comment.

**SUMMARY:** The Commodity Futures Trading Commission ("CFTC" or the "Commission") is proposing to exempt the trading and clearing of certain contracts called "options" and other contracts called "security futures" on each of iShares® COMEX Gold Trust Shares ("Gold Products") and iShares® Silver Trust Shares ("Silver Products") (collectively, "Gold and Silver Products"), proposed to be traded on national securities exchanges (as to options) and designated contract markets registered with the Securities and Exchange Commission ("SEC") as limited purpose national securities associations (as to security futures), and in either case cleared through the Options Clearing Corporation ("OCC") in its capacity as a registered securities clearing agency, from the provisions of the Commodity Exchange Act ("CEA")<sup>1</sup> and the regulations thereunder, to the extent necessary to permit them to be so traded and cleared. Authority for this exemption is found in Section 4(c) of the CEA.<sup>2</sup>

**DATES:** Comments must be received on or before November 19, 2008.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [secretary@cftc.gov](mailto:secretary@cftc.gov). Include "Options and Security Futures on Gold and Silver Products" in the subject line of the message.

- *Fax:* 202-418-5521.

- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Courier:* Same as mail above.

All comments received will be posted without change to <http://www.CFTC.gov/>.

#### FOR FURTHER INFORMATION CONTACT:

Robert B. Wasserman, Associate Director, 202-418-5092, [rwasserman@cftc.gov](mailto:rwasserman@cftc.gov), Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The OCC is both a Derivatives Clearing Organization ("DCO") registered pursuant to Section 5b of the CEA,<sup>3</sup> and a securities clearing agency registered pursuant to Section 17A of the Securities Exchange Act of 1934 ("the '34 Act").<sup>4</sup>

OCC has filed with the CFTC, pursuant to Section 5c(c) of the CEA and Commission Regulations 39.4(a) and 40.5 thereunder,<sup>5</sup> requests for approval of rules and rule amendments that would enable OCC (1) to clear and settle contracts called "options" ("Options") on Gold and Silver Products traded on national securities exchanges, in its capacity as a registered securities clearing agency (and not in its capacity as a DCO) and (2) to clear and settle contracts called "security futures" ("Security Futures") on Gold and Silver Products traded on designated contract markets<sup>6</sup> registered with the SEC as limited purpose national securities associations pursuant to Section 15A(k) of the '34 Act<sup>7</sup> ("DCMs") as security futures subject to the CEA and CFTC regulations thereunder governing security futures, in either case in OCC's capacity as a registered securities clearing agency (and not in its capacity as a DCO).<sup>8</sup> Section 5c(c)(3) provides that the CFTC must approve such rules and rule amendments submitted for approval unless it finds that the rules or rule amendments would violate the CEA.

The request for approval concerning the Options and Security Futures on

Gold and Silver Products was filed effective July 23, 2008. By letter dated August 20, 2008, the Director of the Division of Clearing and Intermediary Oversight, pursuant to delegated authority, extended the review period of the request until October 21, 2008 due to the novel and complex issues raised by the products that are the subject of the request. By letter dated October 16, 2008, OCC consented to an extension of the review period until November 20, 2008.

##### II. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA empowers the CFTC to "promote responsible economic or financial innovation and fair competition" by exempting any transaction or class of transactions from any of the provisions of the CEA (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.<sup>9</sup> The Commission may grant such an exemption by rule, regulation or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

In enacting Section 4(c), Congress noted that the goal of the provision "is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner."<sup>10</sup> Permitting Options and Security Futures on Gold and Silver Products to trade on national securities exchanges (as to Options) and DCMs (as to Security Futures) and in

<sup>9</sup> Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), provides in full that: In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (c)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

<sup>10</sup> HOUSE CONF. REPORT NO. 102-978, 1992 U.S.C.A.N. 3179, 3213 ("4(c) Conf. Report").

<sup>1</sup> 7 U.S.C. 1 *et seq.*

<sup>2</sup> 7 U.S.C. 6(c).

<sup>3</sup> 7 U.S.C. 7a-1.

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 7 U.S.C. 7a-2(c), 17 CFR 39.4(a), 40.5.

<sup>6</sup> See Section 5 of the CEA, 7 U.S.C. 7.

<sup>7</sup> 15 U.S.C. 78o-3(k).

<sup>8</sup> See SR-OCC-2008-13 and SR-OCC-2008-14.

OCC has also filed these proposed rule changes with the Securities and Exchange Commission ("SEC").

either case to be cleared by OCC in its capacity as a securities clearing agency, as discussed above, may foster both financial innovation and competition. In accordance with the Memorandum of Understanding entered into between the CFTC and the SEC 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 or both a CFTC- or SEC-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority). The CFTC is requesting comment on whether it should exempt Options and Security Futures on Gold and Silver Products, as described above, that are traded on a national securities exchange or a DCM, respectively, and cleared through OCC in its capacity as a registered securities clearing agency, from the CEA and the Commission's regulations thereunder, to the extent necessary to permit them to be so traded and cleared.

In proposing this exemption, the CFTC need not—and does not—find that Options on the Gold and Silver Products are (or are not) options subject to the CEA, or find that Security Futures on the Gold and Silver Products are (or are not) security futures as defined in Section 1a(31) of the CEA.<sup>11</sup> During the legislative process leading to the enactment of Section 4(c) of the CEA, the House-Senate Conference Committee noted that:

The Conferees do not intend that the exercise of exemptive authority by the Commission would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward. Rather than making a finding as to whether a product is or is not a futures contract, the Commission in appropriate cases may proceed directly to issuing an exemption.<sup>12</sup>

The Options and Security Futures on Gold and Silver Products described above are “novel instruments.” Given their potential usefulness to the market, however, the Commission believes that this may be an appropriate case for issuing an exemption without making a finding as to the nature of these particular instruments.

Section 4(c)(2) provides that the Commission may grant exemptions only when it determines: that the requirements for which an exemption is being provided should not be applied to the agreements, contracts or transactions at issue, and the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the CEA.<sup>13</sup>

The purposes of the CEA include “promot[ing] responsible innovation and fair competition among boards of trade, other markets and market participants.”<sup>14</sup> It may be consistent with these and the other purposes of the CEA, with the public interest, with the CFTC–SEC Memorandum of Understanding of March 11, 2008, and with the addendum thereto, for the mode of trading and clearing the Options and Security Futures on Gold and Silver Products—whether the mode applicable to options on securities or commodities, or to security futures or futures—to be determined by competitive market forces. Accordingly, the CFTC is requesting comment as to whether this exemption from the requirements of the CEA and regulations thereunder should be granted in the context of these transactions.

Section 4(c)(3) includes within the term “appropriate persons” a number of specified categories of persons, and also in subparagraph (K) thereof “such other persons that the Commission determines to be appropriate in light of \* \* \* the applicability of appropriate regulatory protections.” National

<sup>13</sup> Section 4(c)(2) of the CEA, 7 U.S.C. 6(c)(2), provides in full that: The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

<sup>14</sup> CEA 3(b), 7 U.S.C. 5(b). See also CEA 4(c)(1), 7 U.S.C. 6(c)(1) (purpose of exemptions is “to promote responsible economic or financial innovation and fair competition.”).

securities exchanges and OCC, as well as their members who will intermediate Options on Gold and Silver Products, are subject to extensive and detailed regulation by the SEC under the '34 Act. Similarly, DCMs and OCC, as well as their members who will intermediate Security Futures on Gold and Silver Products, are subject to regulation by the SEC and CFTC. The CFTC is requesting comment as to whether all persons trading Options and Security Futures on Gold and Silver Products on national securities exchanges and DCMs, respectively, and clearing such products on OCC, are appropriate persons.

In light of the above, the Commission also is requesting comment as to whether this exemption will interfere with its ability to discharge its regulatory responsibilities under the CEA or with the self-regulatory duties of any contract market or derivatives transaction execution facility.

### III. Request for Comment

The Commission requests comment on all aspects of the issues presented by this proposed order.

### IV. Related Matters

#### A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”) <sup>15</sup> imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed exemptive order would not, if approved, require a new collection of information from any entities that would be subject to the proposed order.

#### B. Cost-Benefit Analysis

Section 15(a) of the CEA,<sup>16</sup> as amended by Section 119 of the Commodity Futures Modernization Act of 2000, requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to “consider the costs and benefits” of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public;

<sup>11</sup> 7 U.S.C. 1a(31).

<sup>12</sup> 4(c) Conf. Report at 3214–3215.

<sup>15</sup> 44 U.S.C. 3507(d).

<sup>16</sup> 7 U.S.C. 19(a).

efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The Commission is considering the costs and benefits of this proposed order in light of the specific provisions of Section 15(a) of the CEA, as follows:

1. *Protection of market participants and the public.* National securities exchanges, DCMs, OCC and their members who would intermediate the above-described Options and Security Futures on Gold and Silver Products are subject to extensive regulatory oversight.

2. *Efficiency, competition, and financial integrity.* The proposed exemption may enhance market efficiency and competition since it could encourage potential trading of Options and Security Futures on Gold and Silver Products through modes other than those normally applicable to designated contract markets or derivatives transaction execution facilities. Financial integrity will not be affected since the Options and Security Futures on Gold and Silver Products will be cleared by OCC, a DCO and SEC-registered clearing agency, and intermediated by SEC-registered broker-dealers.

3. *Price discovery.* Price discovery may be enhanced through market competition.

4. *Sound risk management practices.* The Options and Security Futures on Gold and Silver Products will be subject to OCC's current risk-management practices including its margining system.

5. *Other public interest considerations.* The proposed exemption may encourage development of derivative products through market competition without unnecessary regulatory burden.

After considering these factors, the Commission has determined to seek comment on the proposed order as discussed above. The Commission invites public comment on its application of the cost-benefit provision.

Issued in Washington, DC, on November 5, 2008 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E8-26815 Filed 11-10-08; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Meeting of the Defense Policy Board Advisory Committee

**AGENCY:** Department of Defense, Defense Policy Board Advisory Committee.

**ACTION:** Notice.

**SUMMARY:** The Defense Policy Board Advisory Committee will meet in closed session on December 1, 2008 from 0800 hrs until 1730 hrs and on December 2, 2008 from 0800 hrs until 1130 hrs at the Pentagon.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: November 4, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

[FR Doc. E8-26760 Filed 11-10-08; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD-2008-OS-0139]**

#### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to amend a system of records notice.

**SUMMARY:** The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on

December 12, 2008 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Cindy Allard at (703) 588-2386.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 4, 2008.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### DPR 36

#### SYSTEM NAME:

Defense Integrated Military Human Resources System (DIMHRS) Records (September 30, 2008, 73 FR 56807).

#### CHANGES:

\* \* \* \* \*

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Delete "mother's maiden name" from first paragraph.

\* \* \* \* \*

### DPR 36

#### SYSTEM NAME:

Defense Integrated Military Human Resources System (DIMHRS) Records.

#### SYSTEM LOCATION:

Primary Location Corporate Data Center, Defense Enterprise Computing Center Ogden, 7879 Wardleigh Road, Hill AFB, UT 84056-5996.

Decentralized segments are located at Department of Defense (DoD) activities worldwide. Official mailing addresses can be obtained from the appropriate Service point of contact found in the "Notification procedure" or "Record Access" sections of this proposed system of records notice.