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May 5, 2008
By fax to 202-872-7565

Freedom of Information Office
Board of Governors of the Federal Reserve System
20th & C Street, N.W.
Washington, D.C. 20551

Re: **FREEDOM OF INFORMATION ACT APPEAL**
Appeal of Federal Reserve Board's April 9, 2008 Response to and Denial of GATA's FOIA Request of December 6, 2007 (Request Number 2007100075)

Dear Sir/Madam:

We represent Gold Anti-Trust Action Committee, Inc. ("GATA"), 7 Villa Louisa Road, Manchester, Connecticut 06043-7541.

FOIA Appeal

This letter constitutes GATA's appeal of the response of the Board of Governors of the Federal Reserve System ("FRB") to GATA's December 6, 2007 request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 (copy attached). Your agency's response came in two parts:

- a letter of response, dated April 9, 2008 (hereinafter referred to as "the denial letter," copy enclosed); and
- a package of certain disclosed documents (identified as including 914 pages), picked up in person by us on April 23, 2008, together with notification of a partial fee waiver, and an invoice for $81.40, which has since been paid.

According to your letter, the enclosed FRB's Rules Regarding Availability of Information, and FRB regs. section 261.13(i), if GATA believes that it has a legal right to any information that is being withheld, it may file a written appeal "within 10 working days of the date ... on which documents in partial response to the request were transmitted to the requester...." Therefore, GATA has until Wednesday, May 7, 2008, to submit this appeal, and the appeal on this day,

May 5, 2008, is therefore timely. These FRB Rules provide for faxing this appeal to the FRB's Freedom of Information Office at (202) 872-7565, which is being done.

Documents Request

On December 6, 2007, on GATA's behalf, we submitted by fax the original FOIA request to the FRB, which can be summarized as requesting copies of all records in the possession or control of the Federal Reserve Board relating to, explaining, denying or otherwise mentioning "gold swaps" involving the United States of America or any agent thereof, during the time period January 1, 1990, to December 6, 2007, the date of the request.

FRB confirmed receipt of our request by letter dated December 6, 2007 (copy attached). By letter dated January 8, 2008 (copy attached), FRB extended the period of its response until January 22, 2008.

As stated above, FRB responded both by letter dated April 9, 2008, and by partial disclosure of documents on April 23, 2008.

Documents Subject to Appeal

1. **Completely-Withheld Documents.** The denial letter of April 9, 2008, states that, in addition to certain withheld information excised from or redacted on the documents being provided to GATA, which amount of such information being withheld is said to "be apparent ... from the face of the documents being provided," **137 full pages were withheld by FRB.**

There is no indication, however, either in the denial letter or any other document transmitted to GATA, as to **what** those withheld documents are, or as to the **basis** for any claim of exemption on which they are being withheld.

Since neither the withheld documents nor the basis for their exemption from disclosure have been described, it is **impossible to know** that any claimed exemption might apply.

We submit, therefore, **no valid exemption having been asserted**, let alone proved, that no exemption would apply, and that the decision to withhold these documents must be reversed.

2. **Partially-Withheld Documents.** Those partially-redacted documents that were disclosed by FRB contain references — usually in the apparent location of the redacted material — to the **number of the FOIA exemption** (*e.g.*, "(b)(2)") that FRB cites to support its decision not to disclose each document in its entirety. However, FRB has **not** furnished any explanation concerning the **nature of that material**, and GATA therefore **cannot reasonably evaluate** FRB's assertion of the claimed exemption.

GATA respectfully submits that the FRB procedure is improper because it does **not include any description** of the withheld information, and GATA is left to speculate about what information has been excised.

We submit, therefore, that **no basis for withholding has been asserted**, and the decision to withhold such information without an adequate description must be reversed.

3. **Document 74 — Additional Arguments.** Document 74 is an apparent e-mail transmittal from Steven A. Weinberg to Ann Misback, attaching an inquiry from one Andrew Hepburn concerning "swap puts." The Hepburn inquiry, which is part of Document 74, has been disclosed, but both the substance of the Weinberg e-mail and certain other material at the bottom of Document 74 were redacted.

Withholding was predicated on FOIA exemptions (b)(5) and (b)(6). It does not appear possible that the substance of Mr. Weinberg's e-mail would be exempt based upon the (b)(5) deliberative process exemption — indeed, it appears that the Weinberg e-mail is directly responsive to the Hepburn inquiry. Further, the FRB furnished no explanation for the claimed (b)(6) exemption, and we have no idea how that claim could relate to whatever information was redacted.

Therefore, we submit that **no valid basis for withholding has been asserted**, and the decision to redact and withhold portions of Document 74 must be reversed.

Inapplicability of Exemptions Claimed

For the reasons discussed above, the FRB's denial of GATA's FOIA request does not provide sufficient information to know whether any of the claimed exemptions apply, and without an adequate showing being made, it is submitted that the withholding is in error and must be reversed. However, we add these comments on the three exemptions on which all withholding is based.

FRB regs., section 261.14(a)(4) **Trade secrets; commercial or financial information (FOIA exemption (b)(4))** would not appear to apply, as the relationship between the FRB and the nation's gold supply is a matter of public trust, not based on any private commercial or financial relationship. Moreover, it appears that there are no commercial trade secrets associated with FRB's responsibility to the public with respect to the nation's gold stocks.

FRB regs., section 261.14(a)(5) **Inter- or intra-agency memorandums (FOIA exemption (b)(5))** could conceivably apply to certain documents being withheld, but the basis for such claim has not been established. Moreover any such claim could be waived, as set forth below.

FRB regs., section 261.14(a)(6) **Personnel and medical files (FOIA exemption (b)(6))** would not appear to apply. Certainly no "medical files" relate to the nation's gold supply, and it is not clear how "an unwarranted invasion of personal privacy" could result from providing any of the requested documents to GATA and the American people.

Conclusion

Appeal. For the reasons set forth above, GATA hereby appeals the FRB's denial of GATA's FOIA request. We respectfully urge you to grant GATA's appeal and order the release of the documents we have requested, and to do so at the earliest possible date.

Discretionary Release. Lastly, even if any of the documents being withheld are arguably covered by an exemption, due to the importance of the information being sought, relating to the confidence of the American people in the integrity nation's gold stocks, GATA would ask the FRB to make a "discretionary release" of these documents "in the public interest," as authorized by FRB regs., section 261.14(c).

Vaughn Index. If the documents are not disclosed in full, to facilitate consideration of this appeal, GATA requests FRB to provide a Vaughn Index of any documents completely or partially withheld, identifying the nature and date of each document, the FOIA exemption claimed, and the basis for each such claim.

Please do not hesitate to contact the undersigned, or William J. Olson of this office, by telephone, if it would assist in the proper resolution of this matter.

Sincerely yours,

John S. Miles

JSM:mm
Enclosures
cc: Gold Anti-Trust Action Committee, Inc.