

(Merced County); Site 4 (101 acres)—within the Applegate Business Park, Highway 33, Air Park Road, Atwater (Merced County); Site 6 (87 acres)—City of Madera Airport Industrial Park/State Center Commerce Park, Falcon Drive, Madera (Madera County); Site 7 (10 acres)—City of Madera Industrial Park, 2500 West Industrial Avenue, Madera (Madera County); Site 8 (102 acres)—Airways East Business Park, East Shields Avenue, Fresno (Fresno County); Site 9 (225 acres)—Central Valley Business Park, East North Avenue, Fresno (Fresno County); Site 10 (497 acres)—consisting of the Fresno Airport Industrial Park area located on Aircorp Way and at the intersection of E. Anderson and E. Clinton Avenues, Fresno, and the adjacent City of Clovis Industrial Park located at the intersection of West Dakota Avenue & West Pontiac Way, Clovis (Fresno County); Site 11 (35 acres)—Reedley Industrial Park II, 1301 South Buttonwillow Avenue, Reedley (Fresno County); Site 12 (128 acres)—City of Selma Industrial Park, East Nebraska Avenue, Selma (Fresno County); and, Site 13 (15 acres)—located at 810 E. Continental Avenue, Tulare, (Tulare County).

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482-0862.

Dated: November 4, 2010.

Andrew McGilvray,
Executive Secretary.

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COMMODITY FUTURES TRADING COMMISSION

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 the CBOE Gold ETF Volatility Index and Similar Products

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” (“Options”) on the CBOE Gold ETF Volatility Index (“GVZ Index”), which would be traded on the Chicago Board Options Exchange (“CBOE”), a national securities exchange, and 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”) ¹ and the regulations thereunder, to the extent necessary to permit such Options on the GVZ Index to be so traded and cleared. Authority for this exemption is found in Section 4(c) of the CEA.² The Commission is also requesting comment regarding whether the Commission should 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), which other instruments are securities as defined in the Securities Exchange Act of 1934 (“the ‘34 Act”).³

DATES: Comments must be received on or before December 10, 2010.

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:* goldvolatility4c@cftc.gov. Include “Options on GVZ Index and Similar 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 must be submitted in English, or if not, accompanied by an English translation. Comments may be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure

under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.

FOR FURTHER INFORMATION CONTACT:

Robert B. Wasserman, Associate Director, 202-418-5092, rwasserman@cftc.gov, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581, or Anne C. Polaski, Special Counsel, 312-596-0575, apolaski@cftc.gov, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, Illinois 60661.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OCC is both a Derivatives Clearing Organization (“DCO”) registered pursuant to Section 5b of the CEA,⁴ and a securities clearing agency registered pursuant to Section 17A of the ‘34 Act.⁵

OCC has filed with the CFTC, pursuant to Section 5c(c) of the CEA and Commission Regulations 39.4(a) and 40.5 thereunder,⁶ a request for approval of a rule that would enable OCC to clear and settle Options on the GVZ Index traded on the CBOE, a national securities exchange, in its capacity as a registered securities clearing agency (and not in its capacity as a DCO).⁷ Section 5c(c)(3) of the CEA provides that the CFTC must approve such a rule submitted for approval unless it finds that the rule would violate the CEA.

The GVZ Index is an index that measures the implied volatility of options on shares of the SPDR® Gold Trust (“SPDR® Gold Trust Shares”), an ETF designed to reflect the performance of the price of gold bullion.⁸

¹ 17 U.S.C. 1 *et seq.*

² 7 U.S.C. 6(c).

³ 15 U.S.C. 78a *et seq.* The Commission has provided exemptions for gold and silver ETF products on three prior occasions. *See* Order Exempting the Trading and Clearing of Certain Products Related to SPDR® Gold Trust Shares, 73 FR 31981 (June 5, 2008), Exemptive Order for SPDR® Gold Futures Contracts, 73 FR 31979 (June 5, 2008), 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 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”).

⁴ 7 U.S.C. 7a-1.

⁵ 15 U.S.C. 78q-1.

⁶ 7 U.S.C. 7a-2(c), 17 CFR 39.4(a), 40.5.

⁷ *See* Securities Exchange Act Release No. 62094 (May 13, 2010), 75 FR 28085 (May 19, 2010) (File No. SR-OCC-2010-07 filed with both the CFTC and the Securities and Exchange Commission (“SEC”)) and the SEC’s approval in Securities Exchange Act Release No. 62290 (June 14, 2010), 75 FR 35861 (June 23, 2010). *See also* Securities Exchange Act Release No. 62139 (May 19, 2010), 75 FR 29597 (May 26, 2010) (SEC approval of the CBOE’s listing and trading of Options on the GVZ Index).

⁸ *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (original GLD Approval Order for listing and trading on the NYSE).

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.⁹ 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.”¹⁰ Permitting Options on the GVZ Index to be traded on a national securities exchange and to be cleared by OCC in its capacity as a securities clearing agency, as discussed above, may foster both financial innovation and competition and may be consistent with public interest and the CEA. The CFTC is requesting comment on whether it should exempt Options on the GVZ Index, as described above, that are traded on a national securities exchange, and cleared through OCC in its capacity as a registered securities clearing agency, from the provisions of the CEA and the Commission’s regulations thereunder, to the extent necessary to permit such Options to be

⁹ 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.

¹⁰ House Conf. Report No. 102-978, 1992 U.S.C.C.A.N. 3179, 3213 (“4(c) Conf. Report”).

so traded and cleared. The CFTC previously granted exemptions for options on shares of gold ETFs on June 5, 2008, December 30, 2008, and June 29, 2010.¹¹

In proposing this exemption, the CFTC need not—and does not—find that Options on the GVZ Index are (or are not) options subject to the CEA. 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 [CEA]. 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.¹²

The Options on the GVZ Index described above raise questions involving their nature and the appropriate resulting jurisdiction over them. 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) of the CEA 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 Commission-regulated markets to discharge their regulatory or self-regulatory responsibilities under the CEA.¹³

¹¹ See footnote 3, above.

¹² 4(c) Conf. Report at 3214–3215.

¹³ 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

The purposes of the CEA include “promot[ing] responsible innovation and fair competition among boards of trade, other markets and market participants.”¹⁴ It may be consistent with these and the other purposes of the CEA and with the public interest for the mode of trading and clearing the Options on the GVZ Index—whether the mode applicable to options on securities indexes or commodity indexes—to be determined by competitive market forces. Accordingly, the Commission proposes to use its authority under Section 4(c) of the CEA to exempt the trading of Options on the GVZ Index on a national securities exchange, and clearing thereof by a registered securities clearing agency, from the provisions of the CEA and the Commission’s regulations thereunder to the extent necessary to permit such Options to be so traded and cleared.

In addition, the Commission proposes to use its authority under Section 4(c) of the CEA to exempt the trading and clearing of options on indexes that measure the volatility of shares of gold ETFs generally, regardless of issuer. In particular, the Commission proposes to exempt the following categories of Options from the provisions of the CEA and the Commission’s regulations thereunder to the extent necessary to permit such Options to be traded on a national securities exchange and cleared by OCC, in its capacity as a securities clearing agency:

(a) Options on the GVZ Index;

(b) Options on any index that measures the volatility (historical or expected) of the price(s) of shares of one or more gold ETFs; and

(c) Options on any index that measures the volatility (historical or expected) of price(s) of shares of one or more gold ETFs and the price(s) of any other instrument(s), which other instruments are securities as defined in Section 3(a)(10) of the ‘34 Act.

The CFTC is requesting comment as to whether an exemption from the requirements of the CEA and regulations thereunder should be granted in the context of these transactions.

On September 24, 2010, the Commission issued a Request for Comment on Options for a Proposed Exemptive Order Relating to the Trading and Clearing of Precious Metal

(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.

¹⁴ 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”).

Commodity-Based ETFs and a Concept Release (“Precious Metal ETF Release”).¹⁵ In the Precious Metal ETF Release, the Commission requested comment, in part, regarding whether it should issue a categorical Section 4(c) exemption to permit options and futures on shares of all or some precious metal commodity-based ETFs to be traded and cleared as options on securities and security futures, respectively. The comment period for the Precious Metal ETF Release expires on November 1, 2010.

The Commission proposes to use its authority under Section 4(c) of the CEA to exempt options on *indexes* that measure the volatility of shares of gold ETFs at this time while it continues to seek comments and consider the appropriateness of a categorical exemption with respect to options and futures on shares of precious metal commodity-based ETFs. The Commission believes that options on an index that measures commodity price volatility based on shares of such an ETF do not raise the same regulatory concerns that may be associated with options and futures on shares of an ETF that is based on the underlying commodity. 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.

Section 4(c)(3) of the CEA 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 securities exchanges and securities clearing agencies, as well as their members who will intermediate Options on the GVZ Index and other options on indexes that measure the volatility of shares of gold ETFs as described herein, are subject to extensive and detailed regulation by the SEC under the ‘34 Act.

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”) ¹⁶ 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 ¹⁷ 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) 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: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may 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 is 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 has determined that the costs of this proposed order are not significant. Although the order would exempt the subject options from regulation under the CEA, market participants and the public will nonetheless be protected because the options, the markets on which they trade, and the intermediaries through which they will be traded will be subject to comprehensive regulation by the SEC. 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 duplicative regulation.

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 considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

Issued in Washington, DC, on November 4, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

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DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License for a U.S. Government-Owned Invention

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e), and 37 CFR 404.7 (a)(1)(i) and 37 CFR 404.7 (b)(1)(i), announcement is made of the intent to grant an exclusive, revocable license for the invention claimed in U.S. Patent Application No. 12/670,250, entitled “Obstetrics Simulation and Training Method and System,” filed on January 22, 2010, and related foreign patent applications deriving from PCT/US2008/076725 to Gaumard Scientific Company, Inc., with its principal place of business at 14700 SW 136 Street, Miami, FL 33196-5691.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702-5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619-6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619-7808, both at telefax (301) 619-5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be

¹⁵ See 75 FR 60411 (September 30, 2010).

¹⁶ 44 U.S.C. 3507(d).

¹⁷ 7 U.S.C. 19(a).