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ATTORNEYS AT LAW

MEMORANDUM

CLIENT-MATTER NUMBER
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TO: David Downey
Donald Horwitz

FROM: George T. Simon
Kathryn M. Trkla

DATE: October 29, 2007

RE: Analysis of streetTRACKS Gold Shares as Securities

This memorandum explains why streetTRACKS Gold Shares (“Gold Shares”) are “securities” within the meaning of the definition of “security” under the Securities Exchange Act of 1934 (the “Exchange Act”), including analysis of research we have previously conducted on the issue.

1. BACKGROUND ON GOLD SHARES

Gold Shares are listed on the New York Stock Exchange (“NYSE”) and represent units of fractional undivided beneficial interest in and ownership of a trust that holds gold for investment purposes (the “Trust”). The investment objective of the Trust is to allow investors to benefit from the performance of the price of gold bullion. As described in the prospectus for the Gold Shares, only broker-dealers meeting certain standards, called Authorized Participants, may create or redeem baskets of shares in the Trust, in 100,000 share increments. To create a basket, an Authorized Participant deposits a specified amount of gold with the Trust at an approved vault. The Trust will accept only gold bars meeting the standards of the London Bullion Market Association from an Authorized Participant to create a basket. To redeem gold from the Trust, an Authorized Participant submits a basket of Gold Shares (100,000 shares) and the Trust provides to that Authorized Participant the amount of gold that is then covered by those shares. As is evident from the creation and redemption process, most market participants are not allowed to redeem shares or receive gold from the Trust, which distinguishes the Gold Shares from a typical vault or warehouse receipt.

The Trust is a grantor trust established under New York law under a trust indenture (“the Trust Indenture”). All Gold Shares are of the same class with equal rights and privileges. Each Gold Share is transferable, is fully paid and non-assessable and entitles the holder to vote on certain limited matters, including removal of the Trustee, termination of the Trust, and certain amendments to the Trust Indenture.

The Bank of New York is the trustee for the Trust (the “Trustee”). As described more fully in the Trust Indenture, the Trustee is responsible for general day-to-day administration of the Trust. The Trustee is responsible for selling the Trust’s gold when necessary to cover Trust expenses, calculating the net asset value of the Trust and Gold Shares, receiving and processing orders from Authorized Participants to create and redeem baskets of shares, and selecting, removing and monitoring the custodian of the gold held by the Trust.

The Securities and Exchange Commission (the “Commission” or “SEC”) approved the registration of the Gold Shares and the listing of the Gold Shares on the NYSE in 2004. The Gold Shares have been actively traded on the NYSE since November of 2004.

2. GOLD SHARES AS SECURITIES

a. Statutory Definition of “Security”

“Security” is defined in Section 3(a)(10) of the Exchange Act of 1934, as amended (“Exchange Act”), which reads, in relevant part:

The term “security” means any note, stock, treasury stock, security future, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, **transferable share**, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security ... or in general, **any instrument commonly known as a ‘security’**....

15 U.S.C. § 78c(a)(10) (emphasis added).

Section 2(a)(1) of the Securities Act of 1934, as amended (“Securities Act”), defines “security” in substantially identical terms, including use of the phrases highlighted above in the Exchange Act definition. The U.S. Supreme Court has stated that these “virtually identical” definitions will be treated as identical in its decisions dealing with the scope of the term. E.g., *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 686 n.1 (1985).

b. Analysis

i. Commonly Known as a Security

The Gold Shares fall under the definitions of a security in the Exchange Act and Securities Act through the portion of the definition that states that a security is “any instrument commonly known as a ‘security.’”

(A) Gold Shares Meet the Definition of “Security” Under Uniform Commercial Code

First, the Gold Shares meet the definition of a “security” under Article 8, “Investment Securities,” of the Model Uniform Commercial Code. “Security” is defined in Section 8-102(a)(15) of the Model Uniform Commercial Code (“UCC”) as follows:

“Security,” except as otherwise provided in Section 8-103, means an obligation of an issuer *or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:*

(i) which is represented by a security certificate in bearer or registered form, or *the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;*

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(Emphasis added.)

This definition is included in Article 8 of the UCC adopted by the State of New York, where the Trust is organized.

The Gold Shares meet the above definition. They represent units of fractional undivided beneficial interest in and ownership of a trust that holds gold for investment purposes, and thus represent “a share, participation, or other interest in an issuer or in property or an enterprise of an issuer.” They also meet the specific enumerated conditions in the definition, in that the Gold Shares: (i) may be transferred by book-entry through the Depositary Trust Corporation (“DTC”); (ii) are issued as a single class, with equal rights and privileges; and (iii) are actively traded on a securities exchange, the NYSE, and have been for several years.

(B) Trust Certificates are Commonly Known as Securities

The Gold Shares, like other trust-issued certificates listed on a national securities exchange, are commonly called “shares,” and have the same attributes as other trust-issued certificates. Specifically, Gold Shares represent ownership in a legal entity, a trust; are freely transferable; and confer certain voting rights upon their owners (“Shareholders”).

In particular, Gold Shares are similar to shares issued by real estate investment trusts issued under trust agreements which are publicly traded among investors after being listed by a stock exchange. It has been stated that “[t]here is no question that interests in real estate investment trusts are securities.” 2 Louis Loss & Joel Seligman, *Securities Regulation* 1134 (3d ed. 1999). This is because, like the Gold Shares, such shares bear all of the common characteristics of a security and thus, have always been treated as such.

Case law supports the conclusion that trust certificates are commonly known as securities. The Supreme Court has stated that the term security “embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of money of others on the promise of profits.” SEC v. W.J. Howey Co., 328 U.S. 293, 299 (1946). The Supreme Court has also stated that “[I]n searching for the meaning and scope of the word ‘security’ in the Act[s], form should be disregarded for substance and the emphasis should be on economic reality.” Tcherepnin v. Knight, 389 U.S. 332, 336 (1967).

Published court opinions involving certificates issued by an investment trust seldom address whether such certificates are securities, but rather implicitly treat trust certificates as securities without challenge and refer to trust certificates as shares. *See, e.g., Beebe v. Pacific Realty Trust*, 578 F. Supp. 1128 (D.Ore. 1984) (describing interests issued by a trust as “shares” and the owners of such interests as “shareholders”). Those cases that have addressed the issue clearly hold that trust certificates (shares) are securities. *See, e.g., SEC v. Jones*, 12 F. Supp. 210 (S.D.N.Y. 1935) (holding that participation trust certificates in oil royalties are securities); SEC v. Timetrust, Inc., 28 F. Supp. 34 (N.D.Cal. 1939) (treating certificates as securities when such certificates evidenced interests in a trust arrangement under which the trustee would commingle investor funds to buy and sell certain common stock).

(C) SEC Approval of Listing of Gold Shares

The Gold Shares were registered with the SEC under the process for registration of securities under the Securities Act of 1933 (the “Securities Act”). The Form S-1 registration statement was filed with the Commission under Rule 424 of the Securities Act.

In addition, the Commission has approved the NYSE’s application to list and trade the Gold Shares, including the NYSE’s classification of Gold Shares as securities under NYSE Rule 1300(c). *See* SEC Release No. 34-50603 (October 28, 2004), 69 FR 64614 (November 5, 2004). Furthermore, the Trust registered the Gold Shares with the NYSE pursuant to Section 12 of the Exchange Act. During its review of the registration statement and NYSE filing, the Commission specifically addressed whether the Gold Shares constituted securities. Thus, in approving the registration and listing of the Gold Shares, the Commission implicitly concluded that the Gold Shares were securities under the Exchange Act.

The Commission’s decision lends support for the position that Gold Shares are securities under the Exchange Act. Although an agency’s decision as to whether a financial instrument is a security is not dispositive, *see, e.g., Chicago Mercantile Exchange v. SEC*, 883 F.2d 537 (7th Cir. 1989), the Commission’s decision should be entitled to judicial deference. *See Chevron*

U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) (holding that a court must generally defer to an agency's construction of a statute that it administers when the statute is silent or ambiguous regarding a specific issue, Congressional intent is unclear regarding the issue, and the agency's answer is based on a permissible construction of the statute).

(D) SEC Approval of Commodity-Based Trust Issued Receipts as Securities

American Stock Exchange ("Amex") Rule 1200A sets out the listing standards for "Commodity-Based Trust Shares." In relevant part, Amex Rule 1200A and related commentary define "Commodity-Based Trust Shares" as "a security" in the form of a trust issued receipt ("TIR") "issued by a trust (the 'Trust') that holds a specified commodity deposited with the Trust." (Amex Rule 1200A(b)(1) and commentary .01.) On January 19, 2005, the SEC approved Amex Rule 1200A – *including its classification of commodity-based TIRs as securities* – along with Amex's listing of iShares COMEX Gold Trust Shares ("iShares Gold Shares") pursuant to the new rule, based on a finding that the rule and the procedures for listing iShares Gold Shares are consistent with the Exchange Act. (Release 34-51058.) The iShares Gold Shares represent beneficial ownership interest in the gold held by the trust, and thus represent essentially the same type of economic interest in trust assets – gold -- as the certificates issued by the Trust which comprise the Gold Shares.

(E) Treated as Securities under Exchange Act Definition of Issuer and SEC Rule 3a11-1

"Issuer" is defined in Section 3(a)(8) of the Exchange Act, which reads, in relevant part:

[W]ith respect to **certificates of interest or shares in an unincorporated investment trust** not having a board of directors or of the fixed, restricted management, or unit type, the term 'issuer' means the person or persons performing the acts and assuming the duties of depositor or manager **pursuant to the provisions of the trust or other agreement** or instrument under which **such securities are issued....**

15 U.S.C. § 78c(a)(8) (emphasis added). Consistent with the analysis above, this definition indicates that Congress intended that shares of an investment trust (similar to the Gold Shares issued by the Trust) be treated as "securities" issued by the trust.

In addition, SEC Rule 3a11-1, promulgated by the Commission under the Exchange Act, defines "equity security" by including many of the above-listed categories (*e.g.*, "stock" and "transferable share") as well as to include within the definition any "certificate of interest in a business trust." This definition too, would seem to encompass the Gold Shares at issue.

ii. " Transferable Share"

The Exchange Act does not define the term "transferable share." However, we believe it is reasonable to read this term to include Gold Shares, which are shares issued by the Trust

representing beneficial interest in the Trust's assets. Gold Shares are transferable by Shareholders as long as the transfer is made through the Depository Trust Corporation ("DTC"). Moreover, as explained above, the Gold Shares are publicly traded on the NYSE. Thus, in our view, Gold Shares are reasonably classified as "transferable shares" under any common reading of this phrase. We have reviewed case law, legislative history, and guidance published by various federal agencies and have found nothing contradictory to a conclusion that Gold Shares are transferable shares within the statutory definition of a security.