

EBS/76/199

CONFIDENTIAL

April 29, 1976

To: Members of the Executive Board

From: The Secretary

Subject: Disposition of Gold Under Schedule B, Paragraph 7(a)
of Proposed Second Amendment

The attached paper, prepared in connection with an issue that arises on the sale of gold under the future Articles, is circulated for the information of Executive Directors. It provides background material for the discussion of the summary of conclusions on gold auctions and restitution (EBS/76/198, 4/29/76) scheduled for the Executive Board meeting on Wednesday, May 5, 1976.

Att: (1)

INTERNATIONAL MONETARY FUND

Disposition of Gold Under Schedule B, Paragraph 7(a)
of Proposed Second Amendment

Prepared by the Legal Department

Approved by Joseph Gold

April 27, 1976

1. At a recent meeting of the Executive Directors, the following question arose. Present arrangements contemplate the sale of gold to members under Article VII, Section 2(ii) of the present Articles for the purpose of replenishment and the resale of part of this gold to other members for currency other than that of the secondary purchaser. The portions resold would be determined on the basis of quotas on August 31, 1975. Suppose, however, that the Fund were willing that a potential secondary purchaser should postpone its purchase until after amendment. Could the Fund make a sale corresponding to the secondary purchase under the provisions of the amended Articles without a hitch?

2. There is no need to discuss the question whether a member entitled to make a secondary purchase would be obligated to make it. A member can refuse to make a secondary or corresponding purchase before or after amendment. (A member is required to make a primary purchase. That is to say, the Fund is entitled to replenish its holdings of a member's currency under the present Article VII, Section 2(ii) by requiring that member to supply its currency for gold.)

3. The provision in the proposed second amendment in relation to which the problem set forth in 1 above must be examined is Schedule B, paragraph 7. The relevant portion of the provision reads as follows:

"To the extent that arrangements equivalent in effect to (a) and (b) below have not been completed before the date of the second amendment of this Agreement, the Fund shall

- (a) sell up to 25 million ounces of fine gold held by it on August 31, 1975 to those members that were members on that date and agree to buy it, in proportion to their quotas on that date. The sale to a member under this subparagraph (a) shall be made in exchange for its currency and at a price equivalent at the time of sale to one special drawing right per 0.888 671 gram of fine gold..."
(P. 349 of Report on Proposed Second Amendment)

4. The passages in the Report that are relevant read as follows
(P. 42):

"5. In accordance with the understandings reached in the Interim Committee of the Board of Governors on the International Monetary System (paragraph 6(3) of the Press Communique issued by the Committee on August 31, 1975 and paragraph 4 of the Communique of June 12, 1975), the Fund is expected to make arrangements, before the effective date of the amendment, that is, on the basis of the present Articles, for

the disposal of fifty million ounces of its gold, as follows:

- (a) one half of this amount will be transferred against payment at the present official price to all members that were members on August 31, 1975 in proportion to their quotas on that date and
- (b) the other half of this amount will be sold for the benefit of developing members that were members on that date.

6. If the disposal of the fifty million ounces of the Fund's gold referred to in 5 above is not completed by the effective date of the amendment, the Fund is required by a provision of the amended Articles to complete the disposition of the balance. The Fund is bound to make arrangements for this purpose, and a further decision will not be necessary. The provision referred to is Schedule B, paragraph 7, which directs the Fund to dispose of any balance by

- (a) selling up to twenty-five million ounces, at the present official price, to those members that were members on August 31, 1975, in proportion to their quotas on that date and in exchange for their currencies ..."

5. One way in which the language of the second proposed amendment and of the Report might be read is that the gold subject to sale under Schedule B, paragraph 7(a) is the unsold balance of the 25 million ounces, and this balance must be sold to willing purchasers in proportion to their quotas as of August 31, 1975. On this reading the portion not sold to a secondary purchaser would fall into the common pot and would be distributed pro rata among all willing purchasers. To sustain this understanding, the references to "arrangements ... completed" in the provision and "disposal ... completed" in the Report would be taken to mean completion by transferring ownership.

6. The reading set forth in 5 above is not the only one that is possible, at least of the provision. The full phrase in Schedule B, paragraph 7(a) is "To the extent that arrangements equivalent in effect to (a) and (b) below have not been completed." The phrase was drafted to refer to arrangements equivalent to sale and not to sale largely because before amendment the Fund itself would not be making the secondary sales. Nevertheless, the language could be read so that "arrangements equivalent in effect" meant not only sales but also arrangements for future sales. Decisions by the Fund to make future sales would be arrangements of this kind. Paragraph 7 would constitute a direction to the Fund to sell the gold subject to the arrangements in accordance with them, and this gold would not fall into the common pot for pro rata distribution. The ambiguity in the text should be resolved in favor of the intention, amply supported by the legislative history of the provision, that the full 25 million ounces is to be disposed of proportionately to all willing purchasers.