This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: September 24, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–24602 Filed 9–29–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of the Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an Open Meeting.

SUMMARY: The Manufacturing Council will hold a meeting to discuss and identify the priority issues affecting the U.S. manufacturing industry, which may include increasing exports, supply chain and access to credit, among others. The Council was re-chartered on April 8, 2010, to advise the Secretary of Commerce on matters relating to the U.S. manufacturing industry.

DATES: October 14, 2010

Time: 10 a.m.

ADDRESSES: Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC, 20230. Because of building security, all non-government attendees must pre-register. This program will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than October 7, 2010, to Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC, 20230, telephone 202–482–4501, *jennifer.pilat@trade.gov.* Last minute requests will be accepted, but may be impossible to fill.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC, 20230, telephone: 202–482–4501, e-mail: *jennifer.pilat@trade.gov.*

SUPPLEMENTARY INFORMATION:

No time will be available for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before and after the meeting. Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. Eastern Time on October 7, 2010, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: September 27, 2010.

Jennifer Pilat,

Executive Secretary, The Manufacturing Council.

[FR Doc. 2010–24604 Filed 9–27–10; 4:15 pm]

BILLING CODE 3510–DR–P

COMMODITY FUTURES TRADING COMMISSION

Request for Comment on Options for a Proposed Exemptive Order Relating to the Trading and Clearing of Precious Metal Commodity-Based ETFs; Concept Release

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of options for a proposed exemptive order and request for comment; concept release.

SUMMARY: Recently, the Commodity Futures Trading Commission ("Commission," or "CFTC") has been confronted with the question of how to treat certain transactions on fractional undivided interests, or shares, in single commodity investment products referred to as exchange traded funds ("ETF" or "ETFs"),[1] primarily in the metals complex. The ETFs have in all relevant instances been structured as trusts (singularly, "ETF Trust" or "Trust"),[2] the assets of which consist of holdings of one specific physical commodity.[3] The explicit and sole investment objective of each of these ETF Trusts is to track as nearly as possible the spot price of the underlying physical commodity less the expenses of trust operations. The listing of these ETF shares provides shareholders with efficient exposure to commodity market price movements.[4] These Precious Metal Commodity-Based ETFs have primarily focused on holding either gold or silver, with a recent expansion into palladium and platinum. The Commission has issued Orders pursuant to Section 4(c) of the Commodity Exchange Act (the "Act") permitting the trading and clearing of certain transactions on these Trusts as, respectively, options on securities and security futures.[5] The Previous Orders have provided exemptions from certain provisions of the Act, or the Commission's regulations thereunder, which might have been transgressed by trading or clearing, among other things, options and futures on Commodity-Based ETFs. The exemption mechanism has enabled the Commission to reserve judgment as to the jurisdictional classification (*i.e.* commodity or security) of Commodity-Based ETFs and options and futures on Commodity-Based ETFs while at the same time providing a mechanism to ensure both that the Commission's regulatory

[1] This Release is limited to those "Commodity ETFs" that are structured as grantor trusts with an investment objective of achieving the price performance of the underlying commodity or commodities held by such trust, less expenses. Further, for purposes of this Release, the term or label "ETF" is loosely applied to precious metal commodity-based ETFs (as used interchangeably herein, "Precious Metal Commodity-Based ETFs" or "Commodity-Based ETFs"), *see* section 3(a)(1) of the Investment Company Act of 1940 (the "1940 Act") and Securities and Exchange Commission ("SEC"), *Exchange-Traded Funds,* Investment Company Act Release No. 28192 (March 11, 2008), 73 FR 14618, 14623 (March 18, 2008). As used herein, "Precious Metal" indicates either gold, silver, palladium, or platinum.

Additionally, when we refer to an "ETF" in this Concept Release, we are not (unless the context otherwise requires) referring to an entity that meets the definition of an "investment company" and is registered under the 1940 Act. This Release also does not address those "ETF Commodity Pools" that attempt to track a benchmark index or commodity by engaging in the purchase of commodity futures and/or options contracts. These ETF Commodity Pools are subject to regulation by the Commission as a commodity pool operator ("CPO") and/or commodity trading adviser ("CTA") and may not implicate regulatory issues raised in this Release.

[2] *See e.g.* NYSEArca Rule 8.201 (Commodity-Based Trust Shares); NYSEAmex Rule 1200A (Commodity-Based Trust Shares); NYSE Rule 1300 (streetTracks Gold Shares); and BATS Exchange Rule 14.4.

[3] *See,* however, Securities Exchange Act Release Nos. 62402 (June 29, 2010), 75 FR 39292 (July 8, 2010) (notice of filing of a proposal to list and trade shares of the ETFS Precious Metals Basket Trust consisting of gold, silver, palladium, and platinum) and 62620 (July 30, 2010) (notice of a proposal to list and trade shares of ETFS White Metals Basket Trust consisting of silver, palladium, and platinum).

[4] For a previous Commission discussion of the structural and arbitrage mechanisms underlying a physical gold ETF, *see Description of the Underlying Commodity* in CFTC, *Proposed Exemptive Order for ST Gold Futures Contracts,* 73 FR 13867, at 13868 (March 14, 2008).

[5] *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").

oversight needs are satisfied (whether through regulation by the Securities and Exchange Commission ("SEC") or by attaching conditions to the exemption orders) and that novel products may be introduced without undue delay for market participant and investor use.

More recently, the Options Clearing Corporation (the "OCC") has sought approval of rules permitting similar treatment of options and futures on certain ETFs based on palladium and platinum.

The Commission is issuing this Release to solicit comments on: (i) Options for a proposed exemptive order in connection with the OCC's request for approval of a rule change; and (ii) the Commission's treatment of Precious Metal Commodity-Based ETFs generally, including whether the Commission should exempt the trading and clearing of certain options and futures transactions on gold and silver, and/or palladium and platinum, Commodity-Based ETFs on a categorical basis.

DATES: Comments must be received on or before November 1, 2010. All comments must be in English, or if not in English, accompanied by an English translation.

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: CommodityETFs@cftc.gov.* Include "Commodity Based ETFs" 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: Ryne Miller, Attorney Advisor, 202–418–5921, *rmiller@cftc.gov,* or David Van Wagner, Chief Counsel, 202–418–5481, *dvanwagner@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Part I—Proposed Exemptive Order

A. Background

The first Commodity-Based ETF in the U.S. was listed and traded on the New York Stock Exchange ("NYSE") in November 2004.[6] Since that time, Commodity-Based ETFs have generally focused on the precious metals of gold and silver,[7] with palladium and platinum [8] having been the subject of a Commodity-Based ETF only recently.

The structure and trading of Commodity-Based ETFs is virtually identical to traditional ETFs listed and traded on national securities exchanges. Shares of ETFs are bought and sold throughout the trading day on national securities exchanges. Unlike traditional mutual funds, ETFs do not sell or redeem their individual shares at net asset value ("NAV").[9] Instead, large institutional investors known as Authorized Participants ("APs") buy shares of the ETF directly from the Trust in creation unit sizes ("Creation Units"), varying from 25,000 to 200,000 shares, generally in exchange for an in-kind deposit of securities.[10] Conversely, APs may sell or redeem shares of an ETF only in Creation Unit size and generally in exchange for portfolio securities ("Redemption Baskets"). In limited cases, such as an ETF investing in illiquid securities or derivatives, APs may deposit cash instead of securities in exchange for shares of an ETF. For Commodity-Based ETFs, Creation Units and Redemption Baskets require the delivery of the relevant physical commodity plus any cash based on the ETF's NAV. ETF shares are traded on national securities exchanges at market prices that may, and do, differ from NAV.

APs, who are typically exchange market makers or specialists, use their ability to exchange Creation Units with their underlying assets to provide liquidity for the ETF shares and help ensure that their intraday market price approximates the NAV of the ETF. Other investors trade ETF shares on national securities exchanges in the secondary market. The ability to purchase and redeem Creation Units and Redemption Baskets gives ETFs an inherent arbitrage mechanism intended to minimize the potential deviation between the market price and NAV of ETF shares.[11] Existing ETFs (including Commodity-Based ETFs) have daily transparent portfolios, so that APs and investors know exactly what portfolio assets they must assemble if they wish to purchase a Creation Unit. The national securities exchanges that trade ETF shares disseminate an updated indicative NAV throughout the trading day, typically at 15-second intervals.

Although similar in practice to traditional ETFs that invest in securities, by law, Commodity-Based ETFs are not subject to specific SEC regulation under the 1940 Act. Instead, Commodity-Based ETFs are subject to SEC disclosure review by the SEC's Division of Corporation Finance as well as exchange regulation.

Based on the belief that options and security futures trading benefits the liquidity and relative success of the underlying ETF, the national securities exchanges and ETF sponsors have sought to be able to trade options and futures on Commodity-Based ETFs. In 2008, the Commission and the SEC provided regulatory approvals and exemptions so that options on shares of the streetTracks Gold Trust (predecessor to the SPDR Gold Trust) (symbol: GLD) would be able to be listed and traded on the various options exchanges.[12] Since 2008, the Commission has permitted options and futures on several other gold and silver Commodity-Based ETFs.[13]

[6] *See* NYSE Information Memo Number 04–59 (November 18, 2004) (trading of streetTRACKS Gold Shares: Rules 1300 and 1301) and Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approval of the listing and trading of streetTRACKS Gold Shares).

[7] *See, e.g.,* Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approval of the iShares COMEX Gold Trust (IAU)); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (approval of the iShares Silver Trust (SLV)); 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (approval of the ETFS Silver Trust); and 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (approval of the ETFS Gold Trust).

[8] *See* Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (approval of ETFS Palladium) and 60970 (November 9, 2009), 74 FR 59319 (November 17, 2009) (approval of ETFS Platinum).

[9] NAV is the amount by which the value of an entity's assets exceeds the value of its liabilities. NAV is typically calculated on a per-share basis by dividing the total value of all assets in a portfolio, less any liabilities, by the number of shares outstanding.

[10] *See* NYSE Explanation of ETFs, available at *http://www.nyse.com/pdfs/ETFs7109.pdf,* and SEC statement regarding ETFs, available at *http://www.sec.gov/answers/etf.htm. See also* Kathleen Moriarty, Exchange-Traded Funds: Legal and Structural Issues Worldwide, 29 Int'l Bus. L. 346 (2001); Stuart M. Strauss, Exchange-Traded Funds—the Wave of the Future? 7 Investment Lawyer 1 (2000); and Stuart Strauss & Scott M. Zoltowski, Exchange Traded Funds, in A.L.I.–A.B.A., Investment Mgmt Reg. 67 (Aug. 2006).

[11] *See* Grimm, *A Process of Natural Correction: Arbitrage and the Regulation of Exchange-Traded Funds Under the Investment Company Act,* 1 U. Pa. J. Bus & Emp. Law 95 (2008). *See also* Securities Exchange Act Release No. 31591 (), 57 FR 60253 (December 18, 1992) (File No. SR–AMEX–92–18) (order approving proposed rule change by the Amex relating to Portfolio Depository Receipts), n. 25.

[12] *See* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (approval of SPDR Gold Trust options), and CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares,* 73 FR 31981 (June 5, 2008), and *Exemptive Order for SPDR Gold Futures Contracts,* 73 FR 31979 (June 5, 2008).

[13] *See* footnote 5, *supra.*

From a procedural standpoint, the issue of the regulation of Commodity-Based ETFs comes before the CFTC through filings by a contract market or a clearing organization in its capacity as a CFTC registrant, requesting Commission approval of certain proposed rule change(s) which would permit it to treat options and futures transactions on such ETFs as options on securities and security futures, respectively. In order to approve such rule changes, the Commission has issued exemptive orders for the options or futures in question pursuant to its exemptive authority under Section 4(c)(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6(c).[14] As noted above, the Commission has issued three such exemptive ETF orders, all of which have been confined to options and futures on shares of specific physical gold and silver ETFs.[15]

Notably, in issuing the Previous Orders providing Section 4(c) exemptions for options and futures on gold and silver ETF shares, the Commission did not make any finding that the options were either options on securities or options subject to the Act, nor did it make any finding that the futures were, or were not, security futures.[16] Rather, the exemptions permitted the trading and clearing of options and/or futures on the Commodity-Based ETFs as, respectively, options on securities and security futures. In doing so, the Commission reserved making any affirmative determination as to whether shares of Commodity-Based ETFs are more properly characterized as either commodities or securities. That is, the exemptions have enabled the Commission to reserve judgment as to the appropriate jurisdictional classification of Commodity-Based ETFs and options and futures on Commodity-Based ETFs. The Commission's approach is consistent with the framework envisioned by Congress. In the future, and upon the Dodd-Frank Wall Street Reform and Consumer Protection Act's ("Dodd-Frank Act")[17] effective date, certain provisions in the Dodd-Frank Act will provide the Commission and the SEC with a legal and procedural framework to use exemptive authority to tailor joint regulatory solutions for novel products that raise jurisdictional questions—such as those raised by Commodity-Based ETFs and options and futures on Commodity-Based ETFs.[18]

B. Pending OCC Submission—Transactions on Palladium and Platinum ETFs

By a submission dated March 1, 2010, the OCC has submitted for Commission approval, pursuant to Section 5c(c)(2) of the Act and Commission Regulations 39.4(a) and 40.5, a proposed amendment to an interpretation of Article I, Section 1.F.(8) of their By-Laws.[19] The interpretation, as amended, would state that the OCC will clear and treat as options on securities any options on ETFS Palladium Shares ("Palladium Products")[20] or ETFS Platinum Shares ("Platinum Products"),[21] and will clear and treat as security futures any futures contracts on the Palladium and Platinum Products. Section 5c(c)(3) of the Act provides that the Commission must approve any such rules or rule amendments, which includes a proposed amendment of an interpretation, submitted for approval unless it finds that the rules or rule amendments would violate the Act. The Commission initially extended the review period of the OCC's submission by forty-five days, pursuant to Commission Regulation 40.5(c)(1), to June 1, 2010. By letter dated June 1, 2010 and pursuant to Commission Regulation 40.5(c)(2), the OCC consented to a further extension of the review period to September 30, 2010. While the OCC's pending rule submission deals with options and futures on two specific palladium and platinum Commodity-Based ETFs (the Palladium and Platinum Products), the Commission is also requesting comment on options for a proposed exemption that would permit the trading and clearing, as options on securities and security futures, of options and futures on gold and silver, and/or palladium and platinum Commodity-Based ETFs on a categorical basis, *i.e.,* regardless of issuer.

C. Regulatory Implications of Precious Metal Commodity-Based ETFs

The Commission is issuing this Release because, among other things, the Commission believes that options and futures on Commodity-Based ETFs may raise certain regulatory issues due to their economic similarity to options on commodities and futures on commodities traded on designated contract markets. The Commission's concerns include the potential that futures contracts based on the commodities underlying the ETFs could be affected by withdrawal of the deliverable supply for futures contracts, and also, that the Commission would lack the jurisdictional capability to surveil persons with positions in the Commodity-Based ETFs.[22]

The concerns are heightened by the reality that options and futures on Commodity-Based ETFs allow market participants to take positions in instruments that appear economically similar to Commission-regulated products, including products that would otherwise fall under, for example, the Commission's market and trade practice surveillance and large trader reporting

[14] Section 4(c)(1) of the Act 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.

[15] *See* footnote 5, *supra.*

[16] Under Section 4(c), the Commission is not required to make an express finding of jurisdiction over a product as a condition precedent to issuing a Section 4(c) exemption. The 4(c) Conference Report states: "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." *See* House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3214–3215 ("4(c) Conf. Report").

[17] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[18] *See e.g.* §§ 717 and 718 of the Dodd-Frank Act, which cover "New Product Approval CFTC—SEC Process" and "Determining Status of Novel Derivative Products", respectively.

[19] The complete submission is made available on the Commission's Web site at: *http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul030110occ001.pdf.*

[20] Shares of the Palladium Products are traded on NYSE Arca under the symbol "PALL".

[21] Shares of the Platinum Products are traded on NYSE Arca under the symbol "PPLT".

[22] These concerns arise from the Commission's statutory mandate under Section 6(c) of the Act, which charges the Commission with manipulation authority regarding price of "any commodity, in interstate commerce, or for future delivery [* * *]." *See* Section 6(c) of the Act.

system.[23] By taking positions in options and futures on Commodity-Based ETFs traded on national securities exchanges, which can achieve the same investment objectives and are functionally the same as Commission-regulated products, market participants potentially avoid incurring any obligation to comply with the Commission's rules and regulations (although the market participants do remain subject to the existing regulatory regime applicable to the securities markets). Beyond this concern, the Commission has examined, and continues to examine, the palladium and platinum markets relative to the gold and silver markets to review empirical findings which may justify a different regulatory resolution for the Palladium and Platinum Products as compared to the Commission's approach to gold and silver ETF products under the Previous Orders (discussed further at section D, *infra*).

At the same time, the Commission is seeking comment as to whether the trading and clearing (as options on securities or security futures) of options and futures on all or some Precious Metal Commodity-Based ETFs should be categorically exempted from the Act to the extent necessary to permit them to be so traded and cleared, whether absolutely or subject to conditions. Related to that issue, the Commission has been encouraged by market participants to adopt a "generic" approach for addressing the transactions in question on Precious Metal Commodity-Based ETFs as opposed to the existing process of performing a case-by-case basis review.[24] This Release is intended to assist in the Commission's consideration relating to a potential "generic" approach, and the Commission is seeking comments to that end.

D. Empirical Observations: Palladium and Platinum v. Gold and Silver

There are significant empirical differences across the precious metal markets which may support the Commission taking a different regulatory approach with respect to options and futures on Commodity-Based ETFs holding palladium and platinum than it has previously taken with respect to options and futures on Commodity-Based ETFs holding gold and silver.

Global palladium and platinum supplies are considerably smaller in volume than supplies of gold and silver, and come predominantly from mine production concentrated in a small number of countries, namely, South Africa and Russia ("Producer Countries").[25] These factors make palladium and platinum markets potentially more susceptible to tightness during periods of economic growth and subject to potential supply shocks from isolated events in either of the Producer Countries. Palladium and platinum futures markets consequently become more susceptible to price volatility that may result from relatively small changes in demand. These concerns were observed in January 2010 when the Palladium and Platinum Products were initially listed for trading on NYSE Arca, resulting in an apparent one-time increase in short-term demand for physical palladium and platinum,[26] and the NYMEX palladium and platinum futures markets entered nearby backwardation.[27] Indeed, the Prospectuses for the Palladium and Platinum Products, dated December 30, 2009, and filed with the SEC, acknowledge that purchase of the shares may affect the prices of palladium and platinum, respectively, and may impact the supply of, and demand for, palladium and platinum, respectively.[28]

In addition to these distinguishing features, industrial demand constitutes a greater percentage of the total demand for both palladium and platinum[29] as compared to industrial demand as a percentage of total demand for gold and silver,[30] and palladium and platinum have traditionally not been held for investment purposes to nearly the same extent as gold and silver.[31] Accordingly, the Commission requests comment on whether these empirical differences suggest the need for a different regulatory approach for options and futures on the Palladium and Platinum Products, or any palladium or platinum Commodity-Based ETF, as compared to options and futures on the gold and silver Commodity-Based ETFs covered by the Previous Orders.

Part II—Issues for Comment

The Commission requests comment, taking into account all of the issues presented in this Release and

[23] The Commission has previously considered whether special conditions should be attached to related exemptions granted pursuant to Section 4(c) of the Act:

In order to preserve the integrity of the price discovery and risk management functions of Commission regulated markets, it may be that national securities exchanges that list the options [on precious metal commodity-based ETFs] should comply with market reporting requirements and brokers and traders that carry accounts or trade in options on gold and silver products should comply with large trader reporting requirements.

See CFTC, *Request for Comment on a 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 ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares,* 75 FR 19619 (April 15, 2010) at 19621. In its order exempting the trading and clearing of products related to the ETFS Physical Swiss Gold Shares and the ETFS Physical Swiss Silver Shares, the Commission did not impose market reporting and large trader reporting requirements. However, the Commission noted the comments received and future consideration with respect to market and large trader reporting for certain gold and silver option products. *See* CFTC, Order Exempting the Trading and Clearing of Certain Products Related to ETFS Physical Swiss Gold Shares and ETFS Physical Swiss Silver Shares, footnote 5, *supra.*

[24] Specifically, on April 15, 2010, the OCC and the Chicago Board Options Exchange ("CBOE") jointly delivered a letter to the Chairmen of both the Commission and the SEC, expressing their concern about the delays incurred in the case-by-case review method of these products. The letter is referenced in a public presentation available on the CBOE's Web site at: *http://cboenews.cboe.com/pdfs/PressBriefingOIC2010FINAL.pdf,* at page 7.

[25] Data from the Johnson Matthey Platinum 2010 publication indicates that 76.5% of global platinum supplies came from South Africa in 2009, while 51.1% of global palladium supplies came from Russia. Global platinum and palladium supplies for 2009 totaled 5.9 million ounces and 7.1 million ounces respectively (based on Johnson Matthey's data), compared to much larger 2009 global supplies of gold (116.6 million ounces) and silver (826.1 million ounces), based on data from the CPM Group Gold and Silver Yearbooks for 2010.

[26] For example, NYMEX settlement data shows that the April 2010 to July 2010 active spread for platinum futures was in backwardation on 18 out of 19 trading days between January 14, 2010, and February 10, 2010, ranging from +$0.20 to +$2.00. The March 2010 to June 2010 active spread for palladium futures was in backwardation on 5 of 6 trading days from January 14, 2010 to January 22, 2010, ranging from +$0.05 to +$1.00.

[27] Nearby backwardation occurs when the price for the nearby futures contract is higher than the price for the next nearest expiring contract, a generally unusual circumstance in the precious metals markets.

[28] *See http://www.sec.gov/Archives/edgar/data/1459862/000093041310000057/c58962_424b3.htm,* at page 7; *see also http://www.sec.gov/Archives/edgar/data/1460235/000093041310000056/c58731_424b3.htm,* at page 7.

[29] The Prospectus for the Palladium Products states that "autocatalysts, automobile components that use palladium, accounted for approximately 57% of the global demand in palladium in 2008." *See* citation in footnote 26, at page 9. The Prospectus for the Platinum Products states that autocatalysts accounted for approximately 51% of the 2008 global demand for platinum. *See* citation in footnote 26, at page 9.

[30] In comparison, the CPM Group Gold and Silver Yearbooks for 2010 indicate that 12.5% of global gold demand was for industrial purposes in 2009 (this includes electronics and dental/medical products), while 45.3% of global silver demand was for industrial purposes (this includes photography and electronics and batteries). Jewelry demand is not included in these figures.

[31] The Johnson Matthey Platinum 2010 publication indicates that 9.4% of global demand for platinum in 2009 was for investment purposes, while 8.0% of global demand for palladium was for investment. In contrast, the CPM Group Gold and Silver Yearbooks for 2010 indicate that net private investment in gold accounted for a larger 44.7% share of global gold demand in 2009 (this includes official coins, bullion and medallions), with net private investment accounting for around 30.0% of global silver demand in 2009 (this includes bullion and coins).

considering the Commission's future treatment of options and futures on Precious Metal Commodity-Based ETFs as required pursuant to the Dodd-Frank Act, on each of the following options for a proposed exemptive order:

1. Is there any reason the Commission should not provide a categorical Section 4(c) exemption for the trading and clearing of the transactions in question on gold and/or silver Commodity-Based ETFs?

2. Are the palladium and platinum markets sufficiently distinct from the gold and silver markets to justify a different regulatory approach, for the purposes of a Section 4(c) exemption, for options and futures on the Palladium and Platinum Products (*i.e.* the specific ETF products identified in the OCC's pending submission) as compared to that for options and futures on gold and silver Commodity-Based ETFs.

3. More generally, should the Commission consider extending such a Section 4(c) exemption to options and futures on palladium and platinum Commodity-Based ETFs on a categorical basis (*i.e.* without respect to issuer)?

4. If the Commission continues granting Section 4(c) exemptions, whether on an individual or categorical basis, when presented with a request to allow options and futures on Commodity-Based ETFs, should the Commission include additional conditions and requirements? For example, should the Commission consider imposing large trader reporting obligations, position limits,[32] or other analogous requirements when exempting options and futures on Precious Metal Commodity-Based ETFs from the Commission's jurisdiction?

Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [33] 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. At least some of the options for a proposed exemptive order described above, if issued with substantive reporting or similar conditions, would require a new collection of information from any entities that would be subject to the proposed order.

B. Cost-Benefit Analysis

In considering the options for a Section 4(c) exemption allowing the trading and clearing as options on securities any options on gold, silver, palladium, and platinum Commodity-Based ETFs, and to clear and treat as security futures any futures contracts on gold, silver, palladium, and platinum Commodity-Based ETFs, Section 15(a) of the Act,[34] 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 Act. 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 Act 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; 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 Act.

The Commission is considering the costs and benefits of the options for a proposed order described above in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* National securities exchanges, OCC, and their members who would intermediate the above-described options and security futures on gold, silver, palladium, and platinum Commodity-Based ETFs are subject to extensive regulatory oversight; however, this regulatory oversight in the securities markets does not completely parallel the oversight programs seen in CFTC regulated markets.

2. *Efficiency, competition, and financial integrity.* The options for a proposed exemption may enhance market efficiency and competition since they could encourage potential trading of options and security futures on the gold, silver, palladium, and platinum Commodity-Based ETFs through modes other than those normally applicable; that is, designated contract markets or derivatives transaction execution facilities. Financial integrity will not be affected since the options and security futures on gold, silver, palladium, and platinum Commodity-Based ETFs will be cleared by the 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 the gold, silver, palladium, and platinum Commodity-Based ETFs will be subject to OCC's current risk-management practices including its margining system.

5. *Other public interest considerations.* The options for a 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 matters discussed above. The Commission invites public comment on its application of the cost-benefit provision.

* * * * *

Issued in Washington, DC, on September 24, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–24586 Filed 9–29–10; 8:45 am]

BILLING CODE P

[32] The Commission understands that certain position and exercise limits on Commodity-Based ETF options currently exist in the securities options markets. *See, e.g.,* ISE Rules 412 and 414; *see also* NYSE Amex Rules 904 and 905. In addition, certain position limits and position accountability rules apply to security futures products listed and traded on OneChicago. *See* OneChicago Rule 414.

[33] 44 U.S.C. 3507(d).

[34] 7 U.S.C. 19(a).

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2010–OS–0129]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof.