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April 14, 2009

(By fax to 202-622-3895)

Mr. Hugh Gilmore
Departmental Offices
Disclosure Services
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: Freedom of Information Act (FOIA) Request of
Gold Anti-Trust Action Committee, Inc.
7 Villa Louisa Road
Manchester, Connecticut 06043-7541

Dear Mr. Gilmore:

We represent Gold Anti-Trust Action Committee Inc. ("GATA"). GATA hereby submits this new request under the Freedom of Information Act.

We are aware that various bureaus exist within the U.S. Department of the Treasury, and it is possible that certain of the records herein requested could be maintained by one or more of those bureaus, and not by the Treasury Headquarters (the departmental offices). We understand, however, that no separate FOIA request is required because you will forward any such request to the appropriate bureau for processing, and that we will be advised. Please let us know if this is not correct.

GATA is a nonprofit corporation organized under the laws of Delaware, is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, and is classified as a public charity. GATA is an educational organization engaged in a variety of research and public education activities relative to economic and monetary policy, with a particular focus on the price and supply of gold. GATA monitors the policies and actions of the United States with respect to gold and other precious metals, and educates the public concerning governmental and nongovernmental efforts to intervene in precious metals markets. (For further information on GATA, see www.gata.org.)

The records sought by GATA in this request are intended to be the basis of educational information that will be released to the public, and are likely to contribute significantly to public understanding of the operations or activities of the government.

In making this request, we want to call your 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 following directive:

The Freedom of Information Act should be administered with a clear **presumption**: In the face of doubt, **openness** prevails..... [i]n responding to requests under the FOIA, executive branch agencies ... should act **promptly** and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a **presumption in favor of disclosure**, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. [74 *Fed. Reg.*, No. 15, pp. 4683-84, (Jan. 26, 2009) (emphasis added); http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/.]

We look forward to the Department of the Treasury's processing this new request "promptly," and with a "presumption in favor of disclosure," in accordance with this Presidential directive. *See also* Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies (March 19, 2009), <http://www.usdoj.gov/ag/foia-memo-march2009.pdf> (issued pursuant to the President's January 21, 2009 FOIA Memorandum, underscoring our nation's fundamental commitment to open government).

Background

GATA submitted a FOIA request to your office on December 6, 2007, seeking records in the possession or control of the Department of Treasury 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.

By letter dated June 18, 2008, Timothy Dulaney of the Department of the Treasury **released a one-page e-mail** in response to GATA's FOIA request. The **only other document** that was identified as being responsive to GATA's request — a document said to be responsive to GATA's request for documents related to the legal authority for gold swaps and records related to procedures for gold swaps that may take place in the future — **was withheld** under

exemption 5 of FOIA. This request repeats GATA's December 6, 2007, request, including its request for the record that was withheld, and adds other requests, as indicated below.

Aside from the long period of non-response in processing GATA's 2007 FOIA request, the Treasury Department's response was disappointing because of the inexplicable failure to identify virtually any documents — from 1990 to the end of 2007 — mentioning, explaining, or even referring to “gold swaps.” And this was so despite the fairly prominent mention and discussion of “gold swaps” on the Treasury Department's website.

For the reasons set out above, the Treasury Department's response to GATA's 2007 FOIA request does not inspire credibility or confidence. In view of the new Presidential directive, GATA repeats and expands its earlier request in this new request. Thus, the present request seeks the same categories of records that GATA previously sought, although the time frame is now expanded and we have added certain new categories of records that are being sought.

Moreover, if the requested records are not disclosed in full, GATA requests the Treasury Department 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. We understand that such an index may not be required as a matter of law at this stage of the FOIA process, but we would hope that, in the spirit of President Obama's Memorandum on FOIA referenced above, it will be provided.

Clarification

In an effort to simplify this request and avoid any possible confusion, the following instructions clarify and govern this FOIA request:

1. “Gold swaps” or “Gold swapped” is defined, as each term is used by the U.S. Department of the Treasury on the Department of the Treasury website, as described below.
2. “Department of Treasury website” means www.treasury.gov and www.treas.gov.
3. “Records,” as used herein, means and includes, without limitation, any information that is an agency record subject to the requirements of the Freedom of Information Act, in any format, including an electronic format.

Records Request

On behalf of GATA and pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Department of the Treasury's implementing regulations, 31 C.F.R.

§ 1.1, *et seq.*, we hereby request copies of all records in the possession or control of the Department of Treasury relating to, explaining, denying, or otherwise mentioning:

- “gold swap,”
- “gold swaps,”
- “gold swapped,”
- “proposed gold swap,”
- “proposed gold swaps,” or
- “proposed gold swapped.”

during the time period **January 1, 1990, to the date of this request** either

- (a) **involving** the United States of America, or any department, agency or agent thereof, or
- (b) **not involving** the United States of America,

Without limiting the foregoing, but in an effort to particularize certain categories of records covered by this request, we request copies of the following:

1. All records defining, in whole or in part, or explaining or referring to “gold swapped,” as that term is used in describing “official reserve assets” in the Treasury Department’s “U.S. International Reserve Position” press releases issued beginning May 14, 2007.

This series of press releases is illustrated by the most recent such release of April 14, 2009 (number 2009-4-14-18-49-3770), entitled “U.S. International Reserve Position” found on the Department of Treasury website, at line I.A.(4) (using the term “gold swapped”) <http://www.treas.gov/press/releases/200941418493770.htm> (said line I.A.(4) is hereinafter referred to as “the gold swapped line-item”).

2. All records demonstrating the accuracy of “the gold swapped line-item” (*i.e.*, “gold (including gold deposits and, if appropriate, gold swapped)”) in the above-referenced press release of April 14, 2009.

3. All records defining, in whole or in part, or explaining or referring to “gold swaps” as that term is used in the following answer in “FAQs: International, Gold & Silver” section of the Department of Treasury website, at www.treas.gov/education/faq/international/goldsilver.shtml (said reference being hereinafter referred to as “the FAQ gold swap item”):

“Neither the ESF, nor the Treasury Department, nor the Federal Reserve made any gold swaps during this period.”

4. All records relied upon in making, supporting, or contradicting the above-quoted representation in the FAQ gold swap item (*i.e.*, that “Neither the ESF, nor the Treasury Department, nor the Federal Reserve made any gold swaps during this period”).

5. All records identifying, explaining, or referring to either (a) the type of transaction, or (b) specific transactions encompassed within the term “gold swapped” in the gold swapped line-item, as well as in the term “gold swaps” as used in the FAQ gold swap item.

6. All records identifying, explaining or referring to, in whole or in part, the following change in the Treasury Department’s press releases:

- Prior to May 11, 2007, the line-item accounting for United States’ gold reserves appeared as: “(4) Gold stock.” See Treasury Department press release of May 8, 2007, <http://www.treas.gov/press/releases/2007581342179779.htm>.
- On and after May 11, 2007, the line-item accounting for United States’ gold reserves appeared and now appears as follows: “I.A.(4) gold (including gold deposits and, if appropriate, gold swapped).”

7. All records identifying or referring to the legal authority for “gold swap,” “gold swaps,” or “gold swapped” of any kind under United States law, including any “gold swap,” “gold swaps,” or “gold swapped” that have actually occurred, or are planned for the future.

8. All records identifying or referring to the legal authority for “gold swap,” “gold swaps,” or “gold swapped” of any kind under the law of any country other than the United States, including any “gold swap,” “gold swaps,” or “gold swapped” that have actually occurred or are planned.

9. All records describing, in whole or in part, or referring to, the procedure by which “gold swap,” “gold swaps,” or “gold swapped,” whether included in the gold line-item or not,

- a. actually have taken place, or
- b. may take place in the future.

10. All records identifying, explaining, referring to, or describing, in whole or in part, any “gold swap,” “gold swaps,” or “gold swapped” involving the United States, including, but not limited to, any agent, agency, or instrumentality of the United States, that have taken place during the period January 1, 1990 to the date of this request.

11. All records identifying, explaining, referring to, or describing, in whole or in part, any “gold swap,” “gold swaps,” or “gold swapped” of any country (or political subdivision) and/or any individual or entity that have taken place during the period January 1, 1990 to the date of this request.

12. All records identifying, explaining, describing, or referring to United States policy or practice, including, but not limited to, the policy or practice of the Department of the Treasury, the Federal Reserve System, and/or Federal Reserve Board of Governors, with respect to “gold swap,” “gold swaps,” or “gold swapped.”

13. All records setting out requests for information with respect to gold swaps and/or any of the matters set forth in request numbers 1-12 above, during the period January 1, 1990 to the present, including, but not limited to, (a) requests from members of Congress, (b) requests from non-U.S.-government-related persons and entities, and (c) FOIA requests other than GATA's FOIA request of December 6, 2007.

14. All Treasury Department responses to the requests referenced in request number 13.

15. All records relating to and/or mentioning the requests identified in request number 13, and all records relating to and/or mentioning the responses identified in request number 14.

16. The records withheld by the Treasury Department in response to GATA's December 6, 2007 FOIA request.

17. All records of FOIA requests submitted by other persons which requested records involving: (a) the GATA FOIA request of December 6, 2007; or (b) the records provided to GATA in response to its FOIA request of December 6, 2007 since December 6, 2007.

18. FOIA requests made by persons or entities other than GATA for records relating to "gold swap," "gold swaps," or "gold swapped" since January 1, 1990.

We ask that copies of the documents be mailed to the undersigned as soon as possible to the following address:

William J. Olson
William J. Olson, P.C.
370 Maple Avenue West, Suite 4
Vienna, VA 22180-5615

Fee Waiver Request

We request that the search, review, and copying fees be waived as provided under section 5 U.S.C. § 552(a)(4)(A) and 31 C.F.R. § 1.7(d). As indicated above, GATA is a nonprofit organization seeking the requested records in an effort to make information available to the public, which information is likely to contribute significantly to public understanding of the operations or activities of the government, and is not sought primarily in the commercial interest of GATA. The fees should be waived because release of the requested records clearly is in the public interest, as the requested information is necessary to have public understanding of the operations or activities of the government. Indeed, the Treasury Department itself on its website uses the undefined terms "gold swapped" and "gold swaps." GATA seeks more information than the Treasury Department thus far has made available, but the public interest in such information is indisputable.

The release of the requested documents is not primarily for any commercial interest or purpose of GATA. GATA has already disseminated information about the issue of “gold swaps” involving the United States by mail, e-mail, and through its website. It is anticipated that GATA will disseminate to the public any relevant information it obtains as a result of this request, through its website or otherwise.

If this waiver request is denied, we would appreciate an estimate of the costs involved in procuring any of the requested documents if the cost exceeds \$1,000. If the costs do not exceed \$1,000, however, we do not need an estimate, and we will guarantee payment.

Conclusion

Thank you for your prompt attention to this request. We look forward to hearing from you within 20 business days, in accordance with 31 C.F.R. § 1.5(h). As we understand it, Section 7 of the OPEN Government Act of 2007, Pub. L. 110-175, requires the Treasury Department to assign an individualized tracking number to this request, if it will take longer than ten days to process, and to provide that tracking number to us. In addition, a telephone line or Internet service must be established by the Treasury Department to allow us, using that tracking number, to inquire about the status of this request, including the date on which you received it and an estimated date on which you will complete action on it. *See also* www.usdoj.gov/oip/foiapost/2008foiapost30.htm.

Sincerely yours,

William J. Olson

WJO:mm

cc: Chris Powell, Secretary
Gold Anti-Trust Action Committee

Edwin Vieira, Jr., Esquire