

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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 GOLD ANTI-TRUST ACTION )  
 COMMITTEE, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BOARD OF GOVERNORS OF )  
 THE FEDERAL RESERVE )  
 SYSTEM, )  
 Defendant. )  
 \_\_\_\_\_ )

Civil Case No. 09-02436  
Judge Ellen S. Huvelle

**DECLARATION OF TIMOTHY FOGARTY**

I, Timothy Fogarty, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am a Vice President in the Markets Group at the Federal Reserve Bank of New York (the "Bank"). I submit this declaration in support of the motion for summary judgment submitted by the Board of Governors of the Federal Reserve System (the "Board of Governors" or the "Board") in the above-referenced matter. The facts stated herein are based on personal knowledge and on information obtained in connection with my official duties or responsibilities.
2. I have been employed at the Bank since 1980 and have spent the majority of my career in the Central Bank and International Account Services Function (CBIAS) which is part of the Bank's Markets Group. I joined CBIAS in 1980 and I am now in the position of Co-

Head of the Function, responsible for overseeing the operations of accounts held at the Bank by approximately 250 foreign central banks (“FCBs”) and other official international customers. Through these accounts, the Bank provides payments services, custodial services for securities and gold, and investment services.

3. I received a Bachelor of Science in Business Administration degree from Manhattan College in 1980.
4. I have been informed that the Board of Governors received a request pursuant to the Freedom of Information Act seeking records “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 (b) not involving the United States of America” (the “FOIA request”). The FOIA request also sought the documents that had been withheld in response to a similar request made by the requester in 2007. I am informed that one of the documents responsive to the 2007 request was a June 9, 1997 memorandum to the Board of Governors from senior Board staff regarding a proposal from the Bank to open and maintain a special purpose gold custody account at the Bank for a U.S. bank at the request of an FCB, and related matters. I have reviewed this document and am familiar with its contents. The document is identified as Document 11 on the Vaughn index submitted in this action. Portions of Document 11 identify particular FCBs and the details of transactions or account arrangements at the Bank. I am informed that these portions of Document 11 were withheld from production to the requester with the designation “Redacted – (b)(4).” This declaration is offered to explain the basis of withholding the redacted information.

5. As an officer of the Bank responsible for the CBIAS Function, I am familiar with the banking services provided to FCBs by the Bank, including custodial services for securities and gold, and the oversight by the Board of Governors of such activities.
6. Central banks around the world have long established account relationships in order to accommodate international monetary transactions and hold their foreign reserve and gold assets. FCBs deposit funds and securities, typically in the form of dollars and U.S. Government and agency securities, in accounts at the Bank to allow settlement of the foreign government's U.S. dollar obligations and investment transactions. Foreign official entities conduct their country's official business and reserve management activity in U.S. dollars, using the Bank as their custodian and correspondent bank. These foreign monetary authorities also routinely use the services of other central banks as well as private sector custodians as there is no U.S. law or regulation requiring that FCBs use the Bank's accounts. Banks acting as custodians, including the Bank, do not publicly disclose customer transactions. Like any bank customer, FCBs expect that their account information at another central bank will be protected from disclosure. In addition to holding U.S. dollar-denominated assets, the Bank also provides vault facilities for the deposit and safekeeping of gold.

**The Gold Custody Function at the New York Fed**

7. The Bank holds approximately 213 million troy ounces of gold for approximately 36 foreign governments or agencies of foreign governments, FCBs, and international organizations (foreign governments, FCBs and international organizations are hereinafter referred to as “official international holders”). The holding of gold predates the use of national currencies as the basis for a country’s national treasure, and FCBs, foreign governments and multilateral international institutions have historically held significant amounts of monetary gold. This gold often represented a strategic national asset and the decision as to where to hold and store the gold has normally taken into consideration, first and foremost, the quality of the safety and confidentiality of the gold custodian. Because of the Bank’s long-established record of safety and security, as well as the strict confidentiality with which the Bank maintains FCB and foreign government holdings, these entities often have chosen the Bank as custodian for this fundamental national asset. No U.S. law or regulation requires official international holders to have accounts at the Bank or to hold any assets, such as cash, securities or gold, at the Bank. These entities may instead avail themselves of the services offered by private custodial banks (such as JP Morgan Chase Bank, HSBC Bank, and others) or certain official providers of gold custody services (such as the Bank for International Settlements or the Bank of England).
8. The Bank holds gold in its gold vault subject to the Bank’s policy of strict confidentiality. Compartments in the vault are identified by number, rather than by the countries that own the gold within them, in order to keep each country’s gold holdings private. Only a few Bank employees know the identity of the gold owners.

9. The gold vault services provided by the Bank at the request of its official international holders are safekeeping (custodial) services. The Bank provides no gold services other than the basic safekeeping service. Safekeeping services involve deposits made by the official international holders, withdrawals upon demand, and transfers between account holders. The Bank has no financial interest in any of the transactions affected on behalf of its account holders. In providing this service, the Bank's responsibility is the physical safety of the customers' gold.
10. The Bank is responsible for all aspects of its gold custody function and the Board of Governors is not involved in the day-to-day administration of the function or in any specific transactions involving gold held at the Bank for official international holders.
11. When the Bank proposes to establish account relationships, including gold custody arrangements, with official international customers, it must request the consent of the Board of Governors pursuant to the provisions of section 14(e) of the Federal Reserve Act (12 U.S.C. § 358), section 14(g) of the Federal Reserve Act, 12 U.S.C. § 348a, and the Board's Regulation N (12 C.F.R. part 214). Document 11 described in ¶ 4 above was generated in response to one such request. The document is a proposal by the Bank to open a Special Purpose Gold Custody Account for a private U.S. banking organization at the request of an FCB to accommodate an arrangement between the FCB and the U.S. bank that was of national importance to the FCB. It contains the name of the FCB and the U.S. bank with which it proposed to do business, as well as details of the proposed transaction. The document also contains some discussion of the Bank's relationships with several other FCB customers of the Bank's gold custodial services. The Board of Governors obtained information in the document from the Bank, which obtained the

information from FCBs which maintain accounts with the Bank. The reasons for the FCB's request were and remain highly sensitive in nature because the proposed transaction involved a foreign currency intervention. Certain official central bank international transactions, such as foreign currency operations and interventions, must be conducted in a highly confidential way to achieve the desired policy effect.

**Disclosure of Information**

12. Like any bank customer, FCBs, and other official international holders, expect that their account and transaction information at another central bank will be protected from disclosure unless they agree that such information may be disclosed. All requests made by an FCB to establish an account relationship at the Bank are treated as highly sensitive and confidential central bank information and are not disclosed to the public. FCBs are not compelled by law or regulation to establish account relationships at the Bank or conduct particular transactions through such accounts, and neither the Bank nor the Board has statutory authority to compel FCBs or other international holders to provide information regarding potential accounts or transactions. FCBs can choose from a number of financial institutions that provide similar account services, as described in ¶ 7 above. The establishment of such a relationship is entirely voluntary on the part of an FCB. Nonetheless, these parties, recognizing the important mutual benefits of maintaining gold and dollar denominated reserves at the central bank of the United States and the careful and confidential handling of those assets by the Bank, have consistently chosen to hold a large portion of their assets at the Bank. As of this writing, official international holders hold in excess of \$3 trillion in assets at the Bank, representing approximately 50% of the world's foreign exchange reserves. The Bank, the Federal

Reserve System, and the U.S. government derive important benefits from having such a large accumulation of assets held at the Bank. For its part, the Bank is under no obligation to respond favorably to a request from an FCB to establish an account or to provide a related service.

13. Official international holders, including the FCBs described in ¶ 11 above, do not customarily disclose information regarding their accounts and transactions with the Bank, including information regarding gold custodial accounts, to the public for reasons of national policy and other reasons. I am aware that these FCBs do not customarily disclose this information to the public through my dealings with FCB customers of the Bank, including the FCBs described in ¶ 11 above, and because the Bank's agreements with these FCBs provide that the Bank will maintain confidentiality of information regarding their transactions and accounts. In addition, the 2-page letter provided by the FCB to the FRBNY outlining its Master Gold Swap Agreement (which is part of Document 11) is labeled "confidential," indicating that the FCB does not customarily release this information to the public. When the Bank receives a request from an FCB to establish an account relationship to which the Bank desires to respond favorably, the Bank informs the Board of Governors of the request only to comply with the requirements of section 14(e) of the Federal Reserve Act and Regulation N. The Board of Governors also treats these requests as highly sensitive and confidential central bank information and does not disclose them to the public.
14. It is likely that public disclosure of the redacted portions of Document 11 would cause FCBs and foreign governments to be less willing to maintain accounts and engage in financial transactions at the Bank. FCBs and foreign governments expect that

information about their accounts and account activity will be kept confidential to the same extent this information is protected for U.S. customers. The Bank has the same expectation of confidentiality with respect to the foreign currency accounts it holds at FCBs for the Federal Reserve System's holdings as well as the holdings of the U.S. Treasury Exchange Stabilization Fund. All FCBs with which the Bank maintains accounts in fact hold information about the Bank's accounts in confidence. As noted in ¶ 7 above, FCBs can choose from a number of international financial institutions with which to establish and maintain account relationships. Information provided to such institutions would not be subject to disclosure to the public under the FOIA. If an FCB became concerned that its private business dealings with the Bank could be made public (especially in a matter involving a sensitive arrangement with one of its financial counterparties), it would lose confidence in the Bank's ability to protect its highly confidential arrangements and would likely choose to do business with a bank that can maintain confidentiality of such business dealings. This could lead to a gradual but significant flight of assets from the Bank as official international holders lose confidence in the Bank as the public disclosure becomes more generally known.

15. Public disclosure of information contained in the Document 11 would also impair the Board's and Federal Open Market Committee's ("FOMC's") ability to utilize their statutory authority under section 14 of the Federal Reserve Act to conduct swap arrangements with FCBs. Section 14 of the Federal Reserve Act provides in pertinent part that "[a]ny Federal reserve bank may, under rules and regulations prescribed by the Board of Governors ... purchase and sell in the open market, at home or abroad, either from or to domestic or foreign banks, firms, corporations, or individuals, cable transfers



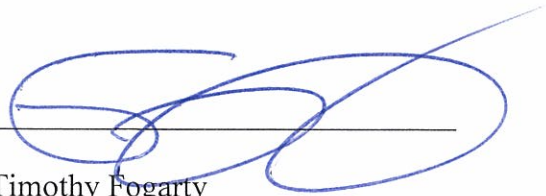
....” 12 U.S.C. § 353. The term “cable transfers” was used at the time the provision was enacted to mean foreign exchange. Section 14(e) of the Federal Reserve Act provides the authority for Reserve Banks to “open and maintain accounts in foreign countries, appoint correspondents, and establish agencies in such countries” and “to open and maintain banking accounts for ... foreign banks or bankers.” 12 U.S.C. § 358. The Board exercises the authority in section 14 in a manner consistent with its broader statutory duties with respect to international monetary cooperation and the promotion of financial stability. The Board and FOMC, through directives to the Bank, utilized this section 14 authority to establish temporary U.S. dollar liquidity swap facilities with fourteen FCBs in 2007 and 2008 and to re-establish such facilities with a smaller number of FCBs in May 2010. By providing FCBs with the capacity to deliver U.S. dollar funding to institutions in their jurisdictions, these swap facilities aim to improve liquidity conditions in global money markets and to minimize the risk that strains abroad could spread to U.S. markets. Information regarding these actions can be found on the Board’s public website at <http://www.federalreserve.gov/newsevents/press/monetary/20080929a.htm> and at <http://www.federalreserve.gov/newsevents/press/monetary/20100509a.htm>, among other press releases.

16. The relationships established by the Bank with FCBs through the accounts and transactions described above facilitate the ability of the Board and FOMC to respond quickly and effectively to international financial developments that might threaten U.S. dollar markets or economic conditions. One key reason the Bank was able to rapidly implement FOMC’s directive to establish and subsequently re-establish swap arrangements described in ¶ 15 above was its ability to use existing relationships with

FCB personnel and to leverage the operational systems developed and used on a daily basis to administer FCB accounts. The Bank's established contacts and operational systems were used to facilitate the rapid and smooth implementation of the swap arrangements, which enabled the Board and the FOMC to address fast moving market developments. If FCBs are unwilling to open and maintain accounts, and engage in transactions, at Federal Reserve Banks out of concern that information regarding their accounts and transactions will be publicly disclosed without their consent, the Board's ability to utilize these relationships to further its statutory duties with respect to international monetary cooperation and the promotion of financial stability would be impaired. It is my opinion that disclosure of information which is the subject of this declaration would directly and negatively affect the Bank's ability to maintain its relationships with official international holders resulting in impairment of the execution of Board and FOMC statutory functions as discussed above.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: JUNE 17, 2010

  
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Timothy Fogarty