



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D C 20551

June 12, 1973

CONFIDENTIAL (FR)

To: Federal Open Market Committee

From: Arthur L. Broida

Enclosed is a memorandum from Chairman Burns concerning the appointment of a subcommittee of the Federal Open Market Committee to consider a question relating to FOMC policy records.

Very truly yours,

A handwritten signature in cursive script that reads "Arthur L. Broida".

Arthur L. Broida
Deputy Secretary
Federal Open Market Committee

Enclosure



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From: Chairman Burns

In connection with its review of draft policy records for the February and March FOMC meetings, the Board of Governors has held several discussions of a staff recommendation that the passages describing the Committee's policy decision be expanded to include more information in quantitative form. It was agreed in those discussions that the staff's recommendation should not be adopted until there had been an opportunity for a more thorough review of the pros and cons by the Board and the Open Market Committee. As an initial step, Mr. Hackley, then General Counsel of the Committee, was asked to prepare an analysis of the legal aspects of the question. A copy of his memorandum is attached.

As the next step, I am asking a subcommittee, consisting of Governors Brimmer and Daane and Presidents Mayo and Morris, to try to develop a consensus on the matter which can be brought to the Board and the Open Market Committee for decision. Given the

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nature of the question, it would appear unnecessary and undesirable for the subcommittee to undertake detailed studies, with or without staff assistance, or to prepare a lengthy report. Indeed, I would hope that the subcommittee could isolate the key considerations and arrive at the desired consensus in the course of a single meeting-- although perhaps a long one.

Attachment

CONFIDENTIAL (F.R.)

May 31, 1973

To: Board of Governors

Subject: Legal aspects of publication
of quantitative specifications re-
lating to the domestic open market
policy directive.

From: Mr. Hackley*

In connection with recent discussions regarding the open market policy records for the February and March 1973 meetings of the Open Market Committee, question has been raised as to the desirability of including the range specified for the Federal funds rate and the six-month targets for M_1 and M_2 . During such discussions it has also been suggested that the entire quantitative specification sheet for each meeting of the Committee be published after a six-month lag or included in an annual review of open market operations.

In considering these questions from a legal viewpoint, two distinctions should be borne in mind: first, the distinction between the requirements of section 10 of the Federal Reserve Act with respect to the keeping of a record of policy actions of the Committee and the requirements of the Public Information Act with respect to disclosure of information by each agency of the Government; and, second, the distinction between the statutory responsibilities of the Board and those of the Open Market Committee.

The tenth paragraph of section 10 of the Federal Reserve Act provides that the Board "shall keep a complete record of the action taken . . . by the Federal Open Market Committee upon all questions of policy relating to open-market operations and shall record therein the

* Mr. O'Connell advises that he concurs in the positions taken in this memorandum.

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votes taken in connection with the determination of open-market policies and the reasons underlying the action of . . . the Committee in each instance." The paragraph further requires the Board to include in its Annual Report to Congress a full account of the actions so taken during the preceding year with respect to open market policies and to include in such Report a copy of the records required to be kept pursuant to this paragraph.

From these provisions it is clear that the responsibility for keeping records of open market policy actions by the Committee rests with the Board and that the record entry for each meeting of the Committee is to be approved by the Board rather than by the Committee. This question was specifically considered at a meeting of the Board on June 13, 1967, shortly before the Public Information Act became effective. At that meeting there was a suggestion that open market policy record entries be put on the agenda of meetings of the Open Market Committee for approval by that Committee before the entries were submitted to the Board for its approval. It was agreed, however, that such a procedure might be inconsistent with the requirements of section 10 of the Federal Reserve Act and that the procedure theretofore followed should be continued, namely, preparation of a draft of the record by the Board's staff, submission of the draft to Board members and Reserve Bank presidents for comments, and subsequent approval of the record by the Board.

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At the same time, it should be noted that the Board's responsibility under section 10 of the Federal Reserve Act is to keep a record of policy actions taken by the Federal Open Market Committee. Obviously, it would be inappropriate for the policy record approved by the Board to omit any action that was clearly intended by the Committee to constitute an action with respect to open market policy.

Heretofore, specifications agreed to at each meeting of the Committee with respect to the range of Federal funds rates and long-range M_1 and M_2 targets have not been recorded as "policy actions" of the Committee; in fact, they have not been included as actions of any kind in the "minutes of actions" for meetings of the Committee. Rather, it appears that they have been treated as "understandings", not based on a formal vote, with respect to interpretation and implementation of the policy directive. This is in contrast to the practice under which the domestic policy directive has been adopted by formal vote and included in the "minutes of actions" of each meeting.*

One might reasonably argue that the understanding as to the range of Federal funds rates reached at each meeting of the Committee and the understanding with respect to M_1 and M_2 targets can more meaningfully be considered actions of policy than the directive itself.

* It might be noted that if the Committee should be recorded as formally voting to approve the specifications - whether or not it treated them as part of the policy action - it would be necessary to report that vote in the minutes of actions which, under the Committee's Rules, are available for public inspection 90 days after the meeting to which they relate.

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If the Committee should decide at some point that such quantitative specifications are part of its policy action, it would be inappropriate, in my opinion, for the Board to omit such specifications from the policy record prepared pursuant to section 10 of the Federal Reserve Act. In the absence of any such action by the Committee, however, it would appear that the question of including such specifications in the policy entry for a particular meeting would be a decision for the Board alone.

In connection with the question whether the specifications should be regarded as "policy actions", it may be noted that, when the members of the Committee on two recent occasions agreed between meetings to a modification of the range of Federal funds rates, that agreement was not ratified at the following meeting of the Committee, thus indicating that such agreement was not considered a policy action. On the other hand, the very fact that it was considered desirable to obtain such agreements between meetings suggests that the range of Federal funds rates was regarded as coming very close to constituting a policy action.

As far as section 10 of the Federal Reserve Act is concerned, policy actions of the FOMC are required to be published only on an annual basis in the Board's Annual Report to Congress. Stricter requirements as to time of publication are imposed by section 552 of Title 5 of the U. S. Code, a section commonly referred to as the "Public Information Act". That section provides that each governmental agency shall "currently publish in the Federal Register for the guidance

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of the public" certain types of information, including "statements of general policy", unless they fall within specifically enumerated exceptions. The only exception that might be applicable to actions of the Committee is that pertaining to "inter-agency or intra-agency memorandums". In a sense, the policy directive adopted by the Committee at each meeting is a communication addressed to the Federal Reserve Bank of New York and might therefore be regarded as an "inter-agency memorandum"; but after the enactment of the Public Information Act the Committee agreed that the directive should properly be regarded as a statement of general policy falling within the publication requirement of that Act.

It was also agreed in 1967, however, that publication of the directive after a 90-day lag would constitute reasonable compliance with the requirement that statements of general policy be "currently" published. The Committee's Rules Regarding Availability of Information expressly provide that certain types of information of the Committee are not published in the Federal Register until after such period of time as the Committee may determine to be reasonably necessary to avoid certain undesirable effects described in the Rules and that, for this reason, the Committee's current economic policy directive is published in the Federal Register approximately 90 days after the date of its adoption. One of the reasons for such deferment of publication enumerated in the Rules is that earlier disclosure would "permit speculators and others to gain unfair profits or to obtain

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unfair advantages by speculative trading in securities, foreign exchange, or otherwise".

The Committee's Rules also provide that no information in the records of the Committee relating to the adoption of any economic policy directive is made available to the public before it is published in the Federal Register or is otherwise released to the public by the Committee. Consequently, under the Rules, information regarding quantitative targets agreed to in connection with the adoption of the directive at a particular meeting may not be made public until after expiration of the 90-day period unless otherwise released to the public by the Committee.

In the light of the provisions of the Public Information Act and the Committee's Rules regarding disclosure of information, quantitative specifications agreed to by the Committee in connection with adoption of the economic policy directive must be published after a lag of 90 days if such specifications constitute "policy actions", notwithstanding the less stringent requirements of section 10 of the Federal Reserve Act as to the time of publication of the record of policy actions. On the other hand, if the specifications do not constitute policy actions, they may not be published prior to the expiration of approximately 90 days after the meeting at which they were agreed to and, if the Board does not include them in the policy record entry for that meeting, the timing of their subsequent publication, whether after a lag of six months or on an annual basis, is a matter for determination by the Committee and not by the Board.

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To summarize:

(1) If the specifications are not regarded by the Committee as reflecting policy actions and are considered simply as understandings or guidelines with respect to interpretation and implementation of the directive,

(a) the Board may exercise its own judgment as to whether they should be included in the policy record entry in explanation of the directive; but

(b) if they are not included in the policy record entry, their subsequent publication and the timing of such publication are matters for determination by the Committee.

(2) If the specifications are regarded by the Committee as constituting policy actions,

(a) they should be included in the minutes of actions for the meeting at which the directive to which they relate is adopted and shown in the memorandum of discussion for that meeting as having been formally adopted by the Committee;

(b) they should be shown in the policy record for inclusion in the Board's Annual Report to Congress as policy actions with a statement of the underlying reasons for their adoption and the votes of members of the Committee with respect thereto; and

(c) they should be published along with the directive itself in the Federal Register approximately 90 days after the date of the meeting at which they were adopted.