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August 20, 2009

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 Board of Governors' August 5, 2009 Response to and Denial of
GATA's FOIA Request of April 14, 2009 (Request No. 2009100397)

Dear Sir or 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 administrative appeal of the denial by the Board of Governors of the Federal Reserve System ("FRB") of GATA's request for records dated April 14, 2009, under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

Timeliness of Appeal

The FRB's response came in two parts:

- FRB's letter of response dated August 5, 2009, received by us August 7, 2009, a copy of which is enclosed, hereinafter referred to as "the FRB denial letter."
- A package of certain disclosed documents (identified as including 173 pages), transmitted to us on August 7, 2009, and received by us on August 10, 2009, together with notification of fee waiver.

According to your letter, the FRB's Rules Regarding Availability of Information which were enclosed, 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....” Accordingly, GATA has until Friday, August 21, 2009, to submit its appeal, and this appeal is therefore timely. The FRB Rules provide for faxing this appeal to the FRB’s Freedom of Information Office at the fax number stated above.

GATA’s Records Request

On April 14, 2009, 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”¹ involving the United States of America or any agent thereof, during the time period January 1, 1990, to April 14, 2009, the date of the request. A copy of the request is attached.

FRB confirmed receipt of our request by letter dated May 12, 2009 (copy attached) and extended the period of its response until May 27, 2009.

As stated above, FRB responded both by the FRB denial letter dated August 5, 2009, and by partial disclosure of documents transmitted on August 7, 2009.

Documents Subject to Appeal

Four categories of documents are the subject of this appeal.

1. Completely-Withheld Documents (137 pages). The FRB denial letter of August 5, 2009, states that 137 full pages — the same pages withheld in full from GATA’s December 6, 2007 request — again were withheld by FRB, but there is no clear indication as to **the nature**

¹ By way of background, the concept of **gold swaps** are certainly not unknown to **monetary authorities**, such as the Federal Reserve Bank. For example, a recent paper published by an employee of the International Monetary Fund states: “In the current literature, **gold swaps** and gold deposits (loans) are considered as reverse transactions.... However, the special nature of monetary gold as a financial instrument may require further consideration. Currently, the Balance of Payments Manual, fifth Edition (BPM5) does not elaborate on **gold swaps** and does not include any explanation on gold deposits/loans.... ‘In **gold swaps**, gold is exchanged for cash and a firm commitment is made by the **monetary authorities** to repurchase the quantity of gold exchanged at a future date.’ Such **gold swaps** generally are undertaken between **monetary authorities** and with financial institutions....” *See* IMF Committee on Balance of Payments Statistics Reserve Assets Technical Expert Group (RESTEG) Issues Paper (Resteg) # 11, Treatment of Gold Swaps and Gold Deposits (Loans), Prepared by Hidetoshi Takeda, IMF Statistics Department (April 2006), p. 1 (emphasis added). <http://www.imf.org/external/np/sta/bop/pdf/resteg11.pdf>.

of those withheld documents are, or as to the **basis** for any claim of exemption on which they are being withheld.

The FRB denial letter simply indicates that the documents have been reviewed by the FRB staff, together with a general description of certain kinds of allegedly-exempt information contained in the documents, but without any description of the basis for the claimed exemptions within the context of any particular document(s), and the FRC has refused to provide a listing of the withheld documents, such as a Vaughn index. 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 demonstrated, that no exemption would apply, and that the decision to withhold these documents must be reversed.

2. Apparently Redacted Sections of Certain Documents That Were Produced.

The FRB produced 173 pages in response to GATA's FOIA request, apparently consisting of documents from 1991 and 1995 meetings of the FRB. The FRB purported to release the totality of these 173 pages of documents.

However, upon review, it appears that there are substantial gaps in the documents provided. For example in the records labeled 1/31-2/1/95, there is a gap at page 118. There is another gap in the following page (119). Still another appears, beginning on page 127 and continuing on to page 128. Two other gaps appear on page 129. Another appears on page 139. Copies of the pages containing such apparent gaps are enclosed. At least some of these gaps appear to be deliberate undisclosed redactions by the FRB.

Records being withheld must be identified pursuant to FOIA, but there were no indications from the FRB that the documents had been redacted in any way. If portions of these documents have been redacted by FRB, and therefore withheld from GATA, the FRB has not asserted any basis for withholding and should provide the unredacted records to GATA forthwith.

3. New Documents That Were Missing in 2007. The FRB's response indicates that it has improperly withheld documents from GATA in the past. The FRB has now produced 173 pages, described above, in response to GATA's April 14, 2009 FOIA request, which were within the scope of GATA's earlier December 6, 2007 request, but which were not produced at that time. Among 98 pages produced by the FRB in response to GATA's 2007 request, it did not produce the 173 pages that were produced in response to GATA's 2009 FOIA request. No explanation has been provided for this earlier non-production. It is submitted that this is evidence of the FRB's failure to adequately search and/or disclose responsive documents, and that presumably there are other records responsive to GATA's 2009 FOIA request that have not been produced.

Furthermore, the FRB acknowledges that it has copies of records “that originated with or are located on the Treasury website.” *See* FRB denial letter, page 2. It is submitted that such copies should be disclosed, even if they “originated with or are located on the Treasury website.” The FRB should be required to disclose all records that it possesses, even if the FRB is not the originating agency, unless such records are subject to a statutory FOIA exemption. Responsibility for coordinating with the originating agency should have been assumed by the FRB. Moreover, documents on a website are presumptively not subject to FOIA, having already been disclosed to the public. Having failed to coordinate with the Treasury Department, the FRB has asserted no statutory basis for withholding these records, and therefore the FRB should provide these records to GATA forthwith.

4. Known, Undisclosed FRB Documents.

There may be any number of records responsive to our request that have not been identified by the FRB. A recent Google search of www.federalreserve.gov for the words “Gold Swaps,” for example, revealed the existence of the following document containing the words “gold swaps” that falls within the date range of the request (January 1, 1990 to April 14, 2009):

- Brahima Coulibaly, “Effects of Financial Autarky and Integration: The Case of the South Africa Embargo,” Board of Governors of the Federal Reserve System, International Finance Discussion Papers, No. 839, Sept. 2005.²

This document was neither provided in response to our request nor identified by the FRB as being withheld, and would appear to provide further evidence concerning the apparent inadequacy of the search performed by the FRB. Based upon the FRB’s failure to identify that document, as well as the FRB’s failure to identify the records (discussed in #3, above) in response to our 2007 FOIA request, we submit that there is substantial evidence concerning the inadequacy of the FRB’s searches to date, and that the FRB should be required to provide adequate documentation of its FOIA search methodology, efforts and results with respect to GATA’s 2007 and 2009 FOIA requests.

² This FRB Discussion Paper discusses gold swaps, as follows: “The [South African] government had, reportedly, facilitated foreign borrowing by reassuring foreign banks and by stabilizing the indebtedness through **gold swaps**, or by borrowing from the IMF.” P. 5. (emphasis added.) It is not inconceivable that some of the referenced South African “gold swaps” occurred with the FRB, or that the FRB has records of what these gold swaps were. In either case, the documents should have been disclosed.
<http://www.federalreserve.gov/pubs/ifdp/2005/839/ifdp839.htm>

Inapplicability of Exemptions Claimed

In addition to the reasons set out above, GATA adds the following comments regarding the two exemptions on which the FRB appeared to rely exclusively in withholding all of the records:

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, pursuant to the exercise of the FRB's FOIA power of discretionary release.

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). The FRB denial letter has expressly denied such discretionary release, but we urge you to reverse that determination.

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. The FRB denial letter has expressly denied such an index, but we urge you to reverse that determination

In GATA's FOIA request of April 14, 2009, we expressly called the FRB's special attention to the message of President Obama, in his January 21, 2009 Memorandum for the Heads of Executive Departments and Agencies, and the President's directive that the FOIA "should be administered with a clear **presumption**" and that, where there is doubt, "**openness** prevails." We submit that such a policy is strong support for granting our requests for discretionary release and for preparation of a Vaughn Index.

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

Sincerely yours,

William J. Olson

WJO:mm
Attachments

cc: Gold Anti-Trust Action Committee, Inc.