

Dept. of Commerce, NOAA Tech. Memo., NMFS-NWFSC-42, 156p.

Rawson, K., N.J. Sands, K.P. Currens, W. Graeber, M. Ruckelshaus, R. Fuerstenberg, and J.B. Scott. 2008. Viability Criteria for the Lake Ozette Sockeye Salmon ESU. Puget Sound Technical Recovery Team document. Northwest Fisheries Science Center. NOAA Fisheries Service. Seattle, WA. 39p.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: April 17, 2008.

#### Marta Nammack,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8-8831 Filed 4-22-08; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Revised Draft Framework for Developing the National System of Marine Protected Areas and Response to Comments

**AGENCY:** NOAA, Department of Commerce (DOC).

**ACTION:** Extension of public comment period; Notice on the Revised Draft Framework for Developing the National System of Marine Protected Areas.

**SUMMARY:** NOAA and the Department of the Interior published a notice in the *Federal Register* on March 17, 2008 (73 FR 14227) announcing a 30-day public comment period on the Revised Draft Framework for Developing the National System of Marine Protected Areas (Revised Draft Framework). Copies of the Revised Draft Framework can be requested via the contact information below or downloaded from <http://www.mpa.gov>. The deadline for public comment on the Revised Draft Framework is hereby extended.

**DATES:** The extended deadline for comments on the Revised Draft Framework is 11:59 EDT, May 16, 2008.

**ADDRESSES:** All comments regarding the Revised Draft Framework should be submitted to Joseph Uravitch, National MPA Center, N/ORM, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. Comments sent via e-mail should be sent to [mpa.comments@noaa.gov](mailto:mpa.comments@noaa.gov), and all comments sent by fax should be sent to 301-713-3110. E-mail and fax comments should state "Revised Draft Framework Comments" in the subject line.

#### FOR FURTHER INFORMATION CONTACT:

Refer to the *Federal Register* notice of March 17, or contact Lauren Wenzel, NOAA, at 301-713-3100, or via e-mail at [mpa.comments@noaa.gov](mailto:mpa.comments@noaa.gov).

Dated: April 16, 2008.

#### David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. E8-8672 Filed 4-22-08; 8:45 am]

**BILLING CODE 3510-08-M**

## COMMODITY FUTURES TRADING COMMISSION

### Proposal To Exempt the Trading and Clearing of Certain Products Related to streetTRACKS® Gold 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 products called options on streetTRACKS® Gold Trust Shares ("ST Gold Options"), proposed to be traded on a national securities exchange, and cleared through the Options Clearing Corporation ("OCC"), 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 April 30, 2008.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov/http://frwebgate.access.gpo/cgi-bin/leaving>. Follow the instructions for submitting comments.

- *E-mail:* [secretary@cftc.gov](mailto:secretary@cftc.gov). Include "OCC ST Gold Options 4(c)" 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/>.

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

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

#### 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, 7 U.S.C. 7a-1, and a securities clearing agency registered pursuant to Section 17A of the Securities Exchange Act of 1934 ("the '34 Act").<sup>3</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>4</sup> requests for approval of rules and rule amendments that would enable OCC to clear and settle ST Gold Options<sup>5</sup> traded on a national securities exchange in its capacity as a registered securities clearing agency (and not in its capacity as a DCO).<sup>6</sup> Section 5c(c)(3) provides that the CFTC must approve any 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 ST Gold Options was filed effective February 4, 2008, and Amendment No. 1 thereto was filed effective March 7, 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>7</sup> The Commission

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>4</sup> 7 U.S.C. 7a-2(c), 17 CFR 39.4(a), 40.5.

<sup>5</sup> streetTRACKS® Gold Trust Shares, which underly ST Gold Options, are described in greater detail in the "Proposed Exemptive Order for ST Gold Futures Contracts," 73 FR 13,867 (March 14, 2008). The length of the comment period for this proposal is informed by the fact that the ST Gold Futures Contracts proposal is outstanding, and the goal of addressing both proposals simultaneously.

<sup>6</sup> See SR-OCC-2008-04 and Amendment No. 1 thereto. OCC has also filed these proposed rule changes with the SEC.

<sup>7</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

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>8</sup> Permitting ST Gold Options to trade on national securities exchanges and be cleared on OCC as discussed above may foster both financial innovation and competition. In accordance with the Memorandum of Understanding entered into between the CFTC and the Securities and Exchange Commission (“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 ST Gold Options, as described above, that are traded on a national securities exchange and cleared through OCC, 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 does not—and does not find that ST Gold Options are (or are not) 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 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>9</sup>

ST Gold Options are “novel instruments” and the “determination as to [their] jurisdiction is not straightforward.” 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>10</sup>

The purposes of the CEA include “promot[ing] responsible innovation and fair competition among boards of trade, other markets and market

participants.”<sup>11</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 of these transactions—whether it is to be through CFTC-regulated markets and clearing organizations or SEC-regulated markets and clearing organizations—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.” Both national securities exchanges and OCC, as well as their members who will intermediate these transactions, are subject to extensive and detailed regulation by the SEC under the ‘34 Act. The CFTC is requesting comment as to whether all persons trading ST Gold Options on national securities exchanges, and clearing such options 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>12</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

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>8</sup>House Conf. Report No. 102-978, 1992 U.S.C.A.N. 3179, 3213 (“4(c) Conf. Report”).

<sup>9</sup>4(c) Conf. Report at 3214-3215.

<sup>10</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>11</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.”)

<sup>12</sup>44 U.S.C. 3507(d).

information from any entities that would be subject to the proposed order.

#### B. Cost-Benefit Analysis

Section 15(a) of the CEA, as amended by Section 119 of the Commodity Futures Modernization Act of 2000 ("CFMA"),<sup>13</sup> 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; 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, OCC and their members who would intermediate ST Gold Options 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 ST Gold Options on markets other than designated contract markets or derivative transaction execution facilities. Financial integrity will not be affected since the ST Gold Options 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 ST Gold Options 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 April 21, 2008 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

Dissenting Opinion of Commissioner Bartholomew H. Chilton to Notice of Proposed Order pursuant to Section 4(c) of the CEA which would exempt certain products related to StreetTRACKS Gold Trust Shares traded on a national securities exchange and cleared by the Options Clearing Corporation from provisions of the CEA.

I respectfully dissent from the Commission's issuance of the above-referenced proposed order. Should the CFTC ultimately approve this order, it is my hope and expectation that the SEC similarly will fully exercise its broad exemptive authority under the securities laws to permit futures exchanges to trade products that are economically equivalent to those that are or may be approved for trading on national securities exchanges, and to allow designated clearing organizations to clear such products, to ensure that the futures markets are not competitively disadvantaged with regard to such products. I dissent from today's action, because I do not believe that the proposed order provides sufficient basis for or assurance of such reciprocity in the future.

Bart Chilton,  
*Commissioner, Commodity Futures Trading Commission.*

[FR Doc. E8-8942 Filed 4-22-08; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Intelligence Agency National Defense Intelligence College Board of Visitors Closed Meeting

**AGENCY:** Department of Defense, Defense Intelligence Agency, National Defense Intelligence College.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of section 10 of Public

Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the Defense Intelligence Agency National Defense Intelligence College Board of Visitors has been scheduled as follows.

**DATES:** Tuesday, June 3, 2008 (8 a.m. to 5 p.m.) and Wednesday, June 4, 2008 (8 a.m. to 12 p.m.).

**ADDRESSES:** National Defense Intelligence College, Washington, DC 20340-5100.

**FOR FURTHER INFORMATION CONTACT:** Mr. A. Denis Clift, President, Defense Intelligence Agency National Defense Intelligence College, Washington, DC 20340-5100; telephone: (202) 231-3344.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Defense Intelligence College.

Dated: April 16, 2008.

**Patricia L. Toppings,**

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

[FR Doc. E8-8801 Filed 4-22-08; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board Closed Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee meetings.

**SUMMARY:** The Defense Science Board will meet in closed session on May 21-22, 2008; at the Pentagon, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301-3140, via e-mail at [debra.rose@osd.mil](mailto:debra.rose@osd.mil), or via phone at (703) 571-0084.

**SUPPLEMENTARY INFORMATION:** The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss interim finding and recommendations resulting from ongoing Task Force activities. The

<sup>13</sup> 7 U.S.C. 19(a).